

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT, EXPANSION
[CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

entered into between

MOGALE CITY LOCAL MUNICIPALITY

and

[PRIVATE PARTY (RF) (PTY) LTD]

TABLE OF CONTENTS

PARAGRAPH NUMBER	DESCRIPTION	PAGE NUMBER
1	PARTIES	2
2	INTRODUCTION.....	2
3	DEFINITIONS	2
4	INTERPRETATION.....	32
5	PRIVATE PARTY'S RIGHTS.....	34
6	PROJECT DOCUMENTS	35
7	PROJECT DELIVERABLES	35
8	GENERAL OBLIGATIONS	36
9	MCLM OBLIGATIONS.....	37
10	PRIVATE PARTY WARRANTIES.....	37
11	MCLM WARRANTIES	39
12	PRIVATE PARTY INDEMNITIES.....	39
13	LIMITATIONS ON LIABILITY	40
14	PROJECT SITE	40
15	PROJECT SITE CONDITIONS	41
16	CONSENTS	43
17	HERITAGE OBJECTS AND RESOURCES.....	43
18	DURATION OF PPP AGREEMENT.....	44
19	PROVISION OF THE FACILITIES	45
20	UTILITIES AND RATES AND TAXES	45

TABLE OF CONTENTS

PARAGRAPH NUMBER	DESCRIPTION	PAGE NUMBER
21	RATES AND TAXES	45
22	INDEPENDENT CERTIFIER.....	46
23	DESIGN DEVELOPMENT	47
24	MONITORING AND INSPECTION.....	50
25	COMPLETION	51
26	OPERATIONS COMMENCEMENT	52
27	DELAY IN OPERATIONS COMMENCEMENT	52
28	PROJECT ASSETS	53
29	EQUIPMENT STANDARDS.....	54
30	MAINTENANCE SURVEY	54
31	PAYMENT	58
32	INSURANCE.....	61
33	REINSTATEMENT.....	63
34	ECONOMIC TEST	65
35	CONSEQUENCES OF A RELIEF EVENT	67
36	CONSEQUENCES OF A COMPENSATION EVENT	68
37	FORCE MAJEURE	71
38	UNFORESEEABLE CONDUCT.....	72
39	MCLM VARIATIONS	74
40	PRIVATE PARTY VARIATIONS.....	78
41	PERSONNEL.....	80

TABLE OF CONTENTS

PARAGRAPH NUMBER	DESCRIPTION	PAGE NUMBER
42	MONITORING AND INSPECTION.....	80
43	ENVIRONMENTAL POLICY	80
44	OCCUPATIONAL HEALTH AND SAFETY.....	81
45	BLACK EQUITY IN THE PRIVATE PARTY.....	82
46	PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY	83
47	BEE OBLIGATIONS OF SUBCONTRACTORS	84
48	SUBCONTRACTOR MANAGEMENT AND EMPLOYMENT EQUITY ...	85
49	SUBCONTRACTOR BEE PROCUREMENT REQUIREMENTS	86
50	REQUIREMENTS FOR BLACK WOMEN AND DISABLED PERSONS	86
51	BEE REPORT	87
52	TERMINATION FOR MCLM DEFAULT	88
53	TERMINATION FOR PRIVATE PARTY DEFAULT	88
54	TERMINATION FOR FORCE MAJEURE	91
55	TERMINATION FOR CORRUPT ACTS.....	91
56	EFFECTS OF TERMINATION	94
57	COMPENSATION ON TERMINATION FOR MCLM DEFAULT	99
58	COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT 101	
59	COMPENSATION ON TERMINATION FOR FORCE MAJEURE	102
60	COMPENSATION ON TERMINATION FOR CORRUPT ACTS.....	104
61	MCLM STEP-IN	105
62	INFORMATION AND AUDIT ACCESS.....	107

TABLE OF CONTENTS

PARAGRAPH NUMBER	DESCRIPTION	PAGE NUMBER
63	REFINANCING	110
64	STORAGE OF PROJECT DATA	110
65	INTELLECTUAL PROPERTY OF MCLM	111
66	CESSION AND DELEGATION	112
67	CHANGES IN CONTROL AND BLACK EQUITY	113
68	DISPUTE RESOLUTION	114
69	FAST-TRACK DISPUTE RESOLUTION.....	116
71	AMENDMENTS	118
72	WAIVER.....	118
73	ENTIRE PPP AGREEMENT	119
74	CONFLICTS WITH OTHER CONTRACTS	119
75	SEVERABILITY	120
76	REPRESENTATIVES	120
77	COUNTERPARTS	121
78	NOTICES AND LEGAL SERVICE	121
79	PUBLIC RELATIONS AND PUBLICITY	122
80	CONFIDENTIALITY	123
81	COSTS AND EXPENSES	123

SCHEDULES

SCHEDULE NUMBER	DESCRIPTION
1	PROJECT SITE
2	WORKS PROGRAMME
3	UNDEFINED AT THIS STAGE
4	FINANCIAL MODEL
5	FACILITIES SPECIFICATIONS
6	OPERATIONS SPECIFICATIONS
7	SHAREHOLDERS' AGREEMENT
8	FINANCING AGREEMENTS
9	FINAL MAINTENANCE BOND
10	INSURANCES
11	TARGET GROUP TERMS AND PENALTIES
12	SKILLS DEVELOPMENT PLAN
13	KEY PERSONNEL POSITIONS
14	INDEPENDENT CERTIFIER AGREEMENT
15	CONTRACT MANAGEMENT PLAN FOR MONITORING THE KRUGERSDORP GAME RESERVE

1 PARTIES

- 1.1 MOGALE CITY LOCAL MUNICIPALITY; and
- 1.2 [PRIVATE PARTY (RF) (PROPRIETARY) LIMITED].

2 INTRODUCTION

- 2.1 Mogale City Local Municipality is local municipality situated in the western region of Gauteng.
- 2.2 In terms of the Protected Areas Act, Mogale City Local Municipality is empowered to exercise control over the Krugersdorp Game Reserve as a Protected Area and in accordance therewith the Protect Areas Act.
- 2.3 Mogale City Local Municipality wishes to expand the income generation potential of the Krugersdorp Game Reserve by appointing a suitably experienced hotel and recreational facilities operator to design, constuct, refurbish, expand, finance, operate. maintain and manage, of the Krugersdorp Game Reserve (“the **Project**”).
- 2.4 Following an open and competetitive tender process by Mogale City Local Municipality, the Private Party was nominated as the preferred bidder to undertake the Project as a Public Private Partnership.
- 2.5 Accordingly, Mogale City Local Municipality and the Private Party wish to enter into this PPP Agreement to regulate the implementation of the Project on the terms and conditions set out below.

3 DEFINITIONS

- 3.1 In this PPP Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and the cognate expressions shall have corresponding meanings:-
 - 3.1.1 **“Active Black Equity”** - in relation to any Black Equity or in relation to any issued shares in the share capital of any Subcontractor held by Black People and/or Enterprises, means Black Equity or shares is/are held by Black People and/or Black Enterprises who will participate directly in the day-to-day management and operations of the Project;
 - 3.1.2 **“Adjusted Debt”** – [●]% percent of the Debt less, the aggregate of:-

- 3.1.2.1 the Tender Costs;
- 3.1.2.2 all credit balances on any bank accounts held by or on behalf of the Private Party on the Termination Date and the value of any right of the Private Party or the Lenders to receive insurance proceeds or any proceeds pursuant to letters of credit and of any such proceeds actually received by them (save where such credit balances or proceeds are paid to MCLM and/or are to be applied in reinstatement) and sums due and payable from the Subcontractors and any other third parties;
- 3.1.2.3 the market value of any other assets and rights of the Private Party or the Lenders (including any assets and/or rights secured in favour of the Lenders in respect of the Project but excluding the Project Assets) less the liabilities of the Private Party or the Lenders properly incurred in carrying out its obligations under this PPP Agreement as at the Termination Date or such later date as the assets and rights can be realised. Provided that no account shall be taken of any liabilities and obligations of the Private Party arising out of:-
 - 3.1.2.3.1 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
 - 3.1.2.3.2 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; and
- 3.1.2.4 amounts that are due by the Private Party to MCLM pursuant to this PPP Agreement; (to the extent same constitutes a positive amount);
- 3.1.3 **"Adjusted Estimated Project Value"** - the Estimated Project Value of this PPP Agreement less an amount equal to the aggregate of:-
 - 3.1.3.1 the Calculation Costs;
 - 3.1.3.2 amounts that are due by the Private Party to MCLM pursuant to this PPP Agreement; (to the extent same constitutes a positive amount); and

- 3.1.3.3 an amount equal to the aggregate of:-
- 3.1.3.3.1 all credit balances on any bank accounts held by or on behalf of the Private Party on the date that the Estimated Project Value of this PPP Agreement is calculated; and
- 3.1.3.3.2 any insurance proceeds, and other amounts owing to the Private Party, to the extent not included in clause 3.1.3.3.1,
- 3.1.3.3.3 to the extent that clauses 3.1.3.3.1 and 3.1.3.3.2 have not been directly taken into account in calculating the Estimated Project Value and MCLM has received such amounts in accordance with this PPP Agreement;
- 3.1.4 **“Affiliate”** - any person that directly or indirectly through any one or more intermediaries controls, is controlled by or is under common control with any person, where “Control” means the ability to direct or cause the direction of the business affairs and management policies or practices of a person (but excluding the Subcontractors from this definition);
- 3.1.5 **“Annual Skills Development Commitment”** - has the meaning set forth in clauses 46 (PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY) and 48 (SUBCONTRACTOR MANAGEMENT AND EMPLOYMENT EQUITY);
- 3.1.6 **“Commencement Certificate”** - the certificate issued by the Private Party subsequent to receiving the Completion Certificate confirming that the requirements set out in clauses 19 (PROVISION OF THE FACILITIES) and 25 (COMPLETION) have been met, and that the Private Party is able to undertake the Operations so as to meet the Operations Specifications;
- 3.1.7 **“Base Case Equity IRR”** - having regard to the Base Case Financial Model, the real post-tax Equity IRR as at the Effective Date, being [•]% ([•]percent);
- 3.1.8 **“Base Case Financial Model”** - the financial base case for the Project attached to this PPP Agreement as Schedule 4 (*Financial Model*), which model incorporates the forecasted cash flow statements of the Private Party including all expenditure, revenues, taxation and financing of the Project Deliverables together with the income statements and balance sheets for the Private Party over the Project Term, and details of all assumptions,

calculations and methodology used in the compilation thereof, as amended from time to time in accordance with the Financing Agreements;

- 3.1.9 **“BEE”** - Black Economic Empowerment;
- 3.1.10 **“BEE Codes of Good Practice”** - the codes governing the implementation of BEE and promulgated on 9 February 2007 in accordance with the provisions of the Broad Based Black Economic Empowerment Act 53 of 2003, as amended from time to time;
- 3.1.11 **“BBBEE”** - Broad-based Black Economic Empowerment;
- 3.1.12 **“BBBEE Scorecard”** - the balance scorecard contained in Schedule 11 (*Target Group Terms*);
- 3.1.13 **“Black Enterprise”** - an enterprise that is at least 50,1% (fifty comma one percent) beneficially owned by Black People and in which Black People have Management Control. Such beneficial ownership may be held directly or through other Black Enterprises;
- 3.1.14 **“Black Equity”** - the voting Equity held by Black Shareholders from time to time;
- 3.1.15 **“Black People”** - the term *“black people”* includes all African, Coloured, Indian or Chinese persons who are South African citizens by birth or by descent or who were naturalised prior to the commencement of the Constitution of the Republic of South Africa Act 200 of 1993. In addition, the term also includes black people who became South African citizens after the commencement of the Constitution of the Republic of South Africa Act 108 of 1996 but who would have been able to be naturalised prior to this, were it not for the apartheid laws which prohibited naturalisation of certain persons;
- 3.1.16 **“Black Shareholder”** - any Shareholder that is a Black Person or a Black Enterprise;
- 3.1.17 **“Black Women”** - African, Coloured and Indian Women;
- 3.1.18 **“Black Women Enterprise”** - an enterprise that is at least 30% (thirty percent) beneficially owned by Black Women and in which Black Women have Management Control. Such beneficial ownership may be held directly or through other Black Women Enterprises;

- 3.1.19 **“Business Day”** - any day except a Saturday, Sunday or public holiday in South Africa;
- 3.1.20 **“Calculation Costs”** - the total of all costs forecast to be incurred by MCLM as a result of termination, which shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to sub-clause 3.1.3.1 of Adjusted Estimated Project Value above, such costs to include (without double counting):-
- 3.1.20.1 a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
- 3.1.20.2 the reasonable costs of the Operations forecast to be incurred by MCLM to the standard required in terms of Schedule 6 (*Operations Specifications*); and
- 3.1.20.3 any rectification costs required to undertake the Operations to the standard required in terms of Schedule 6 (*Operations Specifications*) including any costs forecast to be incurred by MCLM to Complete the Works and additional operating costs required to restore operating service standards,
- in each case such costs to be forecast at a level that will undertake the Operations in accordance with the Operations Specifications.
- 3.1.21 **“Capital Expenditure”** - any expenditure treated as capital expenditure under IFRS;
- 3.1.22 **“Change in Control”**- any change whatsoever in Control whether effected directly or indirectly;
- 3.1.23 **“Change in Law”** - the coming into effect after the date of this PPP Agreement of any Law, or any amendment or variation to any Law, other than any Law that on or before the Effective Date, had been published:-
- 3.1.23.1 in a draft Bill as part of a government White or Green Paper which is subsequently enacted in substantially the same form; or
- 3.1.23.2 a Bill which is subsequently enacted in substantially the same form;
- 3.1.24 **“Companies Act”** - the Companies Act, 2008 as amended from time to time;

- 3.1.25 **“Compensation Date”** - that date being 180 (one hundred and eighty) days after the Determination Date or such earlier date upon which the Termination Amount is paid;
- 3.1.26 **“Compensation Date Interest Rate”** - the interest rate applicable under the Financing Agreements;
- 3.1.27 **“Compensation Event”** - any breach by MCLM of any of its obligations under this PPP Agreement (save for any breach that constitutes a MCLM Default) to the extent in each case that the breach or failure is not caused by the Private Party or any Subcontractor, provided that, to the extent that the breach is contributed to by the Private Party or any Subcontractor, the Private Party shall bear responsibility proportionate to such contribution in accordance with clause 36 (CONSEQUENCES OF A COMPENSATION EVENT);
- 3.1.28 **“Complete”** - in respect of the Facilities, that –
- 3.1.28.1 the Works are complete and have been commissioned by the Private Party in accordance with clause 25 (COMPLETION);
- 3.1.28.2 the Project Assets have been supplied, installed and commissioned; and
- 3.1.28.3 the Utilities are available as required for the Operations,
- and **“Completion”** and **“Completed”** shall have a similar meaning;
- 3.1.29 **“Completion Certificate”** - the certificate to be issued by the Independent Certifier in accordance with clause 25 (COMPLETION), declaring that all the Facilities have been Completed;
- 3.1.30 **“Confidential Information”** - any information or data irrespective of the form or media in which it may be stored, accessible to a Party as a consequence of this PPP Agreement or any Project Document, which is protected from disclosures by virtue of:-
- 3.1.30.1 the Promotion of Access to Information Act, 2000; and/or
- 3.1.30.2 is agreed by the Parties as at the Effective Date or prior to disclosure to the other party to be confidential in nature on grounds of commercial sensitivity; and/or

3.1.30.3 being information or data which one Party provides to another in terms of this PPP Agreement or a Project Document and in which the Party would have a reasonable expectation of confidentiality;

but shall not include information which:-

3.1.30.4 is revealed to a Party's employees, professional advisers, the Lenders or their professional advisers, provided that the Party's relevant employees, professional advisers, the Lenders or their professional advisers are made aware of the content of clause 79 (PUBLIC RELATIONS AND PUBLICITY) clause 80 (CONFIDENTIALITY) and have agreed to abide by the terms thereof and each Party procures that its employees, professional advisers, Lenders and their professional advisers shall, prior to the disclosure or their receipt of the Confidential Information, complete, sign and deliver a Confidentiality Undertaking in favour of the disclosing Party; or

3.1.30.5 is disclosed as part of any attempt to resolve a dispute pursuant to clause 68 (DISPUTE RESOLUTION) or clause 69 (FAST-TRACK DISPUTE RESOLUTION); or

3.1.30.6 is made available or published by a Party as required by Law or any regulatory authority including the rules of any recognised securities exchange; or

3.1.30.7 is or becomes public knowledge (otherwise) than by reason of breach of clause 80 (CONFIDENTIALITY); or

3.1.30.8 was in the possession of either Party without restriction in respect of its disclosure before receiving it from the other Party; or

3.1.30.9 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

3.1.30.10 is required to be disclosed to National Treasury or Parliament pursuant to the provisions of the PFMA; or

3.1.30.11 is required to be disclosed to the Auditor-General pursuant to the Public Audit Act; or

3.1.30.12 is provided to potential lenders, provided that they are made aware

of the contents of clause 80 (CONFIDENTIALITY) and agree to abide by it and each Party procures that its employees, professional advisers, Lenders and their professional advisers shall, prior to the disclosure or their receipt of the Confidential Information, complete, sign and deliver a Confidentiality Undertaking in favour of the disclosing Party;

3.1.30.13 is disclosed by MCLM to a Responsible Authority; or

3.1.30.14 is disclosed to a third party with the prior written consent of the Party to whom such information is confidential to; and

“Confidential” shall have a corresponding meaning;

3.1.31 **“Control”** –in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);

3.1.32 **“Consents”** - all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, permissions required to be issued by or made with any Responsible Authority in connection with the performance of any of the Project Deliverables;

3.1.33 **“Contamination”** - all or any pollutants or contaminations, including any chemical or industrial radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas vapour);

3.1.34 **“Contract Month”** - each calendar month occurring during the Project Term;

3.1.35 **“Corrupt Act”** :-

3.1.35.1 directly or indirectly offering, giving or agreeing to give to MCLM or any other organ of state or to any person employed by or on behalf of MCLM or any other organ of state any gift or consideration of any kind as an inducement or reward:-

- 3.1.35.1.1 for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this PPP Agreement or any other agreement with MCLM or any other organ of state; or
- 3.1.35.1.2 for showing or not showing favour or disfavour to any person in relation to this PPP Agreement or any other agreement with MCLM or any other organ of state;
- 3.1.35.2 entering into this PPP Agreement or any other agreement with MCLM or any other organ of state in connection with which commission had been paid or had been agreed to be paid by the Private Party or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to MCLM;
- 3.1.35.3 committing any offence:-
 - 3.1.35.3.1 under any Law from time to time dealing with bribery, corruption or extortion;
 - 3.1.35.3.2 under any Law creating offences in respect of fraudulent acts; or
 - 3.1.35.3.3 at common law, in respect of fraudulent acts in relation to this PPP Agreement or any other agreement with MCLM or any other public body; or
- 3.1.35.4 defrauding or attempting to defraud or conspiring to defraud MCLM or any other public body;
- 3.1.36 **"CPI"** - "CPI" shall mean the weighted average of the consumer price index as published from time to time by Statistics South Africa, which is referred to as "CPI – all urban areas" in Statistical release PO141.1, provided that if, after the Effective Date:
 - 3.1.36.1 such index ceases to be published; or
 - 3.1.36.2 MCLM and the Private Party agree that, due to a change in circumstances or a change in the basis of calculation, and pursuant to such changes, the index is no longer representative,

then, MCLM and the Private Party will use such other official information or index as may be available and acceptable to them.

If MCLM and the Private Party cannot reach agreement as aforesaid, then, for the purposes of the PPP Agreement, an alternative index shall be determined by a majority decision of a panel comprised of economists and actuaries, not exceeding 3 (three) in number and having no interest in the outcome of the determination to be made (provided that at least one such person shall be an economist and one shall be an actuary) ("the CPI Panel") appointed by the Chief Economist of the South African Reserve Bank. The determination by the CPI Panel (including any determination by the CPI Panel as to the date from which any alternative index shall take effect) shall be binding on the Parties. The cost of obtaining such determination shall be borne by the Private Party;

- 3.1.37 **"D & C Subcontract"** - the written agreement between the Private Party and the D&C Subcontractor in respect of the Works;
- 3.1.38 **"D & C Subcontractor"** –[●], being the person appointed by the Private Party to undertake the Works;
- 3.1.39 **"DBSA"** - The Development Bank of Southern Africa Limited, a company established under the provisions of the Development Bank of Southern Africa Act, 1997 and defined as a major public entity in terms of Schedule 2 of the PFMA;
- 3.1.40 **"Debt"** - at any date, all amounts due and payable by the Private Party that are outstanding under the Financing Agreements at that date;
- 3.1.41 **"Default Interest Rate"** –the Prime Rate plus 2% (two percent);
- 3.1.42 **"Detailed Design"** – the detailed design for the Facilities to reflect the requirements of Schedule 5 (*Facilities Specifications*) to be prepared between the Effective Date and the commencement of construction;
- 3.1.43 **"Determination Date"** - that date being:-
 - 3.1.43.1 if clause 52 (TERMINATION FOR MCLM DEFAULT) applies, the date on which the amount due to the Private Party in terms of clause 57 (COMPENSATION ON TERMINATION FOR MCLM DEFAULT) has been agreed, which date shall be 31 (thirty one) Business Days

from the Termination Date or as determined;

- 3.1.43.2 if clause 54 (TERMINATION FOR FORCE MAJEURE) applies, the date upon which the amount due to the Private Party in terms of clause 57 (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) has been agreed, which date shall be 31 (thirty one) Business Days from the Termination Date or as determined;
- 3.1.43.3 if clause 55 (TERMINATION FOR CORRUPT ACTS) applies, the date on which the amount due to the Private Party in terms of clause 60 (COMPENSATION ON TERMINATION FOR CORRUPT ACTS) is agreed, which date shall be 31 (thirty one) Business Days from the Termination Date or as determined;
- 3.1.43.4 if clause 53 (TERMINATION FOR PRIVATE PARTY DEFAULT) applies, the date on which the Adjusted Estimated Project Value and the Adjusted Debt has been agreed or as determined.

For the avoidance of doubt, if the Parties to this PPP Agreement cannot agree on the amount due by either Party on the dates specified in the preceding sub-clauses in this definition by which such agreement is to be achieved, the procedure to be followed to determine such amount or any other matter which is relevant to the determination of the Determination Date, the dispute shall be determined in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION);

- 3.1.44 **“Development Period”** - the period from the Effective Date up to the first anniversary of the Effective Date, unless this PPP Agreement is terminated earlier in accordance with its terms;
- 3.1.45 **“Disabled Persons”** – persons who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into or advancement in, employment;
- 3.1.46 **“Disabled Persons Enterprise”** - an Enterprise that is at least 50,1% (fifty comma one percent) beneficially owned by Disabled Persons. Such beneficial ownership may be held directly or through other Disabled Persons Enterprises;
- 3.1.47 **“Distributions”** -

- 3.1.47.1 whether in cash or in kind, any:-
- 3.1.47.1.1 dividend or distribution of share capital;
- 3.1.47.1.2 reduction of share capital, stated capital redemption fund or any share premium account;
- 3.1.47.1.3 cancellation, conversion, redemption or re-purchase of shares or any other variation whatsoever in share capital;
- 3.1.47.1.4 payment in respect of the Shareholder Loans (whether of principal, interest, breakage costs or otherwise);
- 3.1.47.1.5 payment, loan or other financial assistance, transfer of rights or other assets or receipt of any other benefit to the extent put in place after the Effective Date and not in the ordinary course of business, not on an arm's length basis or not otherwise on reasonable commercial terms;
- 3.1.48 to any of the Shareholders or their Affiliates; or
- 3.1.48.1 release of any contingent liability (prior to its stated date of maturity) of any of the Shareholders or their Affiliates in respect of their financial obligations to the Private Party and/or the Lenders (or any security company or trust holding any security in respect of the Debt for the benefit of the Lenders). Such release shall be deemed to be a cash amount for the purpose of calculating the Refinancing Gain but not for any other purpose;
- 3.1.49 **"Effective Date"** - the date of signature of this PPP Agreement by the Party last signing;
- 3.1.50 **"EME"** - shall have the meaning assigned thereto in the BEE Codes of Good Practice;
- 3.1.51 **"Employment Equity Act"** - Employment Equity Act, 1998 as amended from time to time;
- 3.1.52 **"Enterprise"** - a company, close corporation, juristic person, trust, partnership, joint venture or association or sole proprietor or any other replacement entity contemplated in the Companies Act, whether or not having separate legal personality;

- 3.1.53 **“Equity”** - the entire issued share capital of the Private Party;
- 3.1.54 **“Equity Compensation”** - an amount which, if taken into account together with Distributions paid on or before the Termination Date, gives an internal rate of return on the Equity and outstanding Shareholder Loans equal to the Base Case Equity IRR, having regard to Distributions made and forecast to be made;
- 3.1.55 **“Equity IRR”** - the projected blended rate of return to the Shareholders and their Affiliates over the full Project Term, having regard to the amounts of the Shareholders' Loans and the Equity contributed by the Shareholders to the Private Party and to Distributions made and forecast to be made;
- 3.1.56 **“Estimated Project Value”** - the amount determined in accordance with clause 58 (COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT) that a third party would pay to MCLM as the market value of the New PPP Agreement;
- 3.1.57 **“Exempt Refinancing”** - any refinancing:-
- 3.1.57.1 that effects a sale or cession of the whole or any part of the Equity or the Shareholder Loans or securitisation of the rights attaching to the Equity or the Shareholder Loans; provided that this exemption shall not limit the application of clause 67 (CHANGES IN CONTROL AND BLACK EQUITY);
- 3.1.57.2 that arises solely from a change in taxation or accounting treatment of the Private Party;
- 3.1.57.3 that compromises a waiver, approval or any similar action taken in respect of breaches of warranties or representations or the late or non-provision of required information, and which occurs in the ordinary day-to-day administration of the Project Documents; or
- 3.1.58 **“Expiry Date”** - the 25th (twenty fifth) anniversary of the Effective Date;
- 3.1.59 **“Facilities”** – the buildings and accommodation facilities together with all supporting infrastructure, plant and equipment as required to enable the Private Party to exercise its rights and perform its obligations included in the Project Deliverables;
- 3.1.60 **“Facilities Specifications”** - the Facilities specifications set forth in

Schedule 5 hereto;

- 3.1.61 **“Final Maintenance Bond”** - has the meaning set forth in clause 30.4 (Maintenance Survey);
- 3.1.62 **“Final Maintenance Survey”** - has the meaning set forth in clause 30.1 (MAINTENANCE SURVEY);
- 3.1.63 **“Financial Year”** – the financial year of MCLM, being 1 July in one year to 30 June in the next succeeding year, other than in respect of the first year after Effective Date which shall commence on the Effective Date and end on 31 March of the next year;
- 3.1.64 **“Financing Agreements”** - the agreements relating to the financing provided by the Lenders to the Private Party;
- 3.1.65 **“Fixed Fee”** - the fixed fee payable by the Private Party to MCLM in accordance with clause 31;
- 3.1.66 **“Force Majeure”** - any of the following events:-
 - 3.1.66.1 war, civil war, armed conflicts or terrorism; or
 - 3.1.66.2 nuclear contamination unless the Private Party and/or any Subcontractor is the source or cause of the contamination; or
 - 3.1.66.3 chemical or biological contamination of the Works and/or of the Facilities and/or the Project Site unless the Private Party and/or any Subcontractor is the source or cause of the contamination;
- 3.1.67 which directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement;
- 3.1.68 **“Good Industry Practice”** - applying in relation to the manner in which the Works are performed and the Operations are rendered, the standards, practices, methods and procedures conforming to Applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 3.1.69 **“Gross Revenue”**- has the meaning assigned thereto in Clause 31.1.4;

- 3.1.70 **“IFRS”** - the International Financial Reporting Standards, as amended from time to time;
- 3.1.71 **“Independent Certifier”** - the independent certifier appointed in terms of this PPP Agreement and who is responsible for issuing the Completion Certificate declaring that the Works have been Completed;
- 3.1.72 **“Independent Certifier Agreement”** - the written agreement, so entitled and attached hereto as Schedule 14 (Independent Certifier Agreement), between MCLM, the Private Party and the Independent Certifier, in terms of which the Independent Certifier undertakes to provide the services contemplated under clause 25 (COMPLETION);
- 3.1.73 **“Independent Expert”** -
- 3.1.73.1 an accountant of not less than 10 (ten) years professional experience or investment banker agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants: Northern Region, if the matter relates primarily to a financial matter; or
- 3.1.73.2 an attorney or advocate of not less than 10 (ten) years professional experience agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the Chairman for the time being of the Law Society of the Northern Provinces, if the matter relates primarily to a legal matter; or
- 3.1.73.3 an engineer or architect of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter; or by the President for the time being of the South African Institute of Architects, if the matter relates primarily to an architectural matter; or
- 3.1.73.4 a facilities manager of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of any Party) by the President for the time being of South African Facilities Management Association, if the matter relates primarily to a facilities management matter;

- 3.1.74 **“Intellectual Property”** - all intellectual property whatsoever used from time to time in connection with the Works and/or the Operations whether capable of registration, registered or not;
- 3.1.75 **“Key Personnel Positions”** - those positions described in Schedule 13 (Key Personnel Positions);
- 3.1.76 **“Krugersdorp Game Reserve”** - The recreational facility, which is a Protected Area, located within the Project Site, including the land, buildings and other facilities together with all supporting infrastructure, plant and equipment at the Project Site;
- 3.1.77 **“Law”** -
- 3.1.77.1 the common law;
- 3.1.77.2 all applicable statutes, statutory instruments, by-laws, regulations, ordinances, orders, rules and other secondary provincial or local legislation, treaties, directives and codes of practice having force of law in South Africa or the Province or locality within which the Project is conducted; and/or
- 3.1.77.3 judicial decisions, notifications and all similar directives made pursuant thereto with which MCLM and/or the Private Party is bound to comply; and
- 3.1.77.4 the Environmental requirements, including those applicable to operators operating within the Protected Areas, the Park Rules and Park Management Plan;
- 3.1.78 **“Lender Liabilities”** - the Debt (calculated on the basis that the Financing Agreements shall have been accelerated, cancelled, closed and/or terminated (as the case may be)) less any cash amounts deposited or placed on behalf of the Private Party to secure its obligations to the Lenders under the Financing Agreements, and over which Lenders have security pursuant to the Financing Agreements;
- 3.1.79 **“Lenders”** - any person/s providing financing to the Private Party under the Financing Agreements; including the DBSA to the extent that it is providing financing to the Private Party;
- 3.1.80 **“Licensed Intellectual Property”** – all Intellectual Property to be used

under licence from any third party by the Private Party or the Subcontractors in execution of the Project Deliverables;

- 3.1.81 **“Lion Enclosure”** – the lion enclosure situate at [●] comprising [●size] with the Project Site which houses [●] lions;
- 3.1.82 **“Long Stop Date”** - the last Business Day of the 4th (fourth) Contract Month after the Scheduled Operations Commencement Date (as that date may be amended from time to time in terms of this PPP Agreement) being the date by which the Operations must have commenced failing which MCLM shall be entitled to terminate this PPP Agreement in accordance with the provisions in clause 53 (TERMINATION FOR PRIVATE PARTY DEFAULT);
- 3.1.83 **“Management Control”** - in relation to an Enterprise, the ability to direct or cause the direction of the business and management policies or practices of the Enterprise;
- 3.1.84 **“MCLM Assets”** – any assets procured and installed by MCLM at the Project Site prior to the Effective Date;
- 3.1.85 **“MLCM”** – the Mogale City Local Municipality, a local municipality established pursuant to the Municipal Structure Act, 1998;
- 3.1.86 **“MCLM Default”** – any of the following events:-
- 3.1.86.1 an expropriation of a material part of the Project Assets by MCLM or Responsible Authority from the possession of the Private Party or any Subcontractor or the Private Party’s or such Subcontractor’s rights of access thereto, which has the effect of preventing the Private Party from being able to perform the Project Deliverables;
- 3.1.86.2 an expropriation or compulsory acquisition of the shares of the Private Party or any Subcontractor by MCLM or other Responsible Authority;
- 3.1.86.3 a breach by MCLM of its 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 20 (twenty) business days; and
- 3.1.87 **“MCLM Representative”** - the person appointed pursuant to the provisions of clause 76 (REPRESENTATIVES);

- 3.1.88 **“MFMA”** – the Municipal Finance Management Act, 2003 as amended from time to time;
- 3.1.89 **“Minimum Black Equity”** - has the meaning set forth in Schedule 11 (*Target Group Terms*);
- 3.1.90 **“Minister”** - the Minister of Environmental Affairs in South Africa or any minister that assumes the responsibility for the Protected Area in the future;
- 3.1.91 **“Occupational Health and Safety Act”** - the Occupational Health and Safety Act, 1993 as amended from time to time;
- 3.1.92 **“Operating Expenditure”** - any expenditure treated as operating expenditure under IFRS;
- 3.1.93 **“Operations Commencement Certificate”** - the date of Operations Commencement as stated in the Commencement Certificate issued by the Private Party in accordance with clause 25 (COMPLETION);
- 3.1.94 **“Operations Commencement”** - the actual commencement of the Operations subsequent to the issue of the Commencement Certificate in accordance with clause 25.4;
- 3.1.95 **“Operations Month”** - each Contract Month during the Operations Period;
- 3.1.96 **“Operations Period”** - the period from the Operations Commencement Certificate, to the Expiry Date, unless this PPP Agreement is terminated earlier in accordance with its terms;
- 3.1.97 **“Operations”** - the operational, security and facilities management services to be provided by or on behalf of the Private Party for MCLM as set forth in the Schedule 6 (*Operations Specifications*) to meet the Service Level Requirements, as may be subsequently amended in accordance with this PPP Agreement;
- 3.1.98 **“Operations Commencement Date”** - shall have the meaning assigned thereto in clause 26;
- 3.1.99 **“Operations Subcontract”** - the written agreement between the Private Party and the Operations Subcontractor in respect of the Operations;
- 3.1.100 **“Operations Subcontractor”** – [●], being the person appointed by the

Private Party to perform the Operations;

- 3.1.101 **“Operations Specifications”** – the specifications in respect of the Operations, as stipulated in Schedule 6 (*Operations Specifications*);
- 3.1.102 **“Park Management Plan”** - the management plan developed by Mogale City for the Krugersdorp Game Reserve in consultation with other 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 Krugersdorp Game Reserve was declared a national park in terms of the Protected Areas Act, as may be revised from time to time;
- 3.1.103 **“Park Rules”** - the rules in respect of the Project Site, as may be revised and/or updated by MCLM;
- 3.1.104 **“Service Level Requirements”** – has the meaning ascribed thereto in Schedule 6 (*Operations Specifications*);
- 3.1.105 **“Parties”** – the Private Party and MCLM;
- 3.1.106 **“Penalties”** – the penalties, as set out in Schedule 11 (*Target Group Terms*) to be levied by MCLM against the Private Party for failure to meet its Target Group obligations;
- 3.1.107 **“PPP Agreement”** - this public private partnership agreement between the Parties, being a public private partnership agreement as contemplated in Municipal PPP Regulations to the MFMA, together with the Schedules;
- 3.1.108 **“PPP Fee”** - collectively, the Fixed Fee and the Variable Fee.
- 3.1.109 **“Prime Rate”** - the arithmetic mean 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;
- 3.1.110 **“Private Party”** - [●] a private company with limited liability incorporated in accordance with the company laws of South Africa;
- 3.1.111 **“Private Party Default”** - any of the following events or circumstances:-

- 3.1.111.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangements as defined in the Insolvency Act 1936 or the Companies Act) being entered into by or in relation to the Private Party without the prior written consent of MCLM;
- 3.1.111.2 a liquidator, judicial manager or the like taking possession of or being appointed over, or any judicial management, winding-up, execution or other process being levied or enforced (and such other process or executions not being discharged within 20 (twenty) 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);
- 3.1.111.3 the Private Party ceases to carry on business;
- 3.1.111.4 a resolution being passed or an order being made for the administration or the judicial management, winding-up liquidation or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- 3.1.111.5 the Private Party fails to Complete the Works on or before the Long Stop Date;
- 3.1.111.6 the Private Party abandons the Works (other than as a consequence of a breach by MCLM of its obligations under this PPP Agreement);
- 3.1.111.7 the Private Party ceases to provide all or a substantial part of the Operations in accordance with this PPP Agreement (other than as a consequence of a breach by MCLM of its obligations under this PPP Agreement);
- 3.1.111.8 the Private Party fails to comply with its obligations in terms of clause 30.1 (Maintenance Survey);
- 3.1.111.9 the Private Party fails to comply with any of its obligations in clause 45 (BLACK EQUITY IN THE PRIVATE PARTY) clause 46 (PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY), clause 47 (BEE OBLIGATIONS OF SUBCONTRACTORS), clause 50 (REQUIREMENTS FOR BLACK WOMEN AND DISABLED

PERSONS) and clause 67 (CHANGES IN CONTROL AND BLACK EQUITY) for 3 (three) consecutive Financial Years;

- 3.1.111.10 the Private Party fails to comply with any of its obligations under clause 66 (CESSION AND DELEGATION);
- 3.1.111.11 the Private Party fails to pay the PPP Fee or any portion thereof or any sum or sums due to MCLM under this PPP Agreement;
- 3.1.111.12 the Private Party fails to obtain and maintain any Project Insurances as required in terms of clause 32 (INSURANCE);
- 3.1.111.13 termination of the Financing Agreements as a result of any event of default;
- 3.1.111.14 or acceleration of any amounts under the Financing Agreements;
- 3.1.111.15 any other breach of any provision of this PPP Agreement has occurred more than once and:-
 - 3.1.111.15.1 MCLM has given an initial warning notice to the Private Party describing that breach in reasonable detail and stating that if that breach persists or recurs then MCLM may take further steps to terminate this PPP Agreement; and
 - 3.1.111.15.2 MCLM has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 45 (forty five) days after the initial warning notice, stating that if that breach persists or recurs within the period of 45 (forty five) days after the final warning notice then MCLM may issue a notice of default pursuant to clause 53.2.2;
- 3.1.111.16 any breach of any provisions of this PPP Agreement relating to Refinancing;
- 3.1.111.17 the Private Party commits a breach of any of its material obligations under this PPP Agreement not covered by clauses 3.1.111.1 to 3.1.111.16 (both inclusive) of this definition;
- 3.1.112 **“Private Party’s Representative”** – the person appointed pursuant to the provisions of clause 76.2 (*Private Party’s Representative*);

- 3.1.113 **“Project”** -the provision by the Private Party of the Project Deliverables to MCLM including, *inter alia*:-
- 3.1.113.1 carrying out the Works in respect of the Facilities;
- 3.1.113.2 undertaking the Operations of the Facilities; and
- 3.1.113.3 the financing of the Project Deliverables,
- each pursuant to and in accordance with the provisions of this PPP Agreement and the other Transactions Documents;
- 3.1.114 **“Project Assets”** – all assets and equipment as required to design, construct, commission operate and maintain the Project, including the Facilities and the Project Site, MCLM Assets, but excluding all cash, and Subcontractor Assets;
- 3.1.115 **“Project Data”** - all information required, collected or generated by the Private Party during the Project Term, including the Detailed Design, that is deemed necessary for providing the Project Deliverables under this PPP Agreement;
- 3.1.116 **“Project Deliverables”** - the carrying out of the Works, the design, construction, expansion, refurbishment, commissioning, operation, maintenance and management of the Project Assets including the repair, renewal or replacement thereof, the Operations and the exercise and performance of all other rights and obligations of the Private Party under this PPP Agreement from time to time;
- 3.1.117 **“Project Documents”** - the Financing Agreements, Shareholders Agreement, the Subcontracts and all other contracts relating to the performance of the Project Deliverables;
- 3.1.118 **“Project Insurances”** – has the meaning set forth in clause 32 (*Insurance*);
- 3.1.119 **“Project Site”** - the Krugersdorp Game Reserve as depicted in Schedule 11, which according to the latest SG Diagrams & Database — comprises 7

1 [The Park Boundary Fence is depicted in black and the park in relation to the farm properties (in yellow) is depicted in green. Erf 1563 Arcadia Extension 6, Registration Division J. R.,

different properties, namely:

- 3.1.119.1 Ptn 61 Sterkfontein 173 IQ;
- 3.1.119.2 Ptn 58 Sterkfontein 173 IQ;
- 3.1.119.3 Ptn 97 Sterkfontein 173 IQ;
- 3.1.119.4 Ptn 59 Sterkfontein 173 IQ;
- 3.1.119.5 Ptn 8 Waterval 174 IQ;
- 3.1.119.6 RE/2 Waterval 174 IQ; and;
- 3.1.119.7 Ptn 56 Waterval 174 IQ
- 3.1.120 **“Project Term”** - the period from the Effective Date to the Expiry Date or the Termination Date whichever occurs first;
- 3.1.121 **“Protected Area”** – has the definition assigned thereto in the Protect Areas Act;
- 3.1.122 **“Protected Areas Act”** - The National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);
- 3.1.123 **“Public Audit Act”** - the Public Audit Act of 2004 as amended from time to time;
- 3.1.124 **“QME”** - shall have the meaning assigned thereto in the BEE Codes of Good Practice;
- 3.1.125 **“Qualification Criteria”:-**
 - 3.1.125.1 the original tender criteria, subject to such variation as may be reasonable considering market conditions since the original tender, including the New PPP Agreement terms agreed between MCLM, the

Province of Gauteng, Measuring 31 309 Square Meters, held under title deed number T164131/2007;]

Private Party and the Lenders;

3.1.125.2 financial ability to pay the capital sum tendered on the basis that tenderers may only bid on the basis of a single capital payment;

3.1.125.3 any other criteria agreed between MCLM, the Private Party and the Lenders;

3.1.126 **“Qualifying Financial Institution”:**

3.1.126.1 a bank as defined in section 1 of the Banks Act 1990;

3.1.126.2 any pension fund or provident fund registered in terms of the Pension Funds Act, 1956;

3.1.126.3 any collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2003;

3.1.126.4 any long-term insurer as defined in section 1 of the Long-term Insurance Act, 1998;

3.1.126.5 any short-term insurer being a person registered or deemed (in terms of the Short-term Insurance Act, 1998) to be registered as a short-term insurer in that statute;

3.1.126.6 the DBSA;

3.1.126.7 the Industrial Development Corporation of South Africa Limited as established under the provisions of the Industrial Development Corporation Act, 1940;

3.1.126.8 the Public Investment Corporation Limited as established under the provisions of the Public Investment Corporation Act, 2004;

3.1.127 **“QSE”** - an entity which qualifies to be measured under the Qualifying Small Enterprise scorecard promulgated under the BEE Codes of Good Practice;

3.1.128 **“Rates and Taxes”** – all property rates and taxes that may be levied by and Responsible Authority in respect of the Site.

3.1.129 **“Rectification Costs”** - for the purposes of any Termination Date that occurs during the Operations Period, an amount equal to the reasonable

and proper costs incurred by MCLM in ensuring that the Operations are available;

3.1.130 **“Reference Banks”** - the four largest banks in South Africa by market capitalisation, from time to time;

3.1.131 **" Refinancing"** - at any time after the Effective Date:

3.1.131.1 any amendment, assignment, novation, replacement or supplementing of any of the Financing Agreements, whether independently or in combination with any connected arrangements;

3.1.131.2 the exercise of any right or grant of any waiver, indulgence or approval under any of the Financing Agreements;

3.1.131.3 the disposition or encumbering (by whatever means) by the Private Party of any of its rights under any of the Financing Agreements or the creation or granting of any other benefit or interest in any of the Financing Agreements or any of the Private Party's other contracts, Project revenues or the Facilities Assets, other than as contemplated in the Financing Agreements; or

3.1.131.4 any other arrangements having any of the effects in clauses 3.1.131.1 and 3.1.131.3 (both inclusive);

to the financial advantage of the Private Party, any of the Shareholders or any Affiliate of the Private Party or their Shareholders;

3.1.132 **“Relief Event”:-**

3.1.132.1 any fire, explosion, tempest, flood, ionising radiation (to the extent it does not constitute an event of *Force Majeure*), earthquake, riot and civil commotion, or pressure waves caused by devices travelling at supersonic speed;

3.1.132.2 without limiting the obligations of the Private Party regarding the Operations Specifications and/or the Service Level Requirements, any failure by any Responsible Authority, utility or other like body to carry out works or provide services;

3.1.132.3 any accidental loss or damage to the Works and/or the Facilities;

- 3.1.132.4 any off-site failure or shortage of power, water, fuel or transport;
- 3.1.132.5 any blockage or embargo which does not constitute an event of *Force Majeure*;
- 3.1.132.6 the discovery of any heritage objects or resources that could not reasonably have been discovered by proper due diligence as contemplated in clause 15 (PROJECT SITE CONDITIONS);
- 3.1.132.7 any delay in obtaining any Consent; or
- 3.1.132.8 any official or unofficial strike, lockout, go-slow or other such labour disputes generally affecting the construction industry (or a significant sector of it) during the Development Period, or the facilities management industry during the Operations Period,
- unless any of the events listed in clauses 3.1.132.1 to 3.1.132.8 above (both inclusive) arises (directly or indirectly) as a result of any negligence, wilful conduct or default of the Private Party or any Subcontractor;
- 3.1.133 **“Responsible Authority”** - any ministry, any minister, any organ of state, any official in the public administration or any other governmental or regulatory body, MCLM, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes MCLM;
- 3.1.134 **“Scheduled Operations Commencement Date”** – the first anniversary of the Effective Date, as such date may be extended in terms of this PPP Agreement;
- 3.1.135 **“Schedules”** - the schedules to this PPP Agreement, as may be replaced and/or amended from time to time in accordance with the terms of this PPP Agreement;
- 3.1.136 **“Shareholder Loans”** - at any date, in relation to any financing (other than the Equity and the financing under a Financing Agreement) made available for the Project by the Shareholders, the principal debt and interest unpaid at that date;
- 3.1.137 **“Shareholders Agreement”** - the agreement(s) between the Shareholders and/or the Private Party in respect of the Equity and/or

Shareholder Loans;

- 3.1.138 **“Shareholders”** - the holders of the Equity;
- 3.1.139 **“South Africa”** - the Republic of South Africa;
- 3.1.140 **“Subcontractor Costs”** - all damages, losses, liabilities, costs, and expenses (including legal costs and expenses) (**“Losses”**) that have been or will be reasonably and properly incurred by the Private Party as a direct result of the termination of this PPP Agreement, but only to the extent that:-
 - 3.1.140.1 the Losses are incurred in connection with the completion of the Works or the Operations by the Subcontractors, including, without limitation:-
 - 3.1.140.1.1 the cost of any materials or goods ordered or subcontracts placed that cannot be cancelled without such Losses being incurred;
 - 3.1.140.1.2 subcontractor loss of profits for a period not exceeding 6 (six) months;
 - 3.1.140.1.3 any expenditure incurred in anticipation of the Operations or the completion of the Works;
 - 3.1.140.1.4 the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
 - 3.1.140.1.5 retrenchment payments;
 - 3.1.140.1.6 the Losses that are incurred under arrangements and/or agreements that have been entered into for the purposes of the Project and are consistent with the terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
 - 3.1.140.1.7 each of the Private Party and the relevant Subcontractor has used reasonable endeavours to mitigate its Losses to the extent required by the common law;
- 3.1.141 **“Subcontractors”** - the counterparties of the Private Party to the Subcontracts including the D&C Subcontractor and the Operations

Subcontractor and any other proposed subcontractors appointed by the Private Party to undertake any portion of the Project Deliverables;

3.1.142 **“Subcontractors Assets”** - all assets owned or leased by the Subcontractors;

3.1.143 **“Subcontracts”** - the contracts entered into by the Private Party with its Subcontractors;

3.1.144 **“Target Enterprise”** – a Target Group Person or Target Group Enterprise (as the case may be);

3.1.145 **“Target Group Enterprise”** - a Black Enterprise, Disabled Person Enterprise or Black Women Enterprises (as the case may be);

3.1.146 **“Target Group Report”** – the report to be issued to MCLM by the Private Party:

3.1.146.1 quarterly within 7 (seven) Business Days of the last day of each quarter during the Development Period; and

3.1.146.2 annually, within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period;

setting out that information specified in clause 45 (BLACK EQUITY IN THE PRIVATE PARTY), clause 46 PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY, clause 47 (BEE OBLIGATIONS OF SUBCONTRACTORS), clause 48 (SUBCONTRACTOR MANAGEMENT AND EMPLOYMENT EQUITY), clause 49 (SUBCONTRACTOR BEE PROCUREMENT REQUIREMENT) and clause 50 (REQUIREMENTS FOR BLACK WOMEN AND DISABLED PERSONS) as well as Schedule 11 (*Target Group Terms*);

3.1.147 **“Target Person”** - a Black Person, Disabled Person or Black Woman (as the case may be);

3.1.148 **“Tender Costs”** - the reasonable and proper costs of MCLM incurred or to be incurred in carrying out the tender process as contemplated in clause 56.6 (Transitional Arrangements);

3.1.149 **“Termination Amount”** – the amount agreed or determined to be due and payable to the Private Party in terms of clauses 57 (COMPENSATION ON

TERMINATION FOR MCLM DEFAULT),⁵⁸ (COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT), ⁵⁹ (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) and ⁶⁰ (COMPENSATION ON TERMINATION FOR CORRUPT ACTS);

3.1.150 **“Termination Date Discount Rate”** – a discount rate calculated by weighting each element of the funding (Debt, Equity and Shareholders Loans) according to its outstanding book value in the accounts of the Private Party at the Termination Date as detailed in the Financial Model in relation to the total capital value outstanding and applying the following costs to such weightings:-

3.1.150.1 in the case of amounts invested in the Project by the Shareholders that do not constitute Debt, the Base Case Equity IRR, adjusted by applying the average rate of CPI projected in the Financial Model for the remaining period of the forecasted Project Term; and

3.1.150.2 in the case of the Debt, the interest rate (as defined in the Financing Agreements) at the Termination Date,

3.1.150.3 in the case of clause 3.1.150.2 above, further adjusting the rate so determined by application of the following formula:

$$i_t = i(1-t)$$

Where:

“i” = the interest pre-tax cost as originally determined as a percentage, in terms of clause 3.1.150.2 above;

“t” = the rate of income tax applicable to corporations in South Africa as prevailing at the Termination Date; and

“it” = the interest post-tax costs as originally determined as a percentage in terms of clause 3.1.150.2 above;

3.1.151 **“Termination Date”** - any date on which this PPP Agreement is terminated in accordance with its terms, other than by effluxion of time;

3.1.152 **“Unforeseeable Conduct”** - shall occur if, after the Effective Date, MCLM or any Responsible Authority takes any action (including any Change in

Law) or fails to carry out its obligations as prescribed by Law; and

- 3.1.152.1 the principal effect of which is directly borne by:-
 - 3.1.152.1.1 the Project and not other similar PPP's;
 - 3.1.152.1.2 the Private Party and not other persons; or
 - 3.1.152.1.3 parties undertaking PPP's and not other persons;
- 3.1.152.2 in respect of which the Private Party is not entitled to any other relief pursuant to any other provisions of this PPP Agreement;
- 3.1.152.3 which was not foreseen or, if it was foreseen, its consequences were not foreseen by the Private Party on or before the Effective Date; and
- 3.1.152.4 which could not reasonably have been foreseen or if it could reasonably have been foreseen, its consequences could not reasonably have been foreseen by any person in the position of the Private Party on or before the Effective Date,

provided that the following shall not constitute Unforeseeable Conduct:-

- 3.1.152.4.1 where any action or omission of MCLM or Responsible Authority is in direct response to any action or omission of the Private Party which is illegal (other than an act or omission rendered illegal by virtue of such conduct of MCLM or Responsible Authority) or in violation of agreements to which the Private Party is a party;
- 3.1.152.4.2 an increase in taxes of general application which does not discriminate against the Private Party or against the Private Party and other parties undertaking PPPs; and
- 3.1.152.4.3 such conduct by MCLM or any Responsible Authority is required as a result of an event of *Force Majeure* and is reasonably proportionate thereto;
- 3.1.153 **“Utilities”** - electrical power, water, gas, sewerage, sanitation, storm water drainage fuel (for generators) and such other general utility and engineering services as required for the effective operation of the Facilities and in accordance with Schedule 6 (*Operations Specifications*), but excluding

telecommunication services;

- 3.1.154 **“Variable Fee”** - the variable fee payable by the Private Party to MCLM in accordance with clause 31;
- 3.1.155 **“Variations”** - any variations to the Project Deliverables in accordance with clause 39 (MCLM VARIATIONS), and 40 (PRIVATE PARTY VARIATIONS);
- 3.1.156 **“VAT”** - any value-added tax levied in terms of the Value-Added Tax Act 89 of 1991 as amended from time to time, or any similar tax which is imposed in place of or in addition to such tax;
- 3.1.157 **“Woman”** - a female South African citizen and **“Women”** shall be construed accordingly;
- 3.1.158 **“Woman Enterprise”** - a Enterprise controlled by Woman Shareholders;
- 3.1.159 **“Woman Shareholder”** - a shareholder who is a Woman or Woman Enterprise;
- 3.1.160 **“Works”** - the design, construction and commissioning of the works to be undertaken by the Private Party to enable it to meet the Facilities Specifications , as may be subsequently amended in accordance with this PPP Agreement; and
- 3.1.161 **“Works Programme”** - the programme for the Works attached hereto as Schedule 2, as amended from time to time in accordance with the provisions hereof.

4 INTERPRETATION

This PPP Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:-

- 4.1 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;
- 4.2 references to “indexed to CPI” in relation to any amount of money shall mean that such amount has been expressed in [March 2025] prices and shall be

escalated annually as at 1 April each year, provided that a special calculation shall be done to provide for escalation for the first period from July 2007 to that 1 April that follows immediately after the Effective Date with reference to the then most recent publication of the CPI, subject to adjustments for any rebasing or recalculation thereof in accordance with the definition of CPI;

- 4.3 references to "**Month**" shall be to a calendar month;
- 4.4 references to "**Parties**" shall include the Parties' respective successors-in-title and, if permitted in this PPP Agreement, their respective cessionaries and assignees;
- 4.5 references to a "**person**" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having a separate legal personality;
- 4.6 references to any "**Responsible Authority**" or any public or professional organisation shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;
- 4.7 references to "**clauses**", "**sub-clauses**" and "**Schedules**" are references to the clauses, sub-clauses and Schedules of this PPP Agreement;
- 4.8 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this PPP Agreement;
- 4.9 the Schedules to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Schedules;
- 4.10 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;
- 4.11 words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

- 4.12 references to “**this PPP Agreement**” shall include this PPP Agreement as amended, varied, novated or substituted in writing from time to time;
- 4.13 any reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to statute, enactment, order, regulation or instrument as amended, re-enacted or replaced from time to time;
- 4.14 references to any other agreement 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 agreement or document) a reference to that agreement or document as amended, varied, novated or substituted from time to time;
- 4.15 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, unless inconsistent with the context;
- 4.16 when any number of days is prescribed in this PPP Agreement, same shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day;
- 4.17 all references to “**notices**” shall mean notice in writing and do not include communications by way of electronic mail; and
- 4.18 wherever in this PPP Agreement the duty of reasonability (“**Duty**”) or the obligation to act reasonably (“**Obligation**”) is placed on MCLM, the actions, decisions, duties and obligations of MCLM to which a Duty or Obligation relates shall be “Administrative Action” as defined in the Promotion of Administrative Justice Act, 2000 and such Act shall apply to all such actions, decisions, duties and obligations of MCLM.

5 PRIVATE PARTY’S RIGHTS

5.1 Exclusive Grant of PPP Rights at the Krugersdorp Game Reserve

- 5.1.1 Subject to the terms of this PPP Agreement, Mogale City hereby grants the Private Party the exclusive right to operate the Krugersdorp Game Reserve, for the Project Term.

- 5.1.2 The Private Party shall:
- 5.1.2.1 have the exclusive right to operate the Facilities at the Krugersdorp Game Reserve;
 - 5.1.2.2 collect gate fees from visitors to the Krugersdorp Game Reserve in accordance with the terms of this PPP Agreement. The gate fees shall be increased annually and the amount of the increase shall be agreed between the Parties; and
 - 5.1.2.3 generate, charge and collect revenues from the Facilities.

6 PROJECT DOCUMENTS

- 6.1 The Private Party shall not conclude any Project Document without the prior written consent of the MCLM.
- 6.2 The Private Party must comply with the provisions of the Project Documents, may only:-
- 6.2.1 terminate, or make any amendment to (or otherwise agree to do so) any Project Document; or
 - 6.2.2 in any respect, depart from its obligations or waive any rights under any Project Document,
- with the prior written consent of MCLM, acting reasonably.
- 6.3 Without limiting the restrictions on amendments to the Project Documents in clause 6.1 above, the Private Party shall furnish MCLM with a true and complete copy (including all annexes) of any amendment to any Project Document or of any Project Document not executed by the Effective Date, within 10 (ten) Business Days of the date of the Private Party's execution of such amendment or Project Document.

7 PROJECT DELIVERABLES

- 7.1 **By Private Party:**
- 7.1.1 Subject to, and in accordance with, the provisions of this PPP Agreement, the Private Party shall exercise its rights and perform its obligations to undertake the Project Deliverables at its own cost and risk without recourse to MCLM save as otherwise expressly provided for in this PPP Agreement.

- 7.1.2 The Party shall be responsible for the security of the Project Site, including the perimeter fence of the KGR as well as the fence and all other security required at, around and in the Lion Enclosure.
- 7.1.3 Without limiting clause 7.1.1 above, the Private Party shall at its own cost and risk be solely responsible for undertaking the Project Deliverables, and in so doing shall ensure that the Project Deliverables are performed:-
- 7.1.3.1 in accordance with Good Industry Practice;
- 7.1.3.2 in a manner that is not likely to cause death, injury to health or damage to property or the environment; and
- 7.1.3.3 in a manner that is not likely to result in MCLM breaching its statutory functions and duties;
- 7.1.4 in compliance with all applicable Laws and the Consents;
- 7.1.5 to achieve the Operations Specifications (*Schedule 6*); and
- 7.1.6 to meet the Service Level Requirements.
- 7.2 The Private Party is aware that the Project Site is a Protected Area and agrees to comply with all applicable Laws in this regard.

7.3 Co-operation

Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this PPP Agreement.

7.4 Contractor not Agent

The Private Party shall not contract with any person or otherwise incur liabilities in the name of MCLM.

8 GENERAL OBLIGATIONS

- 8.1 The Private Party shall not engage in any business or activity other than the business or activity included in, or otherwise required to enable the Private Party to provide the Project Deliverables.
- 8.2 The Private Party shall not be relieved of any obligation, responsibility or liability under this PPP Agreement by the appointment of any Subcontractor to carry out any part of the Project Deliverables. As between the Private Party and MCLM,

the Private Party shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all Subcontractors. All references in this PPP Agreement to any performance, payment, act, default, omission, breach or negligence of the Private Party shall be deemed to include any of the same by a Subcontractor.

9 MCLM OBLIGATIONS

- 9.1 MCLM shall, at its costs, be responsible for an undertake the biodiversity management at the Project Site. The Private Party shall co-operate with MCLM in this regard.
- 9.2 MCLM shall, at its costs, be responsible for feeding the lions at the Lion Enclosure. MCLM shall inform the Private Party of the feeding schedule for the lions. The Private Party shall co-operate with MCLM in this regard.

10 PRIVATE PARTY WARRANTIES

The Private Party warrants that:-

- 10.1 it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this PPP Agreement and the Project Documents;
- 10.2 its obligations under this PPP Agreement and those under the Project Documents to which it is a party are legal, valid and binding and enforceable against it, in accordance with the terms of this PPP Agreement and such Project Documents to which it is a party;
- 10.3 all the Project Documents have been duly executed on proper authority and are in full force and effect as at the Effective Date;
- 10.4 execution and performance of any Project Documents do not and will not contravene any provision of the memorandum of incorporation of the Private Party as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Private Party as at the Effective Date; the
- 10.5 all Consents required for the conduct of the Project Deliverables are in full force and effect as at the Effective Date, save for any Consents which are not required under the Laws to be obtained by the Effective Date, provided that the Private Party warrants that it knows of no reason (having made all reasonable enquiries

in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

- 10.6 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Effective Date or, to the best of the knowledge of the Private Party as at the Effective Date (having made all reasonable enquiries) is threatened against it or any of the Subcontractors, which is likely to have a material adverse effect on the ability of the Private Party to conduct the Project Deliverables;
- 10.7 the Private Party is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Project Deliverables;
- 10.8 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), is threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Private Party or for the appointment of a liquidator, judicial manager or similar officer over it or any of its assets;
- 10.9 it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entering into of this PPP Agreement and the other Project Documents);
- 10.10 all information disclosed by or on behalf of the Private Party to MCLM at any time up to the Effective 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 MCLM which would, if disclosed, be likely to have an adverse effect on MCLM's decision (acting reasonably) to award this PPP Agreement to the Private Party;
- 10.11 the copies of the executed Project Documents, which have been delivered to MCLM, are true and complete copies of such Project Documents and there are no other documents replacing or relating to any such Project Documents, which would materially affect the performance of these Project Documents; and
- 10.12 as at the Effective Date:-
 - 10.12.1 the Private Party has an authorised and issued share capital as set out in the Shareholders Agreement and all shares in the issued share capital of

the Private Party are fully paid up;

- 10.12.2 all shares in the issued share capital of the Private Party are legally and beneficially owned as represented in the Shareholders Agreement;
- 10.12.3 save as provided in the Financing Agreements or the Shareholders Agreement, no person has the right (whether actual or contingent) to call for the issue of any share or loan capital in the Private Party whether pursuant to any option or otherwise including any realisation of security; and
- 10.12.4 save as provided in the Financing Agreements (in respect of all of the security provided by the Private Party to the Lenders or their nominee) or the Shareholders Agreement, there are no encumbrances over or affecting any of the Equity or the Shareholder Loans and there is no agreement or commitment to grant or create any such encumbrance.

11 MCLM WARRANTIES

MCLM warrants that:-

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

12 PRIVATE PARTY INDEMNITIES

The Private Party indemnifies and shall keep MCLM indemnified at all times against all direct losses sustained by MCLM in consequence of:-

- 12.1 any:-
 - 12.1.1 loss of or damage to property;
 - 12.1.2 breach by the Private Party which results in MCLM breaching a statutory duty arising under the Laws;
 - 12.1.3 claim for or in respect of the death or personal injury of any individual; or
 - 12.1.4 other claim, action, charge, cost, demand or expense,

(including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance of any Project Deliverables by the Private Party, save to the extent caused by:-

- 12.1.5 the gross negligence or wilful misconduct of MCLM;
- 12.1.6 a breach by MCLM of an express provision of this PPP Agreement; and
- 12.2 any breach by the Private Party of any warranties given by it in this PPP Agreement.

13 LIMITATIONS ON LIABILITY

- 13.1 Nothing shall prevent or restrict the right of MCLM to seek any interdict or similar relief, any decree of specific performance or any other discretionary remedies of a court.
- 13.2 No Party entitled to any indemnification or other compensation under this PPP Agreement for any losses incurred by it, whether because of the conduct of the other Party or for any other cause, shall be entitled to:-
 - 13.2.1 any claim for damages for breach of contract, in delict or on any other basis in respect of such conduct or cause; or
 - 13.2.2 any claim for indirect or consequential losses (including any loss of profit, loss of use, loss of production, loss of business, loss of business opportunity) incurred by it as a result of such conduct or cause save as otherwise provided expressly in this PPP Agreement.

14 PROJECT SITE

- 14.1 The Private Party shall undertake the Works and the Project Deliverables on the Project Site.
- 14.2 All or any clearance of the Project Site (excluding the clearance of any illegal occupants, tenants or persons occupying or using the Project Site prior to the Effective Date, in respect of which MCLM shall be responsible) required for the undertaking of the Works shall be effected by the Private Party. The Private Party shall ensure that for the duration of the Works there is no unauthorised access to the Project Site.

- 14.3 The Private Party shall, throughout the progress of the Works and the conduct of the other Project Deliverables, have regard for the safety of all persons at the Project Site (whether lawfully or not) to the extent required by Law, and shall keep the Project Site, the Works and the Facilities in an orderly state as appropriate in accordance with Good Industry Practice to avoid danger to such persons.
- 14.4 The Private Party shall procure that all Project Deliverables carried out at the Project Site by or on behalf of the Private Party whether before, during or after the completion of the Works shall be carried out in a manner that does not breach any conditions of the title deeds of the Project Site.
- 14.5 The Private Party shall procure that there shall be no conduct which gives rise to a right on the part of any person to obtain title to the Project Site or any part of it save in accordance with the terms of this PPP Agreement.
- 14.6 The Private Party shall be granted vacant possession of and access to the Project Site by MCLM with effect from the Effective Date for the purposes of undertaking the Works and for the purpose of the Operations subject to the provisions of this PPP Agreement and for no other purpose whatsoever. Subject to clause 14.2, MCLM shall ensure that for the duration of the Project Term there is no interference, interruption or disturbance of the Private Party's possession and use of the Project Site.

15 PROJECT SITE CONDITIONS

- 15.1 The climatic, hydrological, hydrogeological, ecological, environmental, geotechnical, geological, palaeontological and archaeological conditions of the Project Site (the “**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 Effective Date to have:-
- 15.1.1 carried out an investigation of all Project Site Conditions and of any extraneous material in or under the Project Site including its surface, sub-soil and ground water to enable the Facilities to be designed and constructed and the Works to be carried out with due regard for the Project Site Conditions and the seismic activity (if any) in the region of the Project Site;
- 15.1.2 for the purpose of the investigation referred to in clause 15.1.1, inspected and examined the Project Site and surroundings;

- 15.1.3 satisfied itself as to the nature of the Project Site Conditions, the surface, sub-soil and ground water of the Project Site, the form and nature of the Project Site, the load-bearing and other relevant properties of the Project Site, the risk of damage to property affecting the Project Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and material necessary for the execution of the Works;
- 15.1.4 satisfied itself as to the adequacy of its right of passage over, access to and through the Project Site and 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 Project Site;
- 15.1.5 satisfied itself as to the possibility of interference by persons with rights-of-way across, access to or use of the Project Site as recorded in the title deeds of the Project Site with particular regard to the owners and users of any land adjacent to the Project Site; and
- 15.1.6 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.
- 15.2 To avoid doubt, the Private Party accepts full responsibility for all matters in clause 15.1 and the Private Party shall:-
- 15.2.1 not be entitled to make any claim against MCLM whether in contract, delict or otherwise on any ground relating to the matters in this clause 15 (PROJECT SITE CONDITIONS); and
- 15.2.2 be responsible for 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 (including air, water, land, surface land and sub-surface land) or capable of damaging the environment or public health or posing a threat to public safety (including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable environment law)) at the Project Site, whether before or after the Effective Date.

16 CONSENTS

- 16.1 The Private Party shall be responsible for:-
- 16.1.1 obtaining all Consents which may be required in connection with the performance of the Project Deliverables;
 - 16.1.2 maintaining in full force and effect all Consents; and
 - 16.1.3 implementing all Consents in accordance with their respective terms within the period of their validity.
- 16.2 MCLM shall provide reasonable assistance to the Private Party as may be reasonably necessary for the Private Party to obtain the Consents referred to in clause 16.1, provided however, that MCLM shall incur no liability for the costs of obtaining or maintaining, or any delay, failure or inability of the Private Party to obtain or maintain any such Consents.

17 HERITAGE OBJECTS AND RESOURCES

17.1 Discovery

Upon the discovery of any heritage object or resource (as defined in the National Heritage Resources Act, 1999 or any corresponding provincial legislation) during the course of the Works, the Private Party shall:-

- 17.1.1 promptly notify MCLM of such discovery;
- 17.1.2 take all necessary steps not to disturb the heritage object or resource, including ceasing any Works to the extent that the carrying out of such Works might reasonably endanger the heritage object or resource or prevent or impede its excavation or preservation; and
- 17.1.3 take all necessary steps to preserve the heritage object or resource in the same position and condition in which it was discovered.

17.2 Action

- 17.2.1 MCLM shall promptly and in any event within 3 (three) Business Days of the notice in clause 17.1 (Discovery), issue an instruction to the Private Party specifying what action MCLM requires the Private Party to take in relation to such discovery.

- 17.2.2 The Private Party shall promptly and diligently comply with any instruction so issued (save to the extent that such instruction constitutes a proposal by MCLM for a deemed MCLM Variation as provided in clause 17.2.4 below, in which case the variation procedure provided for in clause 39 (MCLM VARIATIONS) shall apply) at its own cost.
- 17.2.3 If so directed by MCLM or Responsible Authority, the Private Party shall allow representatives of MCLM or Responsible Authority to enter onto the Project Site for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to MCLM or Responsible Authority complying with all relevant safety and security procedures which shall include any relevant health and safety or security plans for the construction of the Facilities and any reasonable directions regarding the safety and/or security of the Project Site that may be issued by or on behalf of the Private Party.
- 17.2.4 If the discovery constitutes a Relief Event and any instruction from MCLM in connection with the discovery includes the requirement for the Private Party to carry out works (being any work of alteration, addition, demolition or extension or variation in the Facilities) which are not works that would be necessary for the purpose of compliance with any Law or any Consents, then such works shall be deemed to be a MCLM Variation and the provisions of clause 39 (MCLM VARIATIONS) shall apply.
- 17.2.5 If the discovery does not constitute a Relief Event and any instruction from MCLM in connection with the discovery includes the requirement for the Private Party to carry out works (being any work of alteration, addition, demolition or extension or variation in the Facilities), which are not works that would be necessary for the purpose of compliance with any Law or any Consents, then such works shall be deemed to be a Private Party Variation and the provisions of clause 40 (PRIVATE PARTY VARIATIONS) shall apply.

18 DURATION OF PPP AGREEMENT

- 18.1 This PPP Agreement and the rights and obligations of the Parties under this PPP Agreement shall take effect on the Effective Date.
- 18.2 The Operations Period shall commence on the Operations Commencement Date and terminate on the earlier of the Expiry Date and the Termination Date.

19 PROVISION OF THE FACILITIES

- 19.1 The Private Party shall finance, design, construct and provide the Facilities to meet the Operations Specifications and the Service Level Requirements, subject to the provisions of clause 39 (MCLM VARIATIONS), and clause 40 (PRIVATE PARTY VARIATIONS).
- 19.2 The Private Party shall allow the Independent Certifier to inspect and monitor the progress of the Works upon the Project Site as frequently as he wishes subject to his adherence to the site rules established for safety and security. The Independent Certifier shall have no authority to approve or accept the Private Party's performance of its obligations under this PPP Agreement as being discharged except as provided in clause 25 (COMPLETION). Nothing done by MCLM or the Independent Certifier in accordance with this clause 19.2 shall in any respect relieve or absolve the Private Party from its responsibility for the design or construction of the Works under or in connection with this PPP Agreement.
- 19.3 The Private Party undertakes to achieve Operations Commencement on or before the Scheduled Operations Commencement Date. In the event of a delay in Operations Commencement, other than in accordance with clause 35 (CONSEQUENCES OF A RELIEF EVENT) or clause 36 (CONSEQUENCES OF A COMPENSATION EVENT), the provisions of clause 27 (DELAY IN OPERATIONS COMMENCEMENT) shall apply.

20 UTILITIES AND RATES AND TAXES

- 20.1 The Private Party shall for the duration of the Project Term, be responsible for the clearance and supply of all Utilities to the Project Site for the performance of the Project Deliverables in accordance with the provisions of Schedule 5 (*Facilities Specifications*), Schedule 6 (*Operations Specifications*).
- 20.2 The Private Party shall for the duration of the Project Term, be liable for all Utilities costs which the Private Party shall pay directly to the relevant service provider

21 RATES AND TAXES

- 21.1 The Private Party shall be liable for payment of all Rates and Taxes from the Operations Commencement Date until the expiry of earlier termination of this PPP Agreement.

- 21.2 The Private Party shall pay the Rates and Taxes to MCLM at least 7 (seven) days before the due date of such Rates and Taxes.

22 INDEPENDENT CERTIFIER

- 22.1 The Private Party shall prior to the commencement of the Works, and upon prior approval of MCLM, appoint a suitably qualified and experienced independent expert to act as the Independent Certifier for the purposes of this PPP Agreement upon the terms of the Independent Certifier Agreement. Should the Parties fail to agree on such appointment, the appointment shall be made pursuant to clause 69 (FAST-TRACK DISPUTE RESOLUTION).
- 22.2 The Parties undertake to co-operate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement, including the simultaneous copying to the other Party on all instructions and representations made to the Independent Certifier and the attending by both Parties of all inspections and meetings undertaken by or involving the Independent Certifier.
- 22.3 Neither MCLM nor the Private Party shall without the other's prior written approval, which may not be unreasonably withheld or delayed :-
- 22.3.1 terminate, repudiate or discharge the Independent Certifier Agreement or treat the same as having been terminated, repudiated or otherwise discharged;
- 22.3.2 waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
- 22.3.3 vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier;
- 22.4 The Parties shall comply with and fulfil their respective duties and obligations arising under or in connection with the Independent Certifier Agreement.
- 22.5 In the event of the Independent Certifier's appointment being terminated otherwise than for full performance, the Parties shall liaise and co-operate with each other in order to appoint, in accordance with this clause 22 (Independent Certifier), a replacement expert to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed

by the Parties and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.

22.6 In the event the Parties fail to agree the identity and/or terms of a replacement Independent Certifier in accordance with clause 22.4, within 10 (ten) Business Days of the previous Independent Certifier's appointment being terminated, then such replacement shall be made in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).

22.7 The Independent Certifier's fees shall be paid by the Private Party.

23 DESIGN DEVELOPMENT

23.1 Design Warranties

The Private Party warrants that it has used, and will continue to use, the degree of skill and care in the design of the Facilities that would reasonably be expected of a competent professional experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in Schedule 5 (*Facilities Specifications*), and that the design has been performed in accordance with Good Industry Practice.

23.2 Obligation to Finalise Design and Comments

23.2.1 The Private Party shall develop and finalise the design and specification of the Facilities (to form part of the Detailed Design) to comply with Schedule 5 (*Facilities Specifications*).

23.2.2 As and when the Private Party has completed the Detailed Design, it shall provide MCLM with a copy of the Detailed Design for its comments.

23.2.3 If MCLM has comments on the Detailed Design provided to it by the Private Party in terms of clause 23.2.2, it shall raise such comments in writing within 5 (five) Business Days of receipt of the documents from the Private Party, in which case MCLM shall state the ground upon which such comments are based and provide (where possible) the evidence or other information necessary to substantiate that ground.

23.2.4 The Private Party shall comply with the comments of MCLM to the extent that the Private Party accepts the comments of MCLM. If the Private Party disagrees with the comments of MCLM, the Private Party shall within 5 (five) Business Days of receipt of MCLM's comments notify MCLM of such

disagreement and state the grounds for disagreement and provide (where possible) evidence or other information to substantiate such grounds. The Parties shall within 5 (five) Business Days of receipt by MCLM of the Private Party's notice of disagreement, meet to discuss and attempt to resolve such disagreement. If the Parties are unable to agree, the Private Party shall at its discretion be entitled to accept or reject any of MCLM comment/s.

23.2.5 The Private Party shall, after having received the comments of MCLM in accordance with clause 23.2.3 –

23.2.5.1 within 10 (ten) Business Days of having received such comments and to which it has no objection; or

23.2.5.2 in respect of any other comments in relation to which the Parties have met in terms of clause 23.2.4 and which the Private Party has agreed to incorporate, within 10 (ten) Business Days; or

23.2.5.3 if so required pursuant to a determination in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION),

send a copy of the amended design incorporating the comments of MCLM (which the Private Party accepts) to MCLM, and MCLM shall again be entitled to raise comments in accordance with clause 23.2.3, unless the Private Party has not accepted MCLM's comments.

23.2.6 Any aspect of the design to which MCLM has raised no comments within the time period specified in clause 23.2.3, may be implemented (as the case may be) by the Private Party without further consultation.

23.2.7 Any comments or failure by MCLM to comment shall not relieve the Private Party of its obligations under this PPP Agreement nor do such comments or failure to comment constitute an acknowledgement by MCLM that the Private Party has complied with such obligations, and in particular, the obligation to satisfy the provisions of Schedule 5 (*Facilities Specifications*).

23.2.8 No comment or failure to give or make any comment in terms of this clause 23.2, shall constitute a Variation save to the extent provided for in clause 23.2.9 .

23.2.9 If, having received comments from MCLM, the Private Party considers that compliance with those comments is a departure from this PPP Agreement

and would amount to a Variation, the Private Party shall, before complying with the comments, notify MCLM of the same and, if it is agreed by the Parties or determined pursuant to clause 69 (FAST-TRACK DISPUTE RESOLUTION) that a Variation would arise if the comments were complied with, MCLM may, if it wishes, implement the Variation in terms of clause 39 (MCLM VARIATIONS). If MCLM does not wish to implement the Variation, it must withdraw the comment. Any failure by the Private Party to notify MCLM within 10 (ten) Business Days of receipt by it of MCLM's comments that it considers that compliance with any comments of MCLM would amount to a Variation shall constitute an acceptance by the Private Party that compliance with MCLM's comments shall be without cost to MCLM and/or any extension of time.

- 23.2.10 In the event that compliance with any comment of MCLM causes or will cause the Private Party's costs to decrease and result in a direct saving for the Private Party, then the provisions of clause 39, mutatis mutandis shall apply. The Private Party shall use reasonable efforts to obtain a similar undertaking as to sharing from its Subcontractors where a MCLM comment causes or will cause the costs of a Subcontractor(s) to decrease or result in a direct saving for the Subcontractor(s).

23.3 No Construction Prior to Review

The Private Party shall not commence or permit the commencement of construction or any part thereof until it has submitted the Detailed Design, , for comment to MCLM in accordance with clause 23.2 (Obligation to Finalise Design and Comments).

23.4 Access to Detailed Design

The Private Party shall allow MCLM during normal business hours on any Business Day and on reasonable notice having been provided, the opportunity to view any items of Detailed Design, which shall be made available to MCLM within a reasonable time period after receipt of any such written request by MCLM.

23.5 Detailed Design Database

The Private Party shall ensure the establishment and maintenance of a computerised design database which shall be deemed a Record for purposes of clause 62 (INFORMATION AND AUDIT ACCESS) and on which the Private Party shall electronically store (and be able to print copies of) the Detailed Design (the

“**stored data**”) and provide access to MCLM on reasonable notice having been received from MCLM. MCLM shall ensure that any use of the stored data is only in connection with the rights of MCLM to monitor the Works in accordance with this PPP Agreement.

23.6 Responsibility for design

- 23.6.1 All liability and responsibility for the design of the Works (whether in terms of Law, the provisions of this PPP Agreement or otherwise) shall remain with the Private Party and shall not in any way be affected by the agreement or approval by MCLM of any design proposal made by the Private Party whether before or after the Effective Date or whether under clause 23.2 (Obligation to Finalise Design and Comments) or otherwise.
- 23.6.2 For the avoidance of doubt, it is recorded that the obligations in clause 23.1 (*Design warranties*) and clause 23.2 (Obligation to Finalise Design and Comments) are independent obligations, and in particular the fact that the Private Party has complied with the Detailed Design shall not be a defence to an allegation that the Private Party has not satisfied the requirements of Schedule 5 (*Facilities Specifications*).
- 23.6.3 The Parties expressly agree that MCLM, by accepting the Detailed Design, does not confirm that the Detailed Design will meet the requirements of Schedule 5 (*Facilities Specifications*).

24 MONITORING AND INSPECTION

- 24.1 MCLM shall have reasonable access to any portion of the Works to inspect and view the state and progress of the Works and inspect and witness any commissioning of the Works, subject thereto that:
 - 24.1.1 MCLM shall have given the Private Party prior written notice of its intention to inspect the Works, the number of MCLM representatives that will be attending the inspection and proposing at least 3 possible dates and times for the proposed inspection. The Private Party shall within 4 (four) business days of receipt of such notice, advise MCLM which of the dates and times proposed by MCLM is suitable for the said inspection. Should the Private Party fail to respond to such notice, MCLM shall be entitled to inspect the Works on any of the dates proposed by MCLM in the aforesaid notice;
 - 24.1.2 they shall not hinder or interfere with the Private Party or any Subcontractor

in the execution of the Works; and

- 24.1.3 they shall comply with any relevant health and safety plans for the Works, any site rule which may be formulated by the Private Party from time to time and any directions with regard to site safety as may be issued from time to time by or on behalf of the Private Party.
- 24.2 The Private Party shall hold monthly site meetings with the Independent Certifier, which MCLM shall be entitled to attend. The Private Party shall advise MCLM of the details of such monthly meetings no less than 5 (five) Business Days prior to each such meeting.
- 24.3 The Private Party shall provide MCLM and the Independent Certifier with copies of the monthly progress reports that the Private Party receives from the D & C Subcontractor within 3 (three) Business Days of receipt thereof from the D & C Subcontractor.

25 COMPLETION

- 25.1 When the Private Party considers that it has complied with its obligations under clause 19 (PROVISION OF THE FACILITIES), and is satisfied that the Facilities are Complete, it shall advise the Independent Certifier accordingly, and request the Independent Certifier to issue a Completion Certificate.
- 25.2 The Independent Certifier shall within 3 (three) Business Days of receipt of the Private Party's request under clause 25.1:
 - 25.2.1 issue the Completion Certificate being satisfied that:-
 - 25.2.1.1 all of the Works in respect of the Facilities have been Completed in accordance with the Facilities Specifications and have been satisfactorily commissioned by passing all the requisite tests; and
 - 25.2.1.2 in his/her opinion, acting in accordance with the Independent Certifier's Agreement, in respect of the Facilities, the Facilities are in such condition that the Operations could be provided; or
 - 25.2.2 give MCLM and the Private Party a written notice specifying all matters that in the reasonable opinion of the Independent Certifier must be satisfied before the Completion Certificate shall be issued.

- 25.3 The process set out in clause 25.1 and 25.2 shall continue until the Completion Certificate is issued or this PPP Agreement is terminated.
- 25.4 Upon receipt of the Completion Certificate, the Private Party shall issue the Commencement Certificate,
- 25.5 Nothing in this PPP Agreement shall be deemed to imply that MCLM or the Independent Certifier make any representation or warranty of any nature whatsoever as to the value, design, construction, maintenance, operation or fitness for use of the Facilities or any of the Project Assets.

26 OPERATIONS COMMENCEMENT

The Operations Commencement Date shall be the first Business Day following the issue of the Commencement Certificate.

27 DELAY IN OPERATIONS COMMENCEMENT

- 27.1 If and whenever it becomes reasonably apparent to the Private Party that the fulfilment of its obligations under this PPP Agreement is being or is likely to be delayed, such that the Private Party will not meet its obligations under this PPP Agreement which are to be met on or before the Scheduled Operations Commencement Date, the Private Party shall forthwith give written notice to MCLM (the “**Delay Notice**”) of the relevant circumstances.
- 27.2 The Delay Notice shall:-
- 27.2.1 identify the cause or causes of the delay (the “**Event**”);
- 27.2.2 state whether and to what extent the delay is caused by a Compensation Event or Relief Event in which event the provisions of clause 36 (CONSEQUENCES OF A COMPENSATION EVENT) or clause 35 (CONSEQUENCES OF A RELIEF EVENT) shall apply;
- 27.2.3 provide details of the nature of the Event and its duration (or the Private Party's reasonable estimate of its likely continued duration); and
- 27.2.4 identify clearly whether the Scheduled Operations Commencement Date is to be affected (and in the reasonable opinion of the Private Party the extent to which it will be affected) by the Event.

- 27.3 If the Private Party serves a Delay Notice while an Event is continuing, the Private Party shall provide MCLM periodically (and at least on a weekly basis) with details of the Event and the Private Party's reasonable estimate of its impact on the Project or the provision of the Facilities.
- 27.4 The Private Party shall afford MCLM such reasonable access to the Project Site and papers of the Private Party as MCLM may consider necessary and appropriate for the purposes of establishing the accuracy of any Delay Notice.
- 27.5 Should Operations Commencement in respect of the Facilities be delayed beyond the Scheduled Operations Commencement Date owing to the Private Party's failure to timeously comply with its obligations in terms of clause 24 (PREPARATION FOR OPERATION) or clause 25 (COMPLETION), MCLM shall be entitled to obtain indemnification for all reasonable costs and expenses which it may incur as a consequence of such delay, including the costs of securing alternative accommodation, as substantiated by all relevant documentation.

28 PROJECT ASSETS

28.1 Disposal of Project Assets

In the event that the Private Party replaces any of the Project Assets, the Private Party shall be entitled, on behalf of MCLM, to sell or dispose of the replaced item and to retain the proceeds of any such sale or disposal of the replaced item which proceeds shall be required to be used in the undertaking of the Project Deliverables.

28.2 General Obligations in relation to Project Assets

Save as otherwise stated in this PPP Agreement, the Private Party shall be liable for all loss and damage to the Project Assets (in whole or in part) howsoever caused, and shall at its own cost and risk, provide, deliver, install, commission, manage, maintain, repair, renew and replace (as the case may be) the Project Assets (or part thereof) at such times and in such manner:-

- 28.2.1 as to enable it to meet the Operations Specifications;
- 28.2.2 as to enable it to meet the Service Level Requirements;
- 28.2.3 as to ensure that the Private Party is, at all times, able to undertake the Operations;

- 28.2.4 without limiting clause 28.2.1 above, as would be required having regard to Good Industry Practice;
- 28.2.5 as required by Law; and
- 28.2.6 as to meet its obligations under this PPP Agreement.
- 28.3 The Private Party shall at all times during the Project Term ensure that the Project Assets are owned by MCLM free of all encumbrances (other than those provided for in the Project Documents) and are not removed from the Facilities, other than for the purposes of complying with its obligations under this PPP Agreement.

29 EQUIPMENT STANDARDS

The Private Party shall ensure that the Project Assets, equipment, consumables and materials used by it or any Subcontractor in connection with the Operations (each as a distinct and separate obligation) are:-

- 29.1 maintained in a safe, serviceable and clean condition in accordance with Good Industry Practice;
- 29.2 in compliance with the requirements specified in the Operations Specifications; and
- 29.3 in compliance with any Law, codes of practice and/or South African standards, and
- 29.4 shall, as soon as practicable after receiving a request from MCLM, supply to MCLM evidence to demonstrate its compliance with this clause 29 (EQUIPMENT STANDARDS).

30 MAINTENANCE SURVEY

30.1 Maintenance Survey

- 30.1.1 On the 3rd (third) anniversary of the Operations Commencement Certificate and every 5th (fifty) anniversary thereafter, MCLM may procure that a survey ("**Maintenance Survey**") of the Project Assets and Facilities is carried out by a reputable and suitably qualified independent expert with adequate and appropriate knowledge of property and facilities management, selected by MCLM from a panel of 5 (five) such experts nominated by the Private Party.

- 30.1.2 The person selected by MCLM in terms of clause 30.1.1 to carry out the Maintenance Survey (the “**Maintenance Surveyor**”) shall be instructed in accordance with a scope of works agreed between the Parties to include, inter alia, a survey of the Project Assets and the Facilities for compliance with the requirements of this PPP Agreement and to procure a schedule of works (if any) required to put the Project Assets and Facilities into the condition they would have been in if the requirements of this PPP Agreement had at all times, up to the date of the Maintenance Survey, been complied with by the Private Party.
- 30.1.3 Following each Maintenance Survey, the Maintenance Surveyor shall provide each Party with a copy of the Maintenance Survey, including a copy of the schedule of works (if any) contemplated under clause 30.1.2. Thereafter, the Private Party shall carry out all such required works:-
- 30.1.3.1 where the Private Party’s schedule of programmed maintenance already contemplates any item of required work, by no later than the date specified in the relevant schedule of programmed maintenance unless otherwise recommended by the Maintenance Surveyor whereupon the relevant work shall be completed by no later than the date so recommended;
- 30.1.3.2 in the case of any other item of work required, by the date recommended by the Maintenance Surveyor or if later, within three months of receipt of the copy schedule of required works or such other period as may be agreed between the Parties.
- 30.1.4 On the relevant date as per clause 30.1.3 MCLM shall procure that the Maintenance Surveyor either confirms to MCLM that the relevant required works have been carried out or notifies MCLM and the Private Party that the relevant required works remain pending or are incomplete (an “**Outstanding Required Work Notice**”). The Outstanding Required Work Notice shall be in writing, and shall specify:-
- 30.1.4.1 the relevant required work which remains pending or incomplete or not completed to the standard required under the Operations Specifications and Service Level Requirements (the “**Outstanding Required Work**”); and
- 30.1.4.2 the Maintenance Surveyor’s estimate of time to carry out the

Outstanding Required Work (the “**Outstanding Required Work Time**”).

30.1.5 If the Private Party believes it has completed the Outstanding Required Work within the Outstanding Required Work Time, the Private Party shall notify MCLM in writing accordingly.

30.1.6 The Private Party shall pay the costs of the Maintenance Surveyor if the Outstanding Required Work costs more than R250 000.00 (two hundred and fifty thousand Rand). The Private Party shall be liable for any costs to retain the Maintenance Surveyor (if necessary) to inspect and approve the undertaking of any Outstanding Required Work at any time after the initial inspection contemplated in clause 30.1.4.

30.1.7 Any dispute pursuant to this clause 30.1 shall be referred to dispute resolution in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).

30.2 **Final Maintenance Survey**

30.2.1 A final Maintenance Survey shall be undertaken by the Maintenance Surveyor 12 (twelve) months prior to the Expiry Date and shall be conclusive proof of the state of the Project Assets and Facilities as at the expiry of the Project Term (“**Final Maintenance Survey**”).

30.2.2 The Private Party shall pay the costs of the Final Maintenance Survey and the retention of the Maintenance Surveyor for the purpose of undertaking same.

30.2.3 The purpose of the Final Maintenance Survey is to:-

30.2.3.1 assess the maintenance requirements (“**Assessed Maintenance Requirements**”) for the Project Assets and the Facilities for the last 12 months of the Project Term “**Twelve Months**”);

30.2.3.2 provide a programme for carrying out the Assessed Maintenance Requirements for each Contract Month over the Twelve Months;

30.2.3.3 determine the anticipated lifespan of each item of the Project Assets, in order to ensure that an average lifespan of at least 5 (five) years remains in respect of the Project Assets;

- 30.2.3.4 obtain the Maintenance Surveyor's estimate of the cost of carrying out the Assessed Maintenance Requirements, as well as to ensure that the average lifespan of the Facilities is at least 5 (five) years and the average lifespan of the Project Assets is 5 (five) years (the "**Assessed Maintenance Amount**");
- 30.2.3.5 establish a budget indicating that portion of the Assessed Maintenance Amount required for each such Contract Month of the Six Months.
- 30.3 The Final Maintenance Survey shall, in the absence of manifest error, be final and binding on the Parties in respect of determining the Assessed Maintenance Amount.
- 30.4 Following receipt of the Final Maintenance Survey, the Private Party shall within 10 (ten) Business Days of receipt thereof deliver to MCLM a payment bond (the "**Final Maintenance Bond**") valid for a period of 18 (eighteen) months. The Final Maintenance Bond:-
- 30.4.1 shall be issued by a bank acceptable to MCLM in the form set forth in Schedule 9 (*Final Maintenance Bond*) in an amount equal to the Assessed Maintenance Amount; and
- 30.4.2 may be called on by MCLM each time and to the extent that the Private Party fails to complete the Assessed Maintenance Requirements for a Contract Month to the satisfaction of the Maintenance Surveyor for the purposes of undertaking such repairs and/or maintenance.
- 30.5 If the Private Party believes that it has completed the Assessed Maintenance Requirements for a relevant Contract Month in the Twelve Months, the Private Party shall notify MCLM accordingly. If such work has been carried out to the Maintenance Surveyor's satisfaction MCLM shall not be entitled to call on the Final Maintenance Bond in that Contract Month. If the Private Party fails to deliver such notice in a Contract Month, or the Maintenance Surveyor is not satisfied as aforesaid, MCLM shall be entitled to call on the Final Maintenance Bond as provided for in clause 30.4.2.
- 30.6 Regardless of the provisions of clauses 30.2.1 to 30.5 (both inclusive), if upon the termination or conclusion of the Project Term, it is demonstrated that the Private Party has failed to carry out any repairs to or maintenance of the Project Assets and/or Facilities required as a result of the Final Maintenance Survey (or

otherwise) timeously, MCLM shall be entitled to effect such repairs and/or maintenance and call on the Final Maintenance Bond to fund all costs incurred by MCLM in undertaking such repairs and/or maintenance.

31 PAYMENT

31.1 For the purposes of this clause 31,

31.1.1 **"PPP Fee"** means the fee, being the aggregate of the Fixed Fee and the Variable Fee, payable by the Private Party for the PPP Rights, calculated on the basis set out in this clause 31.

31.1.2 **"PPP Year"** means for the first PPP Year, the period commencing on the Effective Date and ending on the last day of the Financial Year in which the Effective Date occurs, and for subsequent PPP Years, each succeeding Financial Year until the end of the PPP Period, provided that if the PPP Period ends on a day other than the last day of a Financial Year, then the final PPP Year shall be the period from the end of the immediately preceding PPP Year to the last day of the PPP Period;

31.1.3 **"Fixed Fee"** means, in respect of the Contract Month in question, R 120 000.00 (one hundred and twenty thousand Rand) escalated annually on the anniversary of the Effective Date to compensate for inflation in accordance with the CPI, and pro rated in respect of any PPP Year which is less than twelve months;

31.1.4 **"Gross Revenue"** shall mean:

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

31.1.4.1.1 operating costs, expenses, materials, labor, or overhead expenses'

31.1.4.1.2 bad debts (or provisions therefore);

- 31.1.4.1.3 commissions or similar consideration paid or payable;
- 31.1.4.1.4 cash, credit-card or similar discounts or commissions; and
- 31.1.4.2 Gross Revenue shall include:
 - 31.1.4.2.1 commissions received or receivable; and
 - 31.1.4.2.2 rentals and other fees received or receivable;
- but shall exclude:
 - 31.1.4.2.3 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of IFRS or GAAP (depending on the principles / standards used by the Private Party);
 - 31.1.4.2.4 interest received or receivable;
 - 31.1.4.2.5 the proceeds of, profit or surpluses on the disposal of non-current assets;
 - 31.1.4.2.6 transfers from reserves; and
 - 31.1.4.2.7 bad debts recovered.
- 31.1.5 **"Variable Fee"** means, in respect of each PPP Year, an amount equal to [●] % ([●] percent) of the Private Party's annual Gross Revenues during that year;
- 31.2 The Private Party shall, in addition to payment of the Rates and Taxes to MCLM in accordance with Clause 21, compensate the MCLM for the PPP Rights granted to it by paying to MCLM:
 - 31.2.1 At the end of every Contract Month, the Fixed Fee; and
 - 31.2.2 At the end of each PPP Year, the Variable Fee.

- 31.3 The PPP Fee shall be payable from the Operations Commencement Date.
- 31.4 The Fixed Fee shall accrue and be payable in arrears by the Private Party to the MCLM no later than 7 (seven) Days following the end of the relevant Contract Month.
- 31.5 The Variable Fee shall accrue and be payable in arrears by the Private Party to the MCLM no later than 30 (thirty) Days following the end of the relevant PPP Year.
- 31.6 All amounts due to MCLM shall be paid into a bank account designated by the MCLM and notified to the Private Party.
- 31.7 The Gross Revenues which form the basis for the Variable Fee must be consistent with both Private Party's tax statements and audited accounts. The Parties acknowledge that there are certain to be differences in timing between the Private Party's Financial Year and the PPP Years. In order to ensure that the Private Party's tax statements are consistent with the basis of determining the actual Variable Fee, the following verification and adjustment process will be followed. Within 120 (one hundred and twenty) days after the end of each Financial Year, the Private Party will make available its audited accounts to the MCLM, which must clearly show the Gross Revenue for the part of each PPP Year falling in that Financial Year. The Gross Revenue that is indicated in these audited accounts, and those for the previous Financial Year, will be used to produce a revised calculation of the Variable Fee for the PPP Year in question. If this figure is different from the Variable Fee which has already been paid for that PPP Year the difference will be paid by means of an adjustment to the next payment due by the Private Party to the MCLM, unless no further payments are due in which case the difference will be refunded by the MCLM to the Private Party, or paid by the Private Party to the MCLM, as the case may be, within 30 (thirty) Business Days of the termination of this PPP Agreement. Such payments will be subject to the interest charges described in clause 19.7 below.
- 31.8 Any overdue payment by either the MCLM or the Private Party shall be accrue interest at the Default Interest Rate.
- 31.9 All PPP Fees or other amounts payable in terms of this PPP Agreement shall be exclusive of Value Added Tax or any other transactional tax.
- 31.10 Calculation of the PPP Fee requires the Fixed Fee to be adjusted for inflation as measured by CPI. This adjustment for inflation will take place with effect from the

first day of the PPP Year in question, and the figures will then be applied for the entirety of the forthcoming PPP Year. For all PPP Years, except PPP Year 1, the adjustment will take the most recent published index for CPI and compare it to the published index for CPI for exactly one year previously, and adjust the financial data accordingly. For PPP Year 1, the adjustment will take the most recent published index for CPI and compare it to the published index for CPI for exactly one year previously and adjust the financial data accordingly.

32 INSURANCE

- 32.1 The Private Party shall take out and shall thereafter maintain and keep in full force and effect the insurances listed in Schedule 10 (*Insurances*) and any other insurances in respect of the Project as may be required by Law (the “*Project Insurances*”). Each of the Project Insurances listed in Schedule 10 (*Insurances*) must be taken out and become fully effective not later than the corresponding date set forth in Schedule 10 (*Insurances*). Each of the Project Insurances (if any) not listed in Schedule 10 (*Insurances*) must be taken out and become fully effective not later than the earliest date required by Law.
- 32.2 The payment of the insurance premiums due and payable in respect of any Project Insurance shall be the responsibility of the Private Party.
- 32.3 No Party to this PPP Agreement shall take any action or fail to take any action, or (in so far as is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any of the policies applying to any Project Insurance.
- 32.4 The Private Party undertakes that each Project Insurance shall:-
- 32.4.1 name the Private Party as the insured and MCLM as co-insured for its separate interest;
- 32.4.2 apply to each of the insured parties as if a separate policy had been issued to each of them, other than in the event of exhaustion of the sum insured or the limit of indemnity;
- 32.4.3 provide for non-vitiating protection cover in accordance with the principles set out in Schedule 10 Part C (*Insurance*) in respect of any claim made by MCLM as co-insured. If non-vitiating protection is unavailable when any such insurance policy is first placed, then the Private Party shall procure same insofar as any non-vitiating protection subsequently becomes

available prior to each renewal of the policy, or provide written confirmation promptly upon the renewal thereof as to the unavailability thereof, to MCLM. If any non-vitiation protection subsequently becomes available, MCLM shall be entitled to require the Private Party to procure such protection and the costs thereof shall be borne by MCLM;

- 32.4.4 contain a provision waiving the insurers' subrogation rights against MCLM, its employees and agents;
- 32.4.5 in respect of Project Insurances in Schedule 10, Part A (*Insurances Required During the Works Phase*), contain non-cancellation or non-amendment provisions by the underwriter of such Project Insurance;
- 32.4.6 in respect of Project Insurances Schedule 10, Part B (*Insurances Required During the Operations Phase*), provide for 90 (ninety) days' prior written notice of its cancellation, non-renewal or amendment to be given to MCLM by the underwriter of such Project Insurance;
- 32.4.7 contain a provision recording that such Project Insurance is a primary insurance and shall not be brought into contribution by any other insurances;
- 32.4.8 provide for payment of any proceeds under any of the material damage insurances included in the Project Insurances to be made by the insurers in accordance with clause 33 (REINSTATEMENT).
- 32.5 The Private Party shall furnish MCLM, on request, with:-
 - 32.5.1 true and complete copies of the policies of all the Project Insurances (together with any other information reasonably requested by MCLM relating to such policies) and MCLM shall be entitled to inspect them during ordinary business hours; and
 - 32.5.2 satisfactory evidence that the premia due and payable under any such policies have been paid and that the Project Insurances are in full force and effect in accordance with the requirements of this clause 32 (INSURANCE).
 - 32.5.3 The Private Party shall, as and when required pursuant to the terms of the relevant Project Insurance, renew each Project Insurance for so long as any risk covered thereby exists and shall furnish MCLM with true and complete copies of each certificate of renewal for such Project Insurance as soon as possible but in

any event within 10 (ten) Business Days after the relevant renewal date.

- 32.6 If the Private Party breaches any of clauses 32.1 or 32.2 above in relation to any Project Insurance, MCLM may pay any premia required to keep such Project Insurance in force and effect, or itself procure such Project Insurance and may recover all premia or other costs incurred by it in doing so from the Private Party on written demand.
- 32.7 The Private Party shall notify MCLM within 5 (five) Business Days after submitting any claim in excess of R100 000 (one hundred thousand Rand) (indexed to CPI) under any of the Project Insurances accompanied by full details of the event giving rise to the claim.
- 32.8 Neither the failure to comply nor full compliance with the insurance provisions of this PPP Agreement shall limit or relieve the Private Party of its liabilities and obligations under this PPP Agreement.
- 32.9 Subject to clause 33 (REINSTATEMENT) the Private Party shall apply any proceeds of any policy of the Project Insurance:-
- 32.9.1 in the case of third-party legal liability or employer's liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which the proceeds are payable; and
- 32.9.2 in the case of any other Project Insurance, so as to ensure the performance by the Private Party of its obligations under this PPP Agreement.
- 32.10 The Private Party shall bear the risk of any shortfall in the proceeds of any Project Insurance.

33 REINSTATEMENT

- 33.1 Subject to clause 34 (ECONOMIC TEST), any insurance proceeds received under any policy referred to in Schedule 10 (*Insurances*) in respect of loss or damage to the Facilities or Project Assets ("*Material Damage Policies*") shall be applied to repair, reinstate or replace each part or parts of the Project Assets in respect of which the proceeds were received.
- 33.2 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 (the "*Insurance Account*") and MCLM

shall have unfettered and reasonable rights of access to the details of the Insurance Account for the duration of this PPP Agreement.

33.3 Subject to clause 34 (ECONOMIC TEST), where a claim is made or proceeds of insurance are received or are receivable under any Material Damage Policy in respect of a single event or a series of related events:-

33.3.1 the Private Party shall deliver as soon as practicable and in any event within 10 (ten) days after the making of the claim, a plan (the “**Reinstatement Plan**”) prepared by the Private Party for the carrying out of the works necessary to repair, reinstate or replace the Project Assets (the “**Reinstatement Works**”) which are the subject of the claim. The Reinstatement Plan shall set out:-

33.3.1.1 the identity of the person proposed to effect the Reinstatement Works, if not the D&C Subcontractor, which shall be subject to the prior written agreement of MCLM; and

33.3.1.2 the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written agreement of MCLM,

provided that if the Parties fail to reach any such agreement, then the dispute shall be referred for resolution by the Independent Expert in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION); and

33.3.2 if MCLM is satisfied that the Reinstatement Plan (as amended by agreement with MCLM or in accordance with the decision of the Independent Expert) will enable the Private Party to comply with clause 33.3.2.5 below within a reasonable timescale, then:-

33.3.2.1 the Reinstatement Plan shall be adopted;

33.3.2.2 the Private Party shall enter into contractual arrangements to effect the Reinstatement Works with the person agreed to by MCLM;

33.3.2.3 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 33.3.2.2 above, and to meet any other reasonable costs and expenses of the Private Party for the sole purposes of funding the Reinstatement Works;

- 33.3.2.4 MCLM agrees and undertakes that, subject to compliance by the Private Party with its obligations under this clause 33 (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 33.3.2.2 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
- 33.3.2.5 after the Reinstatement Plan has been implemented to the reasonable satisfaction of MCLM and in accordance with clause 33.3.2.5 below, MCLM shall permit the withdrawal by the Private Party of any Relevant Proceeds that have not been utilised in accordance with 33.3.2.3 above.
- 33.3.2.6 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 accordance with the Operations Specifications in such a manner that on completion of the Reinstatement Works, the provisions of this PPP Agreement are complied with in all respects.

34 ECONOMIC TEST

- 34.1 If all or substantially all of the Project Assets are 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 Project Assets, then the Private Party shall calculate the loan life cover ratio in accordance with the Financing Agreements (on the assumption that the Project Assets are repaired or reinstated in accordance with this PPP Agreement).
- 34.2 If the calculation referred to in clause 34.1 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 33 (REINSTATEMENT).

34.3 If the calculation referred to in clause 34.1 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:-

34.3.1 the amount of the insurance proceeds; and

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

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

34.3.2.2 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 MCLM 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:-

34.3.2.2.1 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

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

35 CONSEQUENCES OF A RELIEF EVENT

35.1 If and to the extent that a Relief Event:-

35.1.1 directly causes a delay in Operations Commencement in respect of the Facilities and, as a result, the Date is not achieved, or

35.1.2 materially adversely affects the ability of the Private Party to perform any of its obligations under this PPP Agreement,

the Private Party shall be entitled to apply for relief from any rights of MCLM arising under clause 53 (TERMINATION FOR PRIVATE PARTY DEFAULT).

35.2 To obtain relief, the Private Party must:-

35.2.1 as soon as practicable, and in any event within 5 (five) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or materially adversely affect the ability of the Private Party to perform its other obligations, give to MCLM a notice of its claim for relief from its obligations under this PPP Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

35.2.2 within 30 (thirty) days of receipt by MCLM of the notice referred to in clause 35.2.1 above, give full details of the relief claimed; and

35.2.3 demonstrate to the reasonable satisfaction of MCLM that:-

35.2.3.1 the Private Party and its Subcontractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

35.2.3.2 the Relief Event directly caused the delay to the Scheduled Operations Commencement Date;

35.2.3.3 the time lost and/or relief from the obligations under this PPP Agreement claimed could not reasonably be expected to be mitigated

or recovered by the Private Party acting in accordance with Good Industry Practice, without incurring material expenditure; and

35.2.3.4 the Private Party is using reasonable endeavours to perform its obligations under this PPP Agreement.

35.3 In the event that the Private Party has complied with its obligations under clause 35.2 above, then the Works Programme shall be adjusted, and the Scheduled Operations Commencement Date, shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay, provided that the Scheduled Operations Commencement Date shall only be postponed to the extent that the duration of the Relief Events, in aggregate, exceeds 30 (thirty) days.

35.4 Nothing in clause 35.3 above shall affect any entitlement of MCLM to payment of the PPP Fee during the period in which the Relief Event is subsisting.

35.5 In the event that information required by clause 35.2 above is provided after the dates referred to in that clause, then the Private Party shall not be entitled to any relief during the period for which the information is delayed.

35.6 The Private Party shall notify MCLM if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

35.7 In the event of a Relief Event that continues for a period in excess of 180 (one hundred and eighty) days, the Parties shall meet in order to agree a mutually satisfactory solution for dealing with such prolonged Relief Event.

35.8 If the Parties cannot agree on the extent of the relief required, or MCLM disagrees that a Relief Event has occurred or that the Private Party is entitled to any extension of the Scheduled Operations Commencement Date and/or relief from other obligations under this PPP Agreement, the Parties shall resolve the matter in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).

36 CONSEQUENCES OF A COMPENSATION EVENT

36.1 If, as a direct result of the occurrence of a Compensation Event:-

36.1.1 the Private Party is unable to achieve Operations Commencement on or before the Scheduled Operations Commencement Date;

- 36.1.2 the Private Party is unable to comply with its obligations under this PPP Agreement; or
- 36.1.3 the Private Party incurs costs or loses revenue,
- then the Private Party is entitled to apply for relief from its obligations and/or claim compensation under this PPP Agreement.
- 36.2 To obtain relief and/or claim compensation the Private Party must:-
- 36.2.1 as soon as practicable, and in any event within 5 (five) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this PPP Agreement and/or the Private Party to incur costs or lose revenue, give to MCLM a notice of its claim for an extension of time for Operations Commencement, payment of compensation and/or relief from its obligations under this PPP Agreement;
- 36.2.2 within 30 (thirty) days of receipt by MCLM of the notice referred to in clause 36.2.1 above, give full details of the Compensation Event and the extension of time and/or any estimated change in Project costs claimed; and
- 36.2.3 demonstrate to the reasonable satisfaction of MCLM that:-
- 36.2.3.1 the Compensation Event was the direct cause of the estimated change in Project costs and/or any delay in the achievement of the Scheduled Operations Commencement Date; and
- 36.2.3.2 the estimated change in Project costs, time lost, and/or relief from the obligations under this PPP Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Private Party or its Subcontractors acting in accordance with Good Industry Practice.
- 36.3 In the event that the Private Party has complied with its obligations under clause 36.2 above then:-
- 36.3.1 the Works Programme shall be adjusted, and the Scheduled Operations Commencement Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay; and/or
- 36.3.2 in the case of an additional cost being incurred by the Private Party or the Private Party suffering a loss of revenue:-

- 36.3.2.1 on or before the Operations Commencement Date; or
- 36.3.2.2 as a result of Capital Expenditure being incurred by the Private Party at any time,
- MCLM shall compensate the Private Party for the actual change in Project costs Capital Expenditure and loss of revenue reasonably incurred by an adjustment to the Variable Fee and in respect of which the Private Party shall support any claim under this clause 36.3.2 with substantiating information and documentation;
- 36.3.3 in the case of a payment of compensation for the estimated change in Project costs that does not result in Capital Expenditure being incurred by the Private Party but which reflects a change in the costs being incurred by the Private Party after the Scheduled Operations Commencement Date, MCLM shall compensate the Private Party by an adjustment to the Variable Fee, and in respect of which the Private Party shall support any claim under this clause 36.3.3 with substantiating information and documentation; and/or
- 36.3.4 MCLM shall give the Private Party such relief from its obligations and extensions of time under this PPP Agreement, as is reasonable for such a Compensation Event.
- 36.4 In the event that information is provided after the dates referred to in clause 36.2 above, then the Private Party shall not be entitled to any extension of time, compensation, or relief from its obligations under this PPP Agreement in respect of the period for which the information is delayed.
- 36.5 If the Parties cannot agree on the extent of any compensation, delay incurred, or relief from the Private Party's obligations under this PPP Agreement, or MCLM disagrees that a Compensation Event has occurred (or as to its consequences), or that the Private Party is entitled to any relief under this clause 36, the Parties shall resolve the matter in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).
- 36.6 In determining the liability of MCLM for purposes of this clause in respect of any Compensation Event caused or contributed to by the Private Party, the liability of MCLM shall be limited to that proportion of the loss or damage suffered by the Private Party which is agreed or ascribed to MCLM by the Independent Expert. The Independent Expert shall allocate proportionate responsibility having regard

to the contribution to the Private Party's loss or damage in question based upon relative degrees of fault. It is a term of this PPP Agreement that the provisions of Section 1 of the Apportionment of Damages Act, 1956 will apply to all claims under this clause 36 and that "breach" as contemplated in the definition of Compensation Event, and "costs" or "losses" as used herein shall be deemed to fall within the meanings of "fault" and "damage" as contained in the said section of the above Act, and likewise any Deduction.

37 FORCE MAJEURE

37.1 Subject to clauses 37.2.2 , 37.3 and 37.7, the Party claiming relief shall be relieved from liability under this PPP Agreement to the extent that by reason of a *Force Majeure* event it is not able to perform all, or a material part of its obligations under this PPP Agreement.

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

37.2.1 it shall take all reasonable steps to mitigate to the extent required by the common law and, in the case of the Private Party, the provisions of any Project Insurances, 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

37.2.2 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 as a result of its failure to comply with its obligations under clause 37.2.1.

37.3 The Party claiming relief shall serve written notice on the other Party within 5 (five) 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*.

37.4 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 30 (thirty) days, or such longer period as may be agreed between the Parties, which 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 37.2.1, the

date of the occurrence of the event of *Force Majeure* and an estimate of the period of time required to overcome it (and/or its effects).

- 37.5 The Party claiming relief shall notify the other as soon as the consequences of the event of *Force Majeure* have ceased and when performance of its affected obligations can be resumed.
- 37.6 If, following the issue of any notice referred to in clause 37.4, 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.
- 37.7 Nothing in clause 37 above shall affect any entitlement of MCLM to payment of the PPP Fee during the period in which the Force Majeure is subsisting.
- 37.8 If an event of *Force Majeure* occurs before the Scheduled Operations Commencement Date and as a result thereof the Private Party is unable to achieve Operations Commencement on or before the Scheduled Operations Commencement Date and the Private Party has complied with its obligation under this clause 37 (FORCE MAJEURE); then subject to clause 54 (TERMINATION FOR FORCE MAJEURE), the Works Programme shall be adjusted, and the Scheduled Operations Commencement Date shall be postponed by such time as shall be reasonable for such *Force Majeure*, taking into account the likely effect of delay; and
- 37.9 Subject to clause 59 (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) the Private Party's sole right to payment or otherwise in relation to the occurrence of an event of *Force Majeure* shall be as provided in this clause 37.
- 37.10 The Parties shall endeavour to agree any modifications to this PPP Agreement which may be equitable having regard to the nature of an event or events of *Force Majeure*. clause 59 (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) shall not apply to a failure of MCLM and the Private Party to reach agreement pursuant to this clause 37.

38 UNFORESEEABLE CONDUCT

- 38.1 Should any Unforeseeable Conduct occur which shall adversely affect the general economic position of the Private Party, the Private Party shall be entitled to such compensation and/or relief from MCLM as shall place the Private Party

in the same overall economic position as the Private Party would have been in but for such Unforeseeable Conduct.

- 38.2 Should any Unforeseeable Conduct occur which materially beneficially affects the general economic position of the Private Party, the Private Party shall pay the value of such benefit to MCLM so that the Private Party remains in the same overall economic position it would have been in had the materially beneficial Unforeseeable Conduct not occurred.
- 38.3 The Party claiming the occurrence of the Unforeseeable Conduct ("*Claiming Party*") shall give written notice to the other Party ("*Receiving Party*") containing reasonably detailed particulars of such conduct and its likely economic consequences to the Private Party.
- 38.4 The Receiving Party shall have 60 (sixty) Business Days from the date of receipt of such notice to effect a remedy for the Unforeseeable Conduct which restores the general economic position of the Private Party to that which it would have been in if such Unforeseeable Conduct had not occurred. If the Receiving Party does not effect such a remedy within such period, the Parties shall consult within 10 (ten) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. In the event that a mutually satisfactory resolution has not been reached within such consultation period, the matter shall be dealt with in accordance with clause 68 (DISPUTE RESOLUTION), for a determination to be made in respect of:-
- 38.4.1 any appropriate extension of time as may be fair and reasonable under the circumstances; and/or
- 38.4.2 any monetary relief as may be fair and reasonable under the circumstances; and/or
- 38.4.3 any MCLM Variation as may be fair and reasonable in the circumstances (where the Private Party is the Claiming Party);
- 38.4.4 where the Private Party is the Claiming Party, termination of this PPP Agreement where any other remedy under this clause 38 shall not be sufficient to place the Private Party in the same position as it would have been had the Unforeseeable Conduct not taken place.
- 38.5 Insofar as the Private Party is the Claiming Party, it shall use all reasonable endeavours to minimise and mitigate the effects of any Unforeseeable Conduct

to the extent required by the common law and the provisions of any Project Insurances.

- 38.6 If it is agreed between the Parties, or determined pursuant to Dispute Resolution that this PPP Agreement should be terminated as referred to in clause 38.4 , then this PPP Agreement shall terminate 30 (thirty) days after the date of such agreement or determination and the Termination Amount detailed in clause 52 (TERMINATION FOR MCLM DEFAULT) shall be payable to the Private Party.

39 MCLM VARIATIONS

- 39.1 MCLM has the right to propose Variations to the Project Deliverables in accordance with this clause 39 (MCLM VARIATIONS).
- 39.2 If MCLM requires a Variation to the Project Deliverables, it must serve a notice on the Private Party detailing the requested Variation (a "MCLM Variation Proposal").
- 39.3 MCLM Variation Proposal shall set out the Variation required in sufficient detail as to enable the Private Party to calculate and provide the estimated revised Project costs in accordance with clause 39.4 below (the "*Estimate*").
- 39.4 As soon as practicable and in any event within 20 (twenty) Business Days after having received MCLM Variation Proposal, the Private Party shall, subject to clause 39.10 deliver the Estimate to MCLM. The Estimate shall include the opinion of the Private Party on:-
- 39.4.1 whether relief from compliance with its obligations under this PPP Agreement (in whole or part) is required, including the obligations of the Private Party to achieve the Scheduled Operations Commencement Date and meet the Operations Specifications and/or the Service Level Requirements and/or the BEE obligations during the implementation of the Variation;
- 39.4.2 any impact on the Scheduled Operations Commencement Date;
- 39.4.3 any impact on the Operations;
- 39.4.4 any amendment required to this PPP Agreement and/or any Project Document as a result of the Variation;
- 39.4.5 any estimated revised Project costs that result directly from the Variation;

- 39.4.6 any loss of revenue that will result directly from the Variation;
- 39.4.7 any Capital Expenditure or Operating Expenditure that is required or no longer required as a result of the Variation;
- 39.4.8 any Consents which are required; and
- 39.4.9 the proposed method of certification of any Works or operational aspects of the Variations required by MCLM Variation Proposal.
- 39.5 As soon as practicable after MCLM receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate. The Private Party shall:-
- 39.5.1 provide evidence that it has used its reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
- 39.5.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost-effective manner; and
- 39.5.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by MCLM Variation concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 39.4.5, 39.4.6 and/or 39.4.7 above.
- 39.6 In such discussions MCLM may modify MCLM Variation Proposal and (if the estimated increase in Capital Expenditure in respect of the Variation is expected to exceed R5 000 000.00 (five million Rand) (indexed to CPI) and it is practicable for the Private Party to do so) MCLM may require the Private Party to seek and evaluate competitive tenders for the relevant capital Works. In each case the Private Party shall, as soon as practicable, and in any event not more than 20 (twenty) Business Days after receipt of such modification, notify MCLM of any consequential changes to the Estimate.
- 39.7 The Private Party shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Private Party should not be worse off as a result of the implementation of the Variation) when procuring any work, supplies, materials or equipment required in relation to the

Variation.

- 39.8 If the Parties cannot agree on the contents of the Estimate, then the dispute will be determined in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).
- 39.9 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to clause 69 (FAST-TRACK DISPUTE RESOLUTION), MCLM shall:-
- 39.9.1 confirm the Estimate (as modified) in writing; or
- 39.9.2 withdraw MCLM Variation Proposal.
- 39.10 Notwithstanding the other provisions of this clause 39 (MCLM VARIATIONS):-
- 39.10.1 if, on receipt of MCLM Variation Proposal pursuant to clause 39.1, the Private Party is of the opinion that such Variation is likely to result in an increase in the Project risk or its financial risk or to generally adversely affect the risk profile of the Private Party, it shall, as soon as practical and in any event within 20 (twenty) Business Days after having received MCLM Variation Proposal, serve a notice on MCLM stating its opinion and the reasons therefor; and
- 39.10.2 the Parties shall meet as soon as practical and in any event within 10 (ten) Business Days of receipt of such notice. If the Parties agree that such Variation is likely to increase the Project risk or the Private Party's financial risk or to generally adversely affect the risk profile of the Private Party, MCLM Variation Proposal shall be withdrawn. If the Parties are unable to agree on the likely effects of MCLM Variation Proposal, either Party may refer the matter to an Independent Expert pursuant to clause 69 (FAST-TRACK DISPUTE RESOLUTION). If it is determined by the Independent Expert that MCLM Variation Proposal will increase the Project risk, financial risk or generally adversely affect the risk profile of the Private Party, MCLM Variation Proposal shall be deemed to have been withdrawn.
- 39.11 If MCLM does not confirm the Estimate (as modified) in writing within 20 (twenty) Business Days of the contents of the Estimate having been agreed in accordance with clause 39.5 or determined pursuant to clause 39.8, then MCLM Variation Proposal shall be deemed to have been withdrawn and MCLM shall pay the reasonable costs of the Private Party in preparing and negotiating the Estimate.

- 39.12 In the event that the Estimate (as modified) involves estimated Capital Expenditure then the Private Party shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure from either the Lenders or other commercial sources, on terms reasonably satisfactory to it and MCLM.
- 39.13 If the Private Party has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to obtain finance within 20 (twenty) Business Days of the date that MCLM confirmed the Estimate, then the Private Party shall have no obligation to carry out the Variation, unless MCLM agrees to pay the costs involved in accordance with this clause 39.
- 39.14 MCLM may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Private Party has obtained funding for only part of the Capital Expenditure, the remaining part of the Capital Expenditure. MCLM shall compensate the Private Party for such Capital Expenditure by an adjustment to the Variable Fee and in respect of which the Private Party shall support any claim under this clause 39.14 with substantiating information and documentation.
- 39.15 At the same time that the Private Party gives the Estimate, it shall also provide MCLM with a proposal as to whether the Financial Model should change, and if so, how. If MCLM accepts the proposal, the Financial Model shall be adjusted as proposed and concomitantly therewith the PPP Fee shall be adjusted as contemplated in the revised Financial Model. If MCLM rejects such proposal and the Parties are unable to agree the required changes to the Financial Model within 20 (twenty) Business Days of MCLM's rejection of the Private Party's proposal, MCLM Variation Proposal shall be withdrawn.
- 39.16 Where MCLM agrees to pay the Capital Expenditure (in whole or part) for which funding is not available pursuant to clause 39.13 above:-
- 39.16.1 MCLM and Private Party shall agree:-
- 39.16.1.1 a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred by the Private Party in carrying out the Variation to the extent such costs shall be borne by MCLM; and
- 39.16.1.2 where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, an

objective means of providing evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out, shall be agreed and provided for as part of the payment schedule, (such payment schedule and evidence to be determined by an Independent Expert in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION) in the event of MCLM and Private Party failing to agree as to its terms);

- 39.16.2 MCLM shall compensate the Private Party for the actual change in Capital Expenditure and loss of revenue reasonably incurred by an adjustment to the Variable Fee and in respect of which the Private Party shall support any claim under this clause with substantiating information and documentation; and

40 PRIVATE PARTY VARIATIONS

- 40.1 If the Private Party wishes to introduce a Variation, it must serve a notice on MCLM providing details of such Variation (a "*Private Party Variation Proposal*").
- 40.2 The Private Party Variation Proposal must:-
- 40.2.1 set out the proposed Variation in sufficient detail to enable MCLM to evaluate it in full;
 - 40.2.2 specify the Private Party's reasons for the Private Party Variation Proposal;
 - 40.2.3 request MCLM to consult with the Private Party with a view to deciding whether to agree to the Private Party Variation Proposal and, if so, what consequential changes MCLM requires as a result;
 - 40.2.4 specify all implications of the Private Party Variation Proposal on this PPP Agreement and any of its terms, and any of the Project Documents and any of their terms;
 - 40.2.5 indicate, in particular, whether a variation to the PPP Fee is proposed (and, if so, give a detailed cost estimate of such proposed Variation and whether the Financial Model should change, and if so how); and
 - 40.2.6 indicate if there are any dates by which a decision by MCLM is critical.
- 40.3 MCLM shall evaluate the Private Party's Variation Proposal taking into account

all relevant issues, including, *inter alia*, whether:-

- 40.3.1 a change in the PPP Fee will occur;
- 40.3.2 the Variation will affect the quality or successful undertaking of the Operations;
- 40.3.3 the Variation will interfere with the relationship of MCLM with third parties;
- 40.3.4 the financial strength of the Private Party is sufficient to perform the Variation;
- 40.3.5 the residual value of the Project Assets is reduced; and
- 40.3.6 the Variation materially affects the risks or costs to which MCLM is exposed.
- 40.4 As soon as practicable after receiving the Private Party Variation Proposal, the Parties shall meet and discuss the matters referred to in it. During their discussions MCLM may propose modifications or accept or reject the Private Party Variation Proposal.
- 40.5 To the extent that MCLM proposes modifications to the Private Party Variation Proposal, the Private Party may either accept such modifications or withdraw the Private Party Variation Proposal.
- 40.6 If MCLM accepts the Private Party Variation Proposal (with or without modification as agreed to by the Private Party), the Private Party shall begin to implement the relevant changes arising from the Variation within 20 (twenty) Business Days of MCLM's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this PPP Agreement or any relevant Project Document, which are necessary to give effect to the Variation.
- 40.7 If MCLM rejects the Private Party Variation Proposal, it shall not be obliged to give its reasons for such a rejection.
- 40.8 Where the Private Party Variation Proposal shall result in an decrease in the PP Fee, there shall be no decrease in the PPP Fee unless specifically agreed to by MCLM.
- 40.9 If the Private Party Variation Proposal causes or will cause the Private Party's costs or those of a Subcontractor to decrease, there shall be an increase in the

PPP Fee, to reflect 50% (fifty percent) of the value of such savings.

41 PERSONNEL

41.1 MCLM's Personnel

No MCLM employees shall be transferred to the Private Party.

41.2 Key Personnel

The Private Party shall at all times ensure that sufficient suitable and appropriately qualified and experienced personnel are employed in Key Personnel Positions (whether by the Private Party or its Subcontractors) to undertake the Project Deliverables and that such key personnel shall be located in South Africa. Without limiting the generality of the foregoing, the Private Party shall ensure that all Key Personnel Positions are always filled as soon as reasonably possible.

41.3 Removal of Private Party Personnel

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

42 MONITORING AND INSPECTION

The Private Party shall, on notice by MCLM, grant access to the Facilities to any person that MCLM advises the Private Party requires such access to monitor the Private Party's performance of the Project Deliverables.

43 ENVIRONMENTAL POLICY

43.1 The Krugersdorp Game Reserve is a Protected Area and the Private Party undertakes to comply with all Laws and other requirements applicable to Protected Areas.

- 43.2 The Private Party shall ensure that it has familiarised itself with the hazards associated with the Project Deliverables being carried out at the Project Site and that minimum use is made of any hazardous substance (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 (including air, water, land, surface land and sub-surface land) or capable of damaging the environment or public health or posing a threat to public safety including any Contamination and all substances for which in each case liability or responsibility is imposed under applicable environment Law) in undertaking the Project Deliverables, and, where possible, replace any hazardous substance that may be used with a non-hazardous or less hazardous substance.
- 43.3 In utilising any hazardous substance, the Private Party shall ensure that manufacturer's specifications and safety measures are at all times complied with.
- 43.4 The Private Party shall avoid (insofar as is possible) any Contamination of the Facilities and/or the Project Site in undertaking the Project Deliverables and, insofar as any Contamination occurs, shall remove same and avoid any ongoing Contamination, and at its own cost comply with any Law and/or Consent, order, notice or direction of any regulatory body in respect thereof (whether same is made against either the Private Party and/or MCLM).

44 OCCUPATIONAL HEALTH AND SAFETY

- 44.1 During the Project Term, the Private Party shall be responsible for the observance by itself and the Subcontractors and any other person on the Project Site at the request or instance of the Private Party or its Subcontractors of all applicable health and safety precautions necessary, whether required by Law or Good Industry Practice, for the protection of itself and the Subcontractors and any other person involved in providing the Project Deliverables.
- 44.2 The Private Party shall also be responsible for the observance by itself and the Subcontractors in relation to conducting the Project Deliverables during the Project Term of all Laws concerning building works and fire prevention.
- 44.3 The Private Party shall maintain proof of compliance with the Occupational Health and Safety Act and produce the same to MCLM within 24 (twenty four) hours of a request for same.
- 44.4 Accidents involving any employees, including those of the Private Party or the Subcontractors, which would ordinarily require reporting in accordance with the

Occupational Health and Safety Act shall also be reported as soon as is practicable to MCLM.

44.5 The Private Party shall provide full co-operation and information if and when MCLM enquires into occupational health and safety issues concerning the employees referred to in clause 44.4.

44.6 **Section 16 of the Occupational Health and Safety Act**

44.6.1 The Private Party as an employer in its own right shall ensure that the duties in relation to employers as contemplated in the Occupational Health and Safety Act are properly discharged by itself and/or its chief executive officer in accordance with Section 16(1) of the Occupational Health and Safety Act.

44.6.2 In accordance with Section 16(2) of the Occupational Health and Safety Act, the Private Party may appoint competent persons who shall be trained on any occupational health and safety matter, including any provisions in the Occupational Health and Safety Act pertinent to the Project Deliverables. Copies of any such appointments made by the Private Party shall immediately be provided to MCLM. The Private Party and/or its designated person(s) appointed in terms of Section 16(2) of the Occupational Health and Safety Act shall report to the health and safety representative designated by MCLM in respect of the relevant Project Site prior to commencing the Project Deliverables at the relevant Project Site.

45 BLACK EQUITY IN THE PRIVATE PARTY

The Private Party shall ensure that:-

45.1 it complies in all respects with the provisions set out in Schedule 11 (*Target Group Terms*);

45.2 for the duration of the Project Term the target for Black Equity in the Private Party (the "*Minimum Black Equity*") set out in Schedule 11 (*Target Group Terms*) shall be adhered to and such Equity shall rank at least *pari passu* with the voting Equity held by the Shareholders who are not Black People or Black Enterprises;

45.3 the Black Shareholders shall be entitled to earn a return on their investment in the Project consistent with the returns forecast in the Financial Model, through their participation in the Distributions declared by the Private Party from time to

time provided that if the returns are less than or greater than the returns forecast in the Financial Model the Black Shareholders shall earn pro-rata less or more than the returns forecast in the Financial Model.

45.4 The BEE Report shall set forth in relation to each Shareholder, on a quarterly basis within 7 (seven) Business Days of the last day of each such quarter during the Development Period and on an annual basis within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period:-

45.4.1 the Equity ownership of that Shareholder and details of all changes whatsoever in such ownership in that Financial Year (including, without limitation, changes effected through any acquisition or disposal of issued shares, or through any subscription for new shares);

45.4.2 the Shareholder Loans of that Shareholder and details of all changes in the amount of such Shareholder Loans in that Financial Year (including, without limitation, changes effected through repayments);

45.4.3 the voting rights attaching to all classes of Equity owned by that Shareholder in that Financial Year; and

45.4.4 details of all Distributions declared to and received by that Shareholder in that Financial Year.

46 PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY

46.1 The Private Party shall ensure that for the duration of the Project Term it complies with the targets set out in Schedule 11 (*Target Group Terms*) as they relate to Private Party management and employment equity.

46.2 The Private Party shall comply with the Employment Equity Act and implement its current employment equity plan, as substituted from time to time in accordance with that Act. The Private Party shall furnish MCLM with:-

46.2.1 each successive employment equity plan submitted by the Private Party in accordance with the Employment Equity Act within 10 (ten) Business Days following the date of submission of that plan; and

46.2.2 a copy of each report submitted by the Private Party to MCLM of Labour (or its successor) pursuant to section 21 of the Employment Equity Act within 10 (ten) Business Days following the date of submission of that report.

- 46.3 The Private Party shall implement its skills development plan in accordance with Schedule 12 (*Skills Development Plan*) and the targets set out in Schedule 11 (*Target Group Terms*) in relation to skills development.
- 46.4 The Private Party shall include in its BEE Report, on a quarterly basis within 7 (seven) Business Days of the last day of each such quarter during the Development Period and on an annual basis within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period:-
- 46.4.1 a complete statement as to whether it has met or exceeded the targets set forth in Schedule 11 (*Target Group Terms*);
- 46.4.2 a complete statement of all targets set forth in the skills development plan for that Financial Year that have been achieved by the Private Party in that Financial Year, together with details of the costs incurred by the Private Party in that Financial Year in respect of such targets;
- 46.4.3 a complete statement of all targets (if any) set forth in the skills development plan for that Financial Year that have not been achieved by the Private Party in that Financial Year, together with the Private Party's reasons for not achieving these targets;
- 46.4.4 details of the portion (if any) of its Annual Skills Development Commitment for that Financial Year not applied by the Private Party towards the implementation of any of its skills development targets for that Financial Year, together with the Private Party's reasons for not applying the full Annual Skills Development Commitment in that Financial Year;
- 46.4.5 verification of the skills development elements of the BEE Report by the auditor of the Private Party.

47 BEE OBLIGATIONS OF SUBCONTRACTORS

- 47.1 The Private Party shall and shall procure that the Subcontractors comply in all respects with the provisions set out in Schedule 11 (*Target Group Terms*).
- 47.2 The Private Party shall ensure that:-
- 47.2.1 no less than [●%] ([●percent]) of the total Capital Expenditure forecast in the Financial Model to be incurred by the Private Party shall be expended under Subcontracts in which Black People and/or Black Enterprises will participate in the manner described in Schedule 11 (*Target Group Terms*);

- 47.2.2 no less than [●%] ([●percent] of the total Operating Expenditure forecast in the Financial Model to be incurred by the Private Party shall be expended under Subcontracts in which Black People and/or Black Enterprises will participate in the manner described in Schedule 11 (*Target Group Terms*);
- 47.3 The Private Party shall procure that:
- 47.3.1 no less than [●%] ([●percent] of each Subcontractor's senior management appointments specified in Schedule 11 (*Target Group Terms*) shall be filled by Black Persons;
- 47.3.2 each Subcontractor shall meet the annual skills development targets set forth in Schedule 11 (*Target Group Terms*) hereto and shall apply no less than an amount equal to [●%] ([●percent] of that Subcontractor's annual payroll expenditure in any Financial Year towards the costs of implementing its skills development targets for that Financial Year; and
- 47.3.3 each Subcontractor shall expend no less than [●%] ([●percent] of the total procurement budget of that Subcontractor in respect of the Project under procurement contracts with, in the case of the D&C Subcontractor, QSEs, and, in the case of the Operations Subcontractor, EMEs.
- 47.4 The BEE Report shall set forth, in relation to each Subcontractor, on a quarterly basis within 7 (seven) Business Days of the last day of each such quarter during the Development Period and on an annual basis within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period, the information set out in clause 47.2.

48 SUBCONTRACTOR MANAGEMENT AND EMPLOYMENT EQUITY

- 48.1 Each Subcontractor shall implement that Subcontractor's current employment equity plan, as substituted from time to time in accordance with the Employment Equity Act. The Private Party shall furnish MCLM with or cause MCLM to be furnished with:-
- 48.1.1 each successive employment equity plan submitted by that Subcontractor in terms of the Employment Equity Act within 10 (ten) Business Days following the date of submission of that plan; and
- 48.1.2 a copy of each report submitted by that Subcontractor to MCLM of Labour (or its successor) pursuant to section 21 of the Employment Equity Act

within 10 (ten) Business Days following the date of submission of that report; and

- 48.1.3 each Subcontractor shall meet the annual skills development targets set forth in Schedule 12 (*Skills Development Plan*) hereto and shall comply with the targets set out in Schedule 11 (*Target Group Terms*) in relation to skills development.
- 48.2 The BEE Report shall set forth in relation to each Subcontractor, on a quarterly basis, within 7 (seven) Business Days of the last day of each such quarter during the Development Period and on an annual basis within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period:-
 - 48.2.1 a complete statement as to whether it has met or exceeded the targets set forth in Schedule 11 (*Target Group Terms*); and
 - 48.2.2 the same information as required from the Private Party under clauses 46.2 to 46.4 (both inclusive) (PRIVATE PARTY MANAGEMENT AND EMPLOYMENT EQUITY) and shall include a complete statement as to whether it has met or exceeded the targets set forth in this clause.
- 48.3 The BEE Report shall include the validation of the employment equity and skills development contributions as set out in this clause by the respective auditors of the Private Party and the Subcontractors.

49 SUBCONTRACTOR BEE PROCUREMENT REQUIREMENTS

The Private Party shall procure and the Sub-Contractors shall ensure that the total Capital Expenditure and Project Operational Expenditure shall meet the targets set out in Schedule 11 (*Target Group Terms*).

50 REQUIREMENTS FOR BLACK WOMEN AND DISABLED PERSONS

- 50.1 The Private Party shall and shall procure that its Subcontractors ensure that they meet the targets set out in Schedule 11 (*Target Group Terms*) in relation to Black Women.
- 50.2 The Private Party and the Subcontractors (jointly) shall at all times meet the targets as stipulated in Schedule 11 (*Target Group Terms*) in relation to Disabled Persons.
- 50.3 The BEE Report shall set forth, on a quarterly basis within 7 (seven) Business

Days of the last day of each such quarter during the Development Period and on an annual basis within 30 (thirty) Business Days of the last day of each Financial Year during the Operations Period, a complete statement as to whether it has met or the extent to which the targets set out in Schedule 11 (*Target Group Terms*) have been exceeded and the report shall be validated by the respective auditors of the Private Party and the Subcontractors.

51 BEE REPORT

51.1 The BEE Report submitted in terms of clauses 45, 46, 47, 48, 49 and 50 shall be certified in all respects by the Private Party's and the Subcontractor's (if applicable) auditors. Failure by the Private Party to comply with its obligations under clauses 45, 46, 47, 48, 49, 50 and/or 51 for 3 (three) consecutive Financial Years shall result in a Private Party Default.

51.2 MCLM must respond with any comments or disputes in respect of the BEE Report:-

51.2.1 during the Development Period, within 30 (thirty) days of submission of the BEE Report; and

51.2.2 during the Operations Period, within 60 (sixty) days of submission of the BEE Report.

51.3 If MCLM does not respond or dispute the BEE Report within the time periods specified in clause 51.2, the Private Party shall deliver a notice to MCLM informing it of such non-responsiveness and requesting its response.

51.4 If:-

51.4.1 MCLM does not respond or dispute the BEE Report within 30 (thirty) days of receipt of the notice referred to in clause 51.3;

51.4.2 the BEE Report in question does not indicate any non-compliance by the Private Party with its BEE obligations; and

51.4.3 it is subsequently discovered that the Private Party did not comply with its BEE obligations, notwithstanding the findings of the BEE Report,

then no Penalties shall be levied in respect of such non-compliance provided that the Private Party rectifies such non-compliance within the time periods specified in Schedule 11 (*Target Group Terms*).

- 51.5 If the Private Party does not rectify such non-compliance within the time periods specified in Schedule 11 (*Target Group Terms*), then MCLM shall be entitled to levy Penalties against the Private in respect of such non-compliance, which Penalties shall be paid by the Private Party with 30 (thirty) days of receipt on an invoice from MCLM.

52 TERMINATION FOR MCLM DEFAULT

- 52.1 On the occurrence of any MCLM Default, the Private Party may serve notice on MCLM of the occurrence (and specifying details) of such MCLM Default.
- 52.2 If the relevant MCLM Default has not been remedied or rectified within 20 (twenty) Business Days of the notice referred to in clause 52.1 being delivered to MCLM, the Private Party may serve a further notice on MCLM terminating this PPP Agreement (save for clause 56 (EFFECTS OF TERMINATION)) with immediate effect.
- 52.3 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.

53 TERMINATION FOR PRIVATE PARTY DEFAULT

53.1 Notification

The Private Party shall notify MCLM of the occurrence, and details, of any Private Party Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Private Party Default, in either case promptly on the Private Party becoming aware of its occurrence.

53.2 MCLM's Options

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

- 53.2.1 in the case of the Private Party Default referred to in sub-clauses 3.1.111.1 to 3.1.111.6, 3.1.111.8 and 3.1.111.14 of the definition of Private Party Default, terminate this PPP Agreement in its entirety by notice in writing having immediate effect;
- 53.2.2 and while the same is subsisting, in the case of any other Private Party Default referred in sub-clauses 3.1.111.7, 3.1.111.10, to 3.1.111.14 and

3.1.111.15 to 3.1.111.17, of the definition of Private Party Default, serve notice of default on the Private Party requiring the Private Party at the Private Party's option either:-

- 53.2.2.1 to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within 20 (twenty) Business Days of such notice of default being delivered; or
- 53.2.2.2 to put forward, within 20 (twenty) Business Days of such notice of default being delivered, a reasonable programme for remedying the Private Party Default ("**Remedy Programme**"). The Remedy Programme shall specify in reasonable detail the manner in, and the latest date by, which such Private Party Default is proposed to be remedied. The Private Party shall only have the option of putting forward a Remedy Programme if it first notifies MCLM within 5 (five) Business Days of receipt of the notice of default that it proposes to do so.

53.3 **Remedy Provisions**

- 53.3.1 Where the Private Party puts forward a Remedy Programme, MCLM shall have 10 (ten) Business Days from receipt of the same within which to notify the Private Party that it does not accept the Remedy Programme, failing which MCLM shall be deemed to have accepted the Remedy Programme. MCLM shall act reasonably in rejecting the Remedy Programme. Where MCLM notifies the Private Party that it does not accept the Remedy Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedy Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedy 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 (and, if not, what would be a reasonable programme) may be referred by either Party for resolution in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).
- 53.3.2 If:-
 - 53.3.2.1 the Private Party Default notified in a notice of default is not remedied before the expiry of the period referred to in the notice; or

53.3.2.2 where the Private Party puts forward a Remedy Programme which has been accepted by MCLM or has been determined to be reasonable, the Private Party fails to achieve any element of the Remedy Programme or to complete the Remedy Programme by the specified end date for the Remedy Programme (as the case may be); or

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

then MCLM may terminate this PPP Agreement in its entirety by written notice to the Private Party with immediate effect, provided that if the Private Party's execution of the Remedy Programme is adversely affected by the occurrence of an event of *Force Majeure*, Relief Event, Compensation Event, Unforeseeable Conduct or Variation then, subject to the Private Party complying with the mitigation and other requirements in this PPP Agreement concerning *Force Majeure*, Relief Events, Compensation Events, Unforeseeable Conduct or Variations (as the case may be), the time for execution of the Remedy 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, Relief Event, Compensation Event, Unforeseeable Conduct or Variation, (as the case may be) which is agreed by the Parties or determined in accordance with clause 69 (FAST-TRACK DISPUTE RESOLUTION).

53.4 **MCLM's Costs**

53.4.1 The Private Party shall reimburse MCLM with all reasonable costs incurred by MCLM in exercising any of its rights in terms of this clause 53 (TERMINATION FOR PRIVATE PARTY DEFAULT). MCLM shall take reasonable steps to mitigate such costs to the extent required by the common law.

53.4.2 MCLM 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 MCLM (to terminate or otherwise) under this clause 53.4 (*MCLM's Costs*) are in addition (and without prejudice) to any other right which MCLM may have in Law to claim the amount of any direct loss or damages suffered by MCLM on account of the acts or omissions of the Private Party (or to

take any action other than termination of this PPP Agreement).

54 TERMINATION FOR FORCE MAJEURE

If, in the circumstances referred to in clause 37 (FORCE MAJEURE) the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that clause within 180 (one hundred and eighty) 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 events of *Force Majeure* continue to prevent either Party from performing any material obligation under this PPP Agreement.

55 TERMINATION FOR CORRUPT ACTS

55.1 The Private Party warrants that in entering into this PPP Agreement it has not committed any Corrupt Act.

55.2 If the Private Party, any Shareholder, any Subcontractor or any Affiliate of any of them (or anyone employed by or acting on behalf of any of them, including subcontractors of the Subcontractors) commits any Corrupt Act then MCLM shall be entitled to act in accordance with clauses 55.2.1 to 55.2.8 (both inclusive) below:-

55.2.1 if the Corrupt Act is committed by the Private Party, any Shareholder, any director of the Private Party, any director of any Shareholder, or any employee of the Private Party or of any Shareholder acting under the authority of or with the knowledge of a director of the Private Party or such Shareholder, as the case may be, then in any such case, MCLM may terminate this PPP Agreement with immediate effect by giving written notice to the Private Party;

55.2.2 if the Corrupt Act is committed by an employee of the Private Party or of any Shareholder acting of his or her own accord, then in any such case, MCLM may give written notice to the Private Party of termination and this PPP Agreement will terminate, unless within 10 (ten) Business Days of the Private Party's receipt of such notice that employee's involvement in the Project is terminated and (if necessary) the performance of any part of the Project Deliverables previously performed by him or her is performed by another person;

- 55.2.3 if the Corrupt Act is committed by a Subcontractor, director of a Subcontractor or an employee of a Subcontractor acting under the authority or with the knowledge of a director of that Subcontractor, then in any such case, MCLM may give written notice to the Private Party of termination and this PPP Agreement will terminate, unless within 60 (sixty) Business Days of its receipt of such notice the Private Party terminates the relevant Subcontract and within that 60 (sixty) Business Days procures the performance of the relevant part of the Project Deliverables by another person, where relevant, in accordance with clause 66 (CESSION AND DELEGATION);
- 55.2.4 if the Corrupt Act is committed by an employee of a Subcontractor acting of his or her own accord, then MCLM may give notice to the Private Party of termination and this PPP Agreement will terminate, unless within 10 (ten) Business Days of its receipt of such notice the Private Party procures the termination of that employee's involvement in the Project and (if necessary) procures the performance of that part of the Project Deliverables previously performed by that employee to be performed by another person;
- 55.2.5 if the Corrupt Act is committed by a Lender, a director of a Lender or any employee of a Lender acting under the authority or with the knowledge of a director of that Lender, then in any such case MCLM may give written notice to the Private Party of termination and this PPP Agreement will terminate, unless within 80 (eighty) Business Days of its receipt of such notice the Private Party procures the termination of such Lender's involvement in the Project (in any capacity whatsoever including, without limitation, as Lender under the Financing Agreements) and provides MCLM with satisfactory proof that such Lender's entire participations in the Debt and in any undrawn financial commitments under the Financing Agreements have been assumed by any Qualifying Financial Institution(s) (including any one or more of the remaining Lenders);
- 55.2.6 if the Corrupt Act is committed by any employee of a Lender acting of his or her own accord, then MCLM may give written notice to the Private Party of termination and this PPP Agreement will terminate, unless within 10 (ten) Business Days of the Private Party's receipt of such notice, that employee's involvement in the Project is terminated;
- 55.2.7 if the Corrupt Act is committed by any other person not specified in clauses 55.2.1 to 55.2.6 above but involved in the Project as a subcontractor or

supplier to any Subcontractor or to the Private Party, then MCLM may give notice to the Private Party of termination and this PPP Agreement will terminate unless within 5 (five) Business Days the Private Party procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant part of the Project Deliverables by another person, provided that where the Corrupt Act is acknowledged by that person, MCLM may terminate this PPP Agreement on 40 (forty) Business Days written notice to the Private Party unless the Private Party procures the termination of that person's involvement in the Project and (if necessary) procures the performance of the relevant part of the Project Deliverables by another person; and

55.2.8 any notice of termination under this clause 55 (TERMINATION FOR CORRUPT ACTS) shall specify:-

55.2.8.1 the nature of the Corrupt Act;

55.2.8.2 the identity of the party or parties who MCLM believes has committed the Corrupt Act; and

55.2.8.3 the date on which this PPP Agreement will terminate in accordance with the applicable provisions of this clause 55 (TERMINATION FOR CORRUPT ACTS).

55.3 Without prejudice to its other rights or remedies under this clause 55 (TERMINATION FOR CORRUPT ACTS), MCLM shall be entitled to recover from the Private Party, the greater of:-

55.3.1 the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and

55.3.2 any direct losses sustained by MCLM in consequence of any breach of this clause by the Private Party.

55.4 Nothing contained in this clause shall prevent the Private Party from paying any proper commission or bonus to its employees within the agreed terms of their employment.

55.5 The Private Party shall notify MCLM of the occurrence (and details) of any Corrupt Act promptly on the Private Party becoming aware of its occurrence.

55.6 Where the Private Party is required to replace any Subcontractor pursuant to this

clause, the provisions of clause 49 (SUBCONTRACTOR BEE PROCUREMENT REQUIREMENTS) shall apply and be construed accordingly.

56 EFFECTS OF TERMINATION

56.1 Termination

Notwithstanding any provision of this PPP Agreement, on service of a notice of termination, this PPP Agreement shall only terminate in accordance with the provisions of this clause 56 (EFFECTS OF TERMINATION).

56.2 Continued Effect – No Waiver

Notwithstanding any breach of this PPP Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this PPP Agreement as being in full force and effect and to enforce its rights under this PPP Agreement. The failure of either Party to exercise any right under this PPP Agreement, including any right to terminate this PPP Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

56.3 Continued Performance

Subject to any exercise by MCLM of its rights to perform, or to procure a third party to perform, the obligations of the Private Party, the Parties shall continue to perform their obligations under this PPP Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of this PPP Agreement becomes effective in accordance with the provisions of this clause 56 (EFFECTS OF TERMINATION).

56.4 Transfers to MCLM of Contracts

On termination of this PPP Agreement in accordance with its terms for any reason:-

- 56.4.1 if such termination occurs prior to the Operations Commencement Certificate, insofar as any transfer shall be necessary fully and effectively to transfer the Facilities or any part of them to MCLM, the Private Party shall transfer to, and there shall vest in, MCLM such part of the Works and/or the Facilities as shall have been constructed and such items of the plant and equipment and/or Project Assets as shall have been procured by the Private Party, and if MCLM so elects:-

- 56.4.1.1 all materials and/or Project Assets on the Project Site required for the purposes of completing the Works shall remain available to MCLM for the purposes of completing the Works; and
- 56.4.1.2 all construction plant shall remain available to MCLM for the purposes of completing the Works, subject to payment to the Private Party of reasonable costs in connection therewith;
- 56.4.1.3 if MCLM so elects, the Private Party shall procure that all rights and obligations of the Private Party under the Subcontracts or any one of them is ceded and delegated to MCLM or any third party nominated by MCLM, provided that where termination occurs under clause 52 (TERMINATION FOR MCLM DEFAULT), the consent of the Subcontractor shall be required. Where MCLM does not so elect, or any Subcontractor whose consent is required refuses that consent, the Private Party shall procure that the relevant Subcontract automatically terminates when this PPP Agreement terminates.
- 56.4.2 The Private Party shall procure that the benefit of all guarantees, licences, warranties, documentation, service agreements and other rights relating to the plant and equipment, and Project Assets are ceded to MCLM, including any reversionary interests and rights relating to the plant and equipment and Project Assets, or to the extent some may not be ceded, is transferred in a manner agreed between the Parties at that time.
- 56.5 **Transfers to MCLM on Termination or Expiry**
- On termination of this PPP Agreement for any reason in accordance with its terms or within 20 (twenty) Business Days prior to the Expiry Date, the Private Party shall:-
- 56.5.1 deliver to MCLM, free from all encumbrances and/or liabilities, the Project Site, Project Assets and the Facilities, which in the case of expiry or termination of this PPP Agreement at the end of the Project Term, the Facilities and Project Assets shall be in the state required in accordance with clause 30 (MAINTENANCE SURVEY) and all Intellectual Property developed exclusively for the Project, other than any Licensed Intellectual Property (which is governed by clause 56.5.4) and copyright licenses for any computer programmes (which is governed by clause 56.5.6.2);
- 56.5.2 in consideration for the termination payment under clauses 57

(COMPENSATION ON TERMINATION FOR MCLM DEFAULT), clause 58 (COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT) , clause 59 (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) or clause 60 (COMPENSATION ON TERMINATION FOR CORRUPT ACTS) (as the case may be) hand over to (together with a complete inventory and valuation of all such Project Assets), and there shall vest in, MCLM, free from all encumbrances and/or liabilities, the Project Assets, which in the case of expiry or termination of this PPP Agreement at the end of the Project Term shall be in the state required in accordance with clause 30 (MAINTENANCE SURVEY) and all Intellectual Property developed exclusively for the Project, other than any Licensed Intellectual Property (which is governed by clause 56.5.4) and copyright licenses for any computer programmes (which is governed by clause 56.5.6.2); or

- 56.5.3 subject to clause 56.4.1.1, procure that any Subcontractor (as the case may be), shall transfer to MCLM, free from any security or interest, full and unencumbered title in and to all or any part of the Project Assets not owned by MCLM and required by MCLM in connection with the Project Deliverables;
- 56.5.4 subject to the provisions of clause 65 (INTELLECTUAL PROPERTY OF MCLM), procure that any Licensed Intellectual Property shall be provided to MCLM (or its nominee) and MCLM (or its nominee) shall, to the extent possible, be granted a perpetual non-exclusive, royalty-free license to use such Licensed Intellectual Property, or where same cannot be obtained, the Private Party shall procure that MCLM (or its nominee) is given a license on terms consistent with those provided to the Private Party;
- 56.5.5 deliver to MCLM (as far as not already delivered to MCLM) one complete set of:-
 - 56.5.5.1 “as built drawings” showing all and any alterations made to the Facilities by the Private Party since the Operations Commencement Certificate;
 - 56.5.5.2 maintenance, operation and training manuals for the Project Assets for the duration of the Project Term to the extent that they exist or the Private Party has an obligation in terms of this PPP Agreement to acquire or prepare them;

- 56.5.5.3 building performance data including energy, water and waste records; and
- 56.5.5.4 the historical operating data and plans of the Facilities and the Project Assets in a format acceptable to MCLM;
- 56.5.5.5 use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by the Private Party under this PPP Agreement and included in the Project Assets are assigned, or otherwise transferred, to MCLM;
- 56.5.5.6 deliver to MCLM the records referred to in clause 62 (INFORMATION AND AUDIT ACCESS) except where such documents are required by Law or internal policies to be retained by the Private Party or any Subcontractor (in which case complete copies shall be delivered to MCLM);
- 56.5.5.7 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 MCLM will be in a position to exercise its rights, and the Private Party will be in a position to comply with its obligations, under this clause 56;
- 56.5.5.8 remove from the Project Site all property not required by MCLM pursuant to clauses 56.4 and 56.5 (Transfers to MCLM of Contracts and Transfers to MCLM on Termination or Expiry) and if it has not done so by the Expiry Date or the Termination Date, whichever is the earlier, such property shall be deemed to have been abandoned by the Private Party and/or its Subcontractors;
- 56.5.6 deliver to MCLM:-
- 56.5.6.1 any keys, remote access apparatus and computer access cards to the Facilities; and
- 56.5.6.2 without prejudice to clause 65 (INTELLECTUAL PROPERTY OF MCLM), any copyright licenses for any computer programmes (or licenses to use the same) necessary for the operation of the Facilities (but excluding computer programmes which have been developed or acquired by the Private Party for its own use and not solely for the

purposes of Operations of the Facilities or the assignment or transfer of which is otherwise restricted); and

- 56.5.6.3 vacate the Project Site and (without prejudice to clause 30 (MAINTENANCE SURVEY) shall leave the Project Site and the Facilities in a safe, clean and orderly condition;

it being agreed that fair consideration has been paid for such assets, rights and obligations by virtue of the revenue received by the Private Party from the Operations and, to the extent termination occurs prior to the Expiry Date, the termination payments made under clauses 57 (COMPENSATION ON TERMINATION FOR MCLM DEFAULT) to 60 (COMPENSATION ON TERMINATION FOR CORRUPT ACTS).

56.6 **Transitional Arrangements**

For a period of 6 (six) months both before and after the Expiry Date or in the case of any earlier termination for the period from the service of notice of termination to 6 (six) months after the Termination Date, the Private Party shall have the following obligations:-

- 56.6.1 the Private Party shall co-operate fully with MCLM and any successor providing services to MCLM in the nature of any of the Operations or any part of the Operations in order to achieve a smooth transfer of the manner in which MCLM obtains services in the nature of the Operations and to avoid or mitigate (to the extent required by the common law) in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of MCLM and members of the public;
- 56.6.2 if MCLM wishes to conduct a tender process with a view to entering into an agreement for the operations (which may or may not be the same as, or similar to, the Operations or any of it) following the expiry or earlier termination of this PPP Agreement, the Private Party shall co-operate with MCLM fully in such tender process including (without limitation) by:-
- 56.6.2.1 providing any information relating to the Project which MCLM may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Private Party (and, for the purposes of this sub-clause, 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

- 56.6.2.2 assisting MCLM by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the Project Assets subject to the Private Party's safety rules and regulations.

56.7 Continuing Obligations

Save as otherwise expressly provided in this PPP Agreement:-

- 56.7.1 termination of this PPP Agreement shall be without prejudice to any accrued rights and obligations under this PPP Agreement as at the date of termination; and
- 56.7.2 termination of this PPP Agreement shall not affect the continuing rights and obligations of the Private Party and MCLM 10 (PRIVATE PARTY WARRANTIES), 11 (MCLM WARRANTIES), 12 (PRIVATE PARTY INDEMNITIES), 13 (LIMITATIONS ON LIABILITY), 14 (PROJECT SITE), 15 (PROJECT SITE CONDITIONS), 31 (PAYMENT), 32 (INSURANCE), 37 (FORCE MAJEURE), 56 (EFFECTS OF TERMINATION), 57 (COMPENSATION ON TERMINATION FOR MCLM DEFAULT), 58 (COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT), 62 (INFORMATION AND AUDIT ACCESS), 65 (INTELLECTUAL PROPERTY OF MCLM), 68 (DISPUTE RESOLUTION), 69 (FAST-TRACK DISPUTE RESOLUTION), 70 (GOVERNING LAW AND JURISDICTION), 78 (NOTICES AND LEGAL SERVICE), 80 (CONFIDENTIALITY) or under any other provision of this PPP Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

57 COMPENSATION ON TERMINATION FOR MCLM DEFAULT

- 57.1 On termination of this PPP Agreement as a result of a MCLM Default or termination for Unforeseeable Conduct, MCLM shall pay the Private Party on the Compensation Date (or earlier) an amount, equal to the aggregate of:-
- 57.1.1 an amount equal to the Debt and all fees, costs, expenses and breakage costs in connection with the early termination of any Financing Agreement;

57.1.2 Subcontractor Costs; and

57.1.3 Equity Compensation,

less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:

57.1.4 all credit balances on any bank accounts, held by or on behalf of the Private Party on the Termination Date (save where such credit balances are paid to MCLM and/or are to be applied in reinstatement of the Project Assets (in whole or part)); and

57.1.5 the value of any right of the Private Party or the Lenders to receive insurance proceeds or any proceeds pursuant to letters of credit and of any such proceeds actually received by them (save where such proceeds are paid to MCLM and/or are to be applied in reinstatement of the Project Assets (in whole or part)); and

57.1.6 sums due and payable from the Subcontractors and any other third parties; and

57.1.7 the market value of any other assets and rights of the Private Party (including any asset and/or right secured in favour of the Lenders in respect of the Project but excluding the Project Assets), less liabilities of the Private Party properly incurred in carrying out its obligations under this PPP Agreement as at the Termination Date or such later date as such assets may be realised, provided that no account shall be taken of any liabilities and obligations of the Private Party arising out of:-

57.1.7.1 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

57.1.7.2 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; and

57.1.8 amounts that are due by the Private Party to MCLM pursuant to this PPP Agreement.

57.2 Interest at the rate of the Compensation Date Interest Rate shall be payable on the amount determined in terms of clause 57.1 with effect from the Determination Date until the date that such amount is paid.

58 COMPENSATION ON TERMINATION FOR PRIVATE PARTY DEFAULT

58.1 MCLM shall require an expert determination by an Independent Expert in accordance with clause 58.6 below then the following procedure shall apply:-

58.2 In determining the Adjusted Estimated Project Value the Parties shall procure that the Independent Expert appointed pursuant to clause 58.6 will be obliged to follow the principles set out below:-

58.2.1 all forecast amounts should be calculated in nominal terms at current prices, recognising the adjustment for CPI in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this PPP Agreement;

58.2.2 the total of all future payments of the the projected revevue to the Private Party shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;

58.2.3 the total of all costs forecast to be incurred by MCLM after and as a result of termination shall be calculated and discounted at the Termination Date Discount Rate to the Termination Date, such costs to include (without double counting):-

58.2.3.1 the PPP Fees that would have been due to MCLM;

58.2.3.2 the costs forecast to be incurred by MCLM in delivering the Project Deliverables; and

58.2.3.3 any rectification costs to deliver the Project Deliverables (including any cost forecast to be incurred by MCLM to procure repairs, remedial works, replacement and refurbishment in respect of the Project Assets, and any additional operating costs required to restore the Operations).

58.3 If the Parties cannot agree on the Adjusted Estimated Project Value on or before the date falling 30 (thirty) days after the date on which the Independent Expert appointed pursuant to clause 58.6 has determined such value, in accordance with this clause, then the Estimated Project Value shall be determined in accordance

with clause 68 (DISPUTE RESOLUTION).

- 58.4 MCLM shall pay to the Private Party an amount equal to the greater of the Adjusted Debt and the Adjusted Estimated Project Value.
- 58.5 The discharge by MCLM of its obligation in clause 58.4 shall be in full and final settlement of all the Private Party's claims and rights against MCLM for breaches and/or termination of this PPP Agreement or any Project Documents whether in contract, delict, restitution or otherwise.
- 58.6 For the purposes of determining the Adjusted Estimated Project Value of this PPP Agreement, the Parties shall jointly appoint an Independent Expert with expertise in projects similar to the Project. If the Parties cannot agree on the identity of the expert the matter shall be referred to the Banking Association of South Africa, who shall appoint the expert within 5 (five) Business Days of such referral. Within 10 (ten) Business Days of his appointment, the expert shall, in consultation with the Parties, deliver an estimate of time within which he believes such determination shall be made (provided that such period shall not exceed 3 (three) months from the date of his appointment). Each Party shall, promptly on request, make available such information as he may request in making his determination. The Independent Expert shall be entitled to take appropriate independent specialist and technical advice from persons having experience/expertise in projects similar to the Project. The expert's determination shall, in the absence of manifest error be final and binding on the Parties.

59 COMPENSATION ON TERMINATION FOR FORCE MAJEURE

- 59.1 On termination of this PPP Agreement under clause 54 (TERMINATION FOR FORCE MAJEURE), MCLM shall pay to the Private Party on the Compensation Date (or earlier), the aggregate, of:-
- 59.1.1 an amount equal to the Debt as at the Termination Date and all fees, costs, expenses and breakage costs in connection with the early termination of any Financing Agreement;
- 59.1.2 the Subcontractor Costs;
- 59.1.3 an amount equal to the Shareholder Loans less any interest on the Shareholder Loans already paid to the Shareholders; and
- 59.1.4 Equity less dividends or any other distributions in respect of such Equity

already paid,

less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:-

- 59.1.5 all credit balances on any bank accounts held by or on behalf of the Private Party on the Termination Date and the value of any right of the Private Party or the Lenders to receive insurance proceeds or any proceeds pursuant to letters of credit and of any such proceeds actually received by them (save where such credit balances or proceeds are paid to MCLM and/or are to be applied in reinstatement of the Project Assets (in whole or part));
- 59.1.6 sums due and payable from the Subcontractor and any other third parties;
- 59.1.7 the market value of any other assets and rights of the Private Party (including any assets and/or rights secured in favour of the Lenders in respect of the Project but excluding the Project Assets) less the liabilities of the Private Party properly incurred carrying out its obligations under this PPP Agreement at the Termination date; provided that no account shall be taken of any liabilities and obligations of the Private Party arising out of:-
 - 59.1.7.1 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
 - 59.1.7.2 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; and
- 59.1.8 amounts that are due by the Private Party to MCLM pursuant to this PPP Agreement.
- 59.2 Interest at the rate of the Compensation Date Interest Rate shall be payable on the amount so determined with effect from the Determination Date until the date on which that amount is paid.
- 59.3 If the aggregate of the amounts referred to in clauses 59.1.5 to 59.1.8 above is less than zero, then, for the purposes of the calculation in this clause 59 (COMPENSATION ON TERMINATION FOR FORCE MAJEURE) the aggregate

shall be deemed to be zero.

60 COMPENSATION ON TERMINATION FOR CORRUPT ACTS

60.1 On termination of this PPP Agreement in accordance with clause 55 (TERMINATION FOR CORRUPT ACTS), MCLM shall, subject to clause 60.1.5, pay the Private Party on the Compensation Date (or earlier) an amount equal to the Debt as at the Termination Date less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:-

60.1.1 all credit balances on any bank accounts held by or on behalf of the Private Party on the Termination Date and the value of any right of the Private Party or its Lenders to receive insurance proceeds and of any such proceeds actually received by them (save where such credit balances or insurance proceeds are paid to MCLM and/or are to be applied in reinstatement of the Project Assets (in whole or part));

60.1.2 any sums due and payable from any Subcontractor and any other third parties;

60.1.3 the market value of any other assets and rights of the Private Party (including any assets and/or rights secured in favour of the Lenders in respect of the Project but excluding the Project Assets) less the liabilities of the Private Party or the Lenders properly incurred carrying out its obligations under this PPP Agreement at the Termination Date; provided that no account shall be taken of any liabilities and obligations of the Private Party arising out of:-

60.1.3.1 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

60.1.3.2 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; and

60.1.3.3 amounts that are due by the Private Party to MCLM pursuant to this PPP Agreement.

- 60.1.4 Interest at the rate of the Compensation Date Interest Rate shall be payable on the amount so determined with effect from the Determination Date to the Compensation Date.
- 60.1.5 If the aggregate of the amounts referred to in clauses 60.1.1 to 60.1.3.2 above is less than zero, then, for the purposes of the calculation in this clause the aggregate shall be deemed to be zero.
- 60.2 If the termination is as a result of a Corrupt Act on the part of any of the Lenders, then the amount payable by MCLM, whether to the Lenders or to the Private Party, shall be zero.

61 MCLM STEP-IN

- 61.1 If MCLM 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, and/or to discharge a statutory duty, then MCLM shall be entitled to take action in accordance with the following provisions, provided that MCLM must cease to exercise its rights in terms of this clause when the reasons for the exercise of the rights in the first instance no longer apply.
- 61.2 If pursuant to clause 61.1 MCLM wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Private Party in writing of:-
- 61.2.1 the action it wishes to take;
- 61.2.2 its reasons for taking such action;
- 61.2.3 the date when it wishes to commence such action;
- 61.2.4 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
- 61.2.5 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.
- 61.3 Following the service of such notice, MCLM shall take such action as notified under clause 61.2 and any ancillary action as it reasonably believes is necessary (the “**Necessary Action**”) and the Private Party shall give all reasonable assistance to MCLM in the conduct of such Necessary Action.

61.4 If the Private Party is not in breach of any of its obligations under this PPP Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and this prevents the Private Party from providing any part of the Project Deliverables the Private Party shall be relieved from undertaking the Project Deliverables to the extent that the Private Party is unable to do so as a direct consequence of the Necessary Action; and

61.5 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 this prevents the Private Party from performing any of its obligations:-

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

61.5.2 in respect of the period in which MCLM is taking such Necessary Action, Private Party shall be obliged to compensate the MCLM for reasonable costs of taking such Necessary Action;

provided that, if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Private Party Default, then MCLM must serve a notice in terms of clause 49.2 (TERMINATION FOR PRIVATE PARTY DEFAULT) requiring the Private Party to remedy the Private Party Default or to put forward a remediation programme.

61.6 Upon the Necessary Action pursuant to clauses 61.4 and 61.5 ceasing:-

61.6.1 the Private Party shall undertake an audit of the Facilities in order to determine what remedial maintenance or work is required to be undertaken as a direct result of MCLM failing to maintain the Facilities in accordance with the Operations Specifications during the Necessary Action. The Private Party shall provide MCLM with the detailed audit report within 40 (forty) Business Days of the Necessary Action;

61.6.2 within 20 (twenty) Business Days of the Private Party's audit report, as contemplated in clause 59.4.3, being presented to MCLM, the Private Party shall undertake a reconciliation of all Incremental Costs and/or Incremental Savings, and the Private Party shall provide MCLM with the reconciliation and all substantiating documentation within such 20 (twenty) Business Days. Upon the reconciliation being agreed or determined pursuant to clause 69 (FAST-TRACK DISPUTE RESOLUTION):-

- 61.6.2.1 MCLM shall compensate the Private Party for the Incremental Cost as are agreed by an adjustment to the PPP Fee and upon presentation of a valid tax invoice; or
- 61.6.2.2 the Private Party shall pay to MCLM the Incremental Saving, which MCLM.
- 61.6.3 For the purposes of this clause 61.6:
- 61.6.3.1 **“Incremental Cost”** shall mean a reasonable cost, incurred by the Private Party in meeting the Operations Specification after the Necessary Action has ceased, where such cost is incurred by the Private Party as a result of MCLM failing to undertake programmed preventative maintenance or otherwise failing to maintain the Facilities in accordance with the Operations Specification; provided that any costs incurred by MCLM, where the Private Party failed to meet the Operations Specifications prior to the Step-In Period commencing in respect of such item, shall be deducted from the Incremental Costs;
- 61.6.3.2 **“Incremental Saving”** shall mean a saving achieved by the Private Party as a result of costs not incurred by the Private Party during the Necessary Action, less the reasonable costs incurred by the Private Party in meeting the Operations Specifications after the Necessary Action; where such cost is incurred as a result of MCLM failing to undertake programmed preventative maintenance or otherwise failing to maintain the Facilities in accordance with the Operations Specifications.
- 61.6.4 In claiming any Incremental Costs, the Private Party shall provide MCLM with detailed substantiating documentation detailing all fixed costs, variable costs and other costs incurred. The Private Party shall mitigate (to the extent required by the common law and the provisions of any Project Insurance) the costs of any Incremental Costs incurred.

62 INFORMATION AND AUDIT ACCESS

- 62.1 The Private Party shall provide to MCLM all information, documents, records and the like in the possession of, or available to, the Private Party as may reasonably be requested by MCLM for the purpose of complying with any of its statutory reporting obligations including its reporting obligations under the PFMA and the

Auditor-General Act.

- 62.2 To this end the Private Party shall use all reasonable endeavours to ensure that all such information in the possession of any counter-party to any Project Document shall be available to MCLM and the Private Party has included, or shall include, appropriate provisions to this effect in all Project Documents.
- 62.3 Without limiting the generality of the foregoing, the Private Party shall:-
 - 62.3.1 provide and shall procure that its Subcontractors shall provide all such information as MCLM may reasonably require from time to time to enable MCLM to provide reports and returns as required by any Responsible Authority, including reports and returns regarding the physical condition of any building occupied by MCLM, health and safety, national security, and environmental safety; and
 - 62.3.2 note and facilitate MCLM's compliance with the Promotion of Access to Information Act, 2000 in the event that MCLM is required to provide information to any person pursuant to that Act, but subject to any limitations on disclosure in the Promotion of Access to Information Act, 2000.
- 62.4 Without derogating from clause 62.1, the Private Party shall:-
 - 62.4.1 at all times:-
 - 62.4.1.1 maintain a full record of particulars of the costs of providing the Project Deliverables. Such records shall further include details of any commitments made by the Private Party for future expenditure and details of any funds held by the Private Party;
 - 62.4.1.2 when requested by MCLM, furnish the summary of any of the aforementioned costs in such form and detail as MCLM may reasonably require;
 - 62.4.1.3 maintain a comprehensive Project Asset register, and furnish a copy of the Project Asset register to MCLM annually or when reasonably required by MCLM; and
 - 62.4.1.4 afford such facilities as MCLM may reasonably require for its representatives to examine the records maintained under this clause,
 - 62.4.2 for the duration of the Project Term:-

- 62.4.2.1 deliver to MCLM:
- 62.4.2.1.1 as soon as they become available (and in any event within 90 (ninety) days of the end of each Financial Year) copies of its financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement audited and certified by a firm of independent accountants; and
- 62.4.2.1.2 as soon as they become available (and in any event within 30 (thirty) days of the end of each of its financial half year and Financial Year end) copies of its unaudited financial statements for that half year or year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement; and
- 62.4.3 prepare the financial statements referred to in this clause 62 on the basis consistently applied in accordance with IFRS and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Private Party; and
- 62.4.4 at the request of MCLM, furnish MCLM with any and all information provided by it to the Lenders during the term of this PPP Agreement.
- 62.5 The Private Party shall keep books of account in accordance with IFRS and have same available for inspection by MCLM upon reasonable notice, shall present a report of the same to MCLM as and when requested and shall allow MCLM to arrange for an audit to be conducted from time to time as may be required under the Public Audit Act.
- 62.6 MCLM's rights of access to the books of account shall include the appointment of cost auditors for verification of cost expenditure, for the purpose of clauses 39 (MCLM VARIATIONS) and 40 (PRIVATE PARTY VARIATIONS).
- 62.7 The Private Party shall maintain or produce the following records or reports in respect of the Project Site and all the Project Deliverables:-
- 62.7.1 a full record of all incidents relating to health, safety and security which occur during the term of this PPP Agreement;

- 62.7.2 full records of all maintenance procedures carried out during the term of this PPP Agreement;
- 62.7.3 a health and hygiene report to be completed every 6 (six) months; and
- and the Private Party shall have the items listed above available for inspection by MCLM upon reasonable notice, and shall present a report of the same to MCLM as and when requested.
- 62.8 The Private Party shall, within 1 (one) year after the Expiry Date deliver such records to MCLM in such format as MCLM may reasonably require.
- 62.9 Upon the termination of this PPP Agreement, and in the event that MCLM wishes to enter into another agreement for the operation and management of the Project Assets and without prejudice to the identity of any new private party, the Private Party shall comply with all reasonable requests of MCLM to provide information relating to the Private Party's costs of operating the Project Assets. Such information shall include information relating to the anticipated cost of a transfer of the Project Deliverables to a new private party.

63 REFINANCING

The Private Party shall procure that no Refinancing (except for an Exempt Refinancing) is implemented without the prior written approval of MCLM.

64 STORAGE OF PROJECT DATA

- 64.1 The Private Party shall ensure the back-up, storage and safe custody of all Project Data generated by or maintained on a computer or similar system during the Project Term, in accordance with Good Industry Practice. Without prejudice to this obligation, the Private Party shall submit to MCLM its proposals for the back-up, storage and safe custody of such data, materials and documents and MCLM shall be entitled to object and make its own proposals if the same is not in accordance with Good Industry Practice. The Private Party shall comply, and shall cause the Subcontractors to comply, with all procedures to which MCLM has given its approval or which are determined in terms of clause 68 (DISPUTE RESOLUTION). The Private Party may vary its procedures for such back-up and storage subject to submitting its proposals for change to MCLM, who shall be entitled to object on the basis set out above.
- 64.2 The Private Party shall provide MCLM with any Project Data requested by MCLM

from time to time, and shall provide MCLM with a complete list of all Project Data at least 6 (six) months prior to the Expiry Date,

65 INTELLECTUAL PROPERTY OF MCLM

- 65.1 All intellectual property rights whatsoever, whether capable of registration or not, regarding MCLM's name, trademarks, logos, image and all other intellectual property matters relating to MCLM, including its name, trademarks, logos and/or image shall remain the sole property of MCLM.
- 65.2 Subject to existing rights and obligations and clause 65.3, MCLM shall, on prior written application by the Private Party, grant a non-exclusive revocable right and license to the Private Party to use MCLM's trademarks and logos for a period not to exceed the remainder of the Project Term.
- 65.3 In order to establish and maintain standards of quality and propriety acceptable to MCLM, in the event that the Private Party desires to use MCLM's trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to MCLM for approval, which shall be in its sole and absolute discretion. MCLM 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 MCLM approves the concept or sample, the Private Party shall not depart therefrom in any respect without MCLM's further prior written approval.
- 65.4 If at any time MCLM 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 MCLM 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 65.5.
- 65.5 MCLM may revoke its approval immediately upon 5 (five) 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 MCLM's reasonable opinion, materially prejudices the reputation and public goodwill of MCLM.
- 65.6 The Private Party acknowledges that the name(s) of MCLM and the Krugersdorp

Game Reserve (the "Protected Names") are associated with and peculiar to MCLM and are the intellectual property of MCLM. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in MCLM. OTHERS??????????????

- 65.7 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 MCLM. 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.
- 65.8 Within 60 (sixty) Business Days after the end of the Project Term and where the Private Party has operated a company utilising any of the Protected Names with the permission of MCLM, the Private Party shall either:-
- 65.8.1 de-register the company bearing any of the Protected Names; or
- 65.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 65.9 The naming of the Private Party's business operation shall be undertaken in consultation with MCLM and subject to MCLM's approval. In circumstances where the name chosen by the Private Party and approved by MCLM is not part of MCLM's intellectual property, then the rights of MCLM contemplated in clause 65.8 shall not be applicable and the intellectual property shall be the sole property of the Private Party.
- 65.10 The Private Party shall procure, to the maximum extent possible, that all Licensed Intellectual Property provided to MCLM (or its nominee) shall be licensed to MCLM (or its nominee).

66 CESSION AND DELEGATION

- 66.1 Subject to clauses 8.1 (*General Obligations*) and 56 (*Effects of Termination*):-
- 66.1.1 this PPP Agreement and any Project Document to which both MCLM and the Private Party are parties shall be binding on, and shall endure to the benefit of, them and their respective successors-in-title and permitted transferees and assigns; and
- 66.1.2 save as expressly permitted hereunder, the Private Party shall not, without

the prior written approval of MCLM, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this PPP Agreement or any Project Document to which it is a party to any other person.

- 66.2 MCLM shall not assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this PPP Agreement or Project Document to which it and the Private Party are parties to any other person, save with the prior written approval of the Private Party (such approval not to be unreasonably withheld or delayed) or to give effect to any mandatory requirement of any Law.

67 CHANGES IN CONTROL AND BLACK EQUITY

- 67.1 For the duration of the Project Term, the Private Party shall procure that there is no direct Change in Control in excess of 5% (five percent) in aggregate in the Private Party without the prior written approval of MCLM, acting reasonably.
- 67.2 Except for any transaction pursuant to the Financing Agreements, notwithstanding the provisions of clause 67.1, prior to the expiry of a period of 7 (seven) years from 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 directly in or owed directly by the Private Party, nor any dilution of the Equity, without the prior written approval of MCLM, acting reasonably.
- 67.3 The Private Party shall procure that any disposal of the Equity shall be subject to the following:-
- 67.3.1 a pro rata portion of the Shareholder Loans held by that Shareholder must be disposed of with the Equity;
- 67.3.2 any Equity held by a BEE Entity may only be disposed of to a BEE Entity and
- 67.3.3 the targets set out in Schedule 11 (*Target Group Terms*) must not be breached.
- 67.4 The Private Party shall procure that for the duration of the Project Term:
- 67.4.1 there is no dilution in the aggregate Equity holdings of the Black Shareholders below the Minimum Black Equity; and
- 67.4.2 there is no Change in Control (at any time) in any Shareholder that is a

Black Enterprise, which will result in that Shareholder no longer being a Black Enterprise.

67.5 For the purpose of this clause 67 (CHANGES IN CONTROL AND BLACK EQUITY), the term “subsidiary” shall have the meaning as defined in the Companies Act.

67.6 Where a failure by the Private Party to comply with its obligations under this clause is not within its own control:

67.6.1 the Private Party shall be entitled to rectify the failure within a period of 6 (six) months from the date on which the failure to comply with the provisions of this clause 67 came to its attention (the “**Rectification Period**”). A continued failure by the Private Party to comply with its obligations in terms of this clause 67 after the rectification period shall constitute an event of failure for that particular Financial Year for the purposes of clause 67.7 hereunderl

67.6.2 Any dispute between the Parties regarding the provisions of this clause shall be determined in accordance with the provisions of clause 69 (FAST-TRACK DISPUTE RESOLUTION).

67.7 Failure by the Private Party to comply with its obligations under this clause 67 for 3 (three) consecutive Financial Years shall result in a Private Party Default.

68 DISPUTE RESOLUTION

68.1 Referable Disputes

The provisions of this clause 68 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.

68.2 Performance to Continue

No reference of any dispute to any resolution process in terms of this clause 68 shall relieve either Party from any liability for the due and punctual performance of its obligations under this PPP Agreement.

68.3 Litigation

68.3.1 Save where any dispute has been expressly referred for determination in terms of clause 69 (FAST-TRACK DISPUTE RESOLUTION), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the courts by either Party.

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

68.4 **Interlocutory Proceedings**

Notwithstanding the previous provisions of this clause 68 either Party shall have the right to seek appropriate interdictory relief or an order of specific performance against the other in an appropriate Court having jurisdiction in South Africa.

68.5 **Internal Referrals**

If a dispute arises in relation to any aspect of this PPP Agreement, the Private Party and MCLM shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following:-

68.5.1 all disputes shall first be referred to the Private Party Representative (or his alternate) and MCLM Representative (or his alternative) (if necessary with consultation back to their organisations) to resolve such dispute;

68.5.2 if the Parties have been unable to resolve the dispute within 5 (five) Business Days of referral to persons specified in clause 68.5.1, either Party may refer the dispute for a decision by the Accounting Officer of MCLM and the Chief Executive Officer of the Private Party;

68.5.3 in attempting to resolve the dispute in accordance with the provisions of this clause 68.5, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve any matter or issue without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the matter or issue without necessity of formal proceeding; and

68.5.4 any matter or issue which has not been resolved by the representatives contemplated in clause 68.5.1.1.1 within 5 (five) Business Days of the dispute being referred to them (or any longer period agreed between the

Parties) or in respect of which either Party has refused to participate in the informal procedures contemplated in this clause 68.5 shall be treated as a dispute in respect of which informal resolution has failed.

68.6 Suspension of Prescription

The Parties agree that, for the purposes of the Prescription Act, 1969 as amended from time to time, time shall cease to run in respect of any dispute on the date of service of the relevant notice referring that dispute for mediation, and if any other subsequent proceedings are instituted in respect of that dispute, time shall continue to cease to run from the date of service of the relevant summons or notice of motion.

69 FAST-TRACK DISPUTE RESOLUTION

69.1 Disputes expressly referred for determination pursuant to this clause 69 shall be determined by the relevant Independent Expert.

69.2 Within 5 (five) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

69.3 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.

69.4 The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

69.5 The Independent Expert shall provide both Parties with his/her written decision on the dispute, within 20 (twenty) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall

give his/her reasons for the award, if so requested by either Party.

- 69.6 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.
- 69.7 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law. The Independent Expert need not strictly observe the principles of Law and may decide the matter submitted to him/her in accordance with what he/she considers equitable in the circumstances.
- 69.8 Should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a Judge in the High Court of South Africa, save that if by law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.
- 69.9 The proceedings shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his/her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by clause 80 (CONFIDENTIALITY) of this PPP Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 69.10 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 69.11 Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:-
- 69.11.1 give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the

adjudication; or

- 69.11.2 warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.
- 69.11.3 The Independent Expert shall be deemed not to be an arbitrator but shall render his/her decision as an expert and the provisions of the Arbitration Act, 1965 as amended from time to time, and any other Law relating to arbitration shall not apply to the Independent Expert or his/her determination or the procedure by which he/she reaches his/her determination. The Independent Expert's decision shall be final and binding on the Parties.

70 GOVERNING LAW AND JURISDICTION

- 70.1 This PPP Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 70.2 Subject to the provisions of clause 69 (FAST-TRACK DISPUTE RESOLUTION), each Party agrees that the North Gauteng Division of the High Court of South Africa shall have non-exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this PPP Agreement, and irrevocably submits to the jurisdiction of the South Gauteng Division of the High Court of South Africa.

71 AMENDMENTS

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.

72 WAIVER

- 72.1 Any relaxation, indulgence or delay (together "Indulgence") 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 Indulgence constitute a waiver of any other right (whether against that Party or any other person).

- 72.2 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.

73 ENTIRE PPP AGREEMENT

- 73.1 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.

- 73.2 Each of the Parties acknowledges that:-

- 73.2.1 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

- 73.2.2 this clause 73 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 any Law governing this PPP Agreement.

74 CONFLICTS WITH OTHER CONTRACTS

In the event of any conflict between this PPP Agreement and any Project Document, the provisions of this PPP Agreement will prevail between the Parties. In the event of any conflict between the main body of this PPP Agreement and any Schedule/s, the provisions of the main body of this PPP Agreement will prevail between the Parties. In the event of any conflict between any of the Project Documents the following order of precedence will apply, with agreements listed earlier in this list prevailing over those listed later:-

- 74.1 the main body of the PPP Agreement;
- 74.2 the Schedules included in the PPP Agreement;
- 74.3 the Financing Agreements;
- 74.4 the Shareholders' Agreements; and
- 74.5 the Sub-contracts.

75 SEVERABILITY

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

76 REPRESENTATIVES

76.1 MCLM's Representative

- 76.1.1 MCLM shall appoint from the Effective Date until the Expiry Date an individual (the "**MCLM's Representative**") whose identity shall be notified to the Private Party to act as MCLM's duly authorised representative for all purposes connected with this PPP Agreement. MCLM shall notify the Private Party in writing forthwith upon the replacement at any time of MCLM's Representative and such replacement shall not be effective until notice has been given.
- 76.1.2 MCLM's Representative may delegate any of his functions from time to time to a person or persons the identity of who shall be notified to the Private Party and references in this PPP Agreement to MCLM's Representative shall be construed to include such persons.
- 76.1.3 Any notice, instruction or information required to be given by or made to MCLM shall only be valid if given by or delivered to MCLM's Representative.

76.2 Private Party's Representative

- 76.2.1 The Private Party shall appoint from the Effective Date until the Expiry Date, an individual (the "**Private Party's Representative**") whose identity shall

be notified to MCLM to act as the Private party's duly authorized representative for all purposes connected with this PPP Agreement. The Private Party shall notify MCLM in writing forthwith upon the replacement at any time of the Private Party's Representative and such replacement shall not be effective until such notice has been given.

- 76.2.2 Any notice, instruction or information required to be given by or made to the Private Party shall only be valid if given by or delivered to the Private Party's Representative.

77 COUNTERPARTS

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

78 NOTICES AND LEGAL SERVICE

- 78.1 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this PPP Agreement or relating to it shall be given in writing and delivered by courier, or transmitted by email to the recipient Party at its relevant address set out below:-

- 78.1.1 if to MCLM, at:-

Address: [●]

Email address:

marked for the attention of the Municipal Manager,

with a copy to the [●];

- 78.1.2 if to the Private Party, at:-

Address[●]

e-Mail address [●]

marked for the attention of [●]

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

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

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

78.3.2 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

78.3.3 is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.

78.4 The previous provisions of this clause 78 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.

78.5 The Parties choose their respective physical addresses in clause 76.1 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new *domicilium citandi et executand*.

79 PUBLIC RELATIONS AND PUBLICITY

79.1 The Private Party acknowledges that certain information pertaining to the Project is required to be disclosed in accordance with the statutory reporting obligation of MCLM to publish information about the performance of the Private Party and/or any other information as it may be required to publish from time to time in response to enquiries from:-

79.1.1 Parliament and its members and officers in accordance with the provisions

of the PFMA; and

79.1.2 the Auditor-General under the Auditor-General Act; and

79.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.

79.2 Subject to clause 79.3, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this PPP Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld. Save that to the extent that Confidential Information is to be disclosed in accordance with clause 79, the approval shall be deemed to be given by the Private Party in terms of clause 79.

79.3 To the extent that MCLM is obliged to disclose or publish information pursuant to clause 79.1, it undertakes to the Private Party, if time permits, to consult with the Private Party prior to any communication contemplated by this clause 79.2, and if time does not so permit, such consultation shall be dispensed with.

80 CONFIDENTIALITY

80.1 Each Party shall keep all Confidential Information of the other Party confidential and, while this PPP Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason, shall not use or exploit such Confidential Information for any purpose other than for the purpose for which it was disclosed to such Party. Each Party shall also use reasonable endeavours to prevent its employees, agents and Subcontractors from making any disclosure to any person of any Confidential Information of the other Party while this PPP Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason.

80.2 The disclosures permitted under clauses 3.1.30.12 to 3.1.30.13 (both inclusive) of the definition of Confidential Information may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this clause from the intended recipients.

81 COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this PPP Agreement.

SIGNED at

26th

this

June

day of

2025

for and on behalf of

THE MOGALE CITY LOCAL MUNICIPALITY

by

THE ACCOUNTING OFFICER

who warrants his authority hereto

SIGNED at

26th

this

day of

June

2012

for and on behalf of

[PRIVATE PARTY] (RF) (PTY) LTD

by

who warrants his authority hereto

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT,
EXPANSION [CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT
AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

**RESPONSIBILITY IN TERMS OF FACILITIES REFURBISHMENT
AND MAINTENANCE OF THE FACILITY**

Private Party Requirements:

1. Private Party Responsibility:

1.1 The Private Party shall be solely responsible for the refurbishment, finance and maintenance of all KGR infrastructure assets and support infrastructure (internal and external included internal roads). (See list below)

TOURISM ASSET	DESCRIPTION
Main Entrance Gate House	1
Lodge	12 x 2 bed rondavels 22 x 2 bed chalets 4 x bed family self-catering units

Lodge Reception	Attached to Lodge
Conferences Venues	Spurwing – 250 people capacity Yellow-bill – 100 people capacity Moorhen – 50 people capacity Kingfisher – 10 people capacity
Lapa Venues	4 Lapa's – 350 people capacity
Bar & Restaurant	Attached to main reception
Day Visitors Area	Braai and picnic facilities 2 x Swimming Pools Jungle Gym Ablutions
Lion Sanctuary	100 hectares, demarcated and fenced off area, entrance gate
Caravan Park & Camping Site	50 caravan sites with own power supply and braai Ablution block Games room Convenience store Jungle gym 2 Swimming pools Volleyball court Kiosk
Internal Roads and paths	All internal roads and paths
All internal and external furniture fittings and equipment (FFE)	All internal and external (e.g generator.) (
Perimeter fence	Around 1,500 hectare Reserve

*An in loco inspection will be scheduled for all prospective bidders)

1.2 The Private Party shall be solely responsible for the insurance of Assets.

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

1.4 The Private Party shall be solely responsible for the upgrade and maintenance of the KGR infrastructure and support infrastructure (internal and external) for compliance with (where applicable):

- SANS 10400: National Building Regulations
- SANS Specifications
- SANS 1200: Standardized Specification for Civil Engineering Construction (All Parts)
- Occupational Health & Safety Act 85 of 1993
- Periodical structural inspections of building infrastructure must be conducted according to SANS 13822.

1.5 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, conference and general areas/buildings including roofs, electrical light fittings, sanitary ware, ironmongery, tiling, plastering, plumbing and painting.

1.6 The periodical structural inspections of existing building infrastructure were introduced with the promulgation of the Occupational Health and Safety Act 85/1993).

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

1.8 The Private Party must ensure that inspections are carried out periodically by competent persons in order to render the structure safe for continued use.

- The inspections contemplated above are carried out at least once every six months for the first two years and thereafter yearly.
- The records of inspections and maintenance are kept and made available on the request of the MCLM Inspector. The inspection consists of one or both of the following stages:
 - Stage 1: Preliminary Assessment - Visual Inspection
 - Stage 2: Detailed Assessment - Full Structural Investigation
 - Stage 3: Intervention. The Private Party must ensure the structure is maintained in such a manner that it remains safe for continued use. The records of inspections and maintenance are kept and made available on request to an Inspector.

2. Maintenance and Renovation Requirement:

2.1 Internal and external wall finishes (plastering, painting, tiling, cladding).

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

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

2.4 Private Party to ensure that wall tiling in kitchen, on exposed corners, are protected with corner-protectors. Internal and external floor finishes (screed, tiling, tinted granos, carpets, timber decking and concrete/paved aprons).

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

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

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

2.8 Periodic inspections to ensure that no cracks develop in porcelain sanitary fittings. Internal and external plumbing (all internal piping, valves and taps).

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

2.10 Maintenance of all Internal and external doors – Private Party to ensure that BOH doors are protected by means of stainless-steel kick and push plates.

2.11 Gas bottles/cylinders (LP Gas)

- 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.

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

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

2.14 Periodic inspections to ensure that there is no build-up of fat/grease in piping. Periodic inspections to ensure that fat traps and/or gulleys are cleaned out at regular intervals.

2.15 Ceilings, air conditioning, and geysers; Private Party to ensure that ceilings are maintained and painted with anti-mould and anti-bacterial paint where applicable. Private Party to ensure that kitchen concrete ceiling soffits are plastered and painted as above.

2.16 General HVAC Systems:

- Ensure continuous compliance with Occupational Health and Safety Act 85 of 1993.
- Compliance with SANS 10142-1 The wiring of premises Part 1- Low-voltage installations.
- Compliance with SANS 10400 The application of the National Building Regulations – Part A: General principles and requirements.
- Compliance with SANS10400-O - Part O Lighting and ventilation.
- Periodic inspections to ensure heat loads in areas do not change due to equipment upgrades or additions.

2.17 Toilet extract systems:

- Periodic inspections to all toilet extract air are operational.

2.18 Roofs and all external infrastructure relating to the KGR.

- Private Party to ensure that roof leaks are repaired on sheeted and thatched roofs.
- Thatched roofs: 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.
- Thatch to be cleaned every now and then by raking to remove moss and leaves.
- Thatch to be brushed every 5-8 yrs. to ensure no deep rotting or thatch degeneration occurs.

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

2.20 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.

2.21 Kitchen canopies: 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.

2.22 Cool and freezer rooms: 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.

2.23 Laundry Systems: Periodic inspections to ensure laundry dryer ducts are free from lint to prevent fire hazard and to ensure dryers operate optimally.

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

2.25 Access roads with efficient stormwater drainage to the KGR facilities

2.26 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.

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

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

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

2.30 Electrical: Repairs and maintenance of emergency backup generator is currently installed.

2.31 The Private Party shall maintain/upgrade the electrical installations to comply with the latest recommendations of the following South African Standards were applicable: Occupational Health & Safety Act 85 of 1993 SANS 10400: National Building Regulations SANS 10400XA: National Building Regulations Part XA – Energy Usage SANS 10142-1: The wiring of premises – Part 1. SANS 10142-2: The wiring of premises – Part 2 SANS 10114-1: Artificial Lighting SANS 10114-2: Emergency

Lighting SANS 10313: Lightning Protection of Structures SANS 62305: Protection against lightning SANS 10139: Fire detection and alarm systems for buildings SANS 8528 (Part 1-10): Standard for reciprocating internal combustion engine driven alternating current generator sets.

- 2.32 Internal Electrical Installations 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.

SCHEDULE 6

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT,
EXPANSION [CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT
AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

PRIVATE PARTY OPERATIONAL REQUIREMENTS

1. Promotion and conduct of business.

The private party must manage and operate the KGR for the 25-year concession period.

1.1 In the conduct of the Business the Private Party shall actively promote and market the KGR Area, take responsibility for the demand risk and use its best endeavours to further the mutual business interests of MCLM and the Private Party and, without limiting the generality of the foregoing, shall provide and promote the goods and/or services required of the Business as specified herein.

1.2 Standards of Concession Area and Concession Area

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

1.3 Branding

1.3.1 Private Party's brand design must take cognisance of the KGR's ambience.

1.4 Service Provision

- 1.4.1 In the conduct of the Business the Private Party shall keep the Concession Area open for business in accordance with the reasonable requests by MCLM and the requirements of any relevant statute, bylaw or regulation relating to the Business.
- 1.5 Product Offering
 - 1.5.1 The Private Party bid submission and Bid variants document submitted by the Private Party must be adhered to unless otherwise agreed by MCLM.
 - 1.5.2 The Private Party is obliged to offer dining options to guests staying at the Lodge and The Private Party will be obliged to adapt their menu on request by MCLM to reflect any changes that may have been identified through research, or that is otherwise offensive or undesirable.
 - 1.5.3 The Private Party is obliged to maintain and utilize the KGR facilities as outlined in the RFP and the Private Parties bid submission.
 - 1.5.4 Where food is prepared and served to visitors, MCLM reserves the right to implement quality and hygiene audit mechanisms.
 - 1.5.5 Private Party is obliged to provide universal access at the KGR.
 - 1.5.6 The Private Party will be obliged to introduce and provide all staff with the applicable uniform on or before Operation Commencement Date.
- 1.6 Customer Survey Programme: A Customer Survey Programme including a Mystery Guest Programme could/may be implemented by MCLM to measure quality. The Private Party will be required to collaborate with MCLM in the implementation of such Programmes and/or other customer surveys in the Concession Area.
- 1.7 Customer Feedback System Where Customer Feedback Systems are implemented, this will be done in conjunction/collaboration with the Private Party.
- 1.8 Staff requirements: In the conduct of the Business the Private Party shall be solely responsible for all staffing requirements at the Concession Area.
- 1.9 Staff Housing – if required, the private Party will be responsible for essential staff accommodation on the GGR premises.
- 1.10 Maintain stocks 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.
- 1.11 Supplier Accounts: In the conduct of the Business the Private Party shall pay properly as and when due all supplier accounts received by the Private Party pertaining to the Business in accordance with accepted business procedures.
- 1.12 Meetings: To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party and MCLM stakeholders agrees to a monthly meeting that will be attended by both parties.
- 1.13 Operational Procedure Manual: The Private Party is obliged to comply with the Private Party's Operational Manual approved by MCLM. 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 MCLM.

- 1.14 Quality Audit: The Private Party shall participate in and work together with MCLM in conducting and establishing quality audits.
- 1.15 Electrical Certificate of Compliance: MCLM 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.
- 1.16 The Private Party shall supply MCLM with an electrical certificate of compliance (CoC) for the Concession Area before handing the site back after Contract Termination.
- 1.17 The private Party will ensure well-maintained and functional fences around the KGR.
- 1.18 Waste storage: The Private Party is responsible for waste management and to secure and/or 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 and to prevent animals from gaining access to these food sources, and to educate and sensitize staff, contractors, guests and visitors on the issues related to problem animals.
- 1.19 No food or food waste may be left unattended from the beginning of the hand over phase and during the operational phase.
- 1.20 All solid and wet waste must be stored in bins in scavenger-proof storage areas and cleared regularly. 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.
- 1.21 The Private party may offer Game Drives and take full responsibility for guest safety protocols.
- 1.22 Waste: Waste management to adhere to MCLM' waste management guidelines. Private Party to conduct analysis to confirm whether the KGRs waste facility has sufficient capacity or if waste needs to be disposed of outside of the park at an authorised disposal facility; Disposal of waste at the MCLM waste facility would be subject to fees being payable in line with KNP Tariff Document.
- 1.23 Water: Private Party to inspect water supply and take responsibility for management and maintenance of water supply infrastructure.
- 1.24 Sewerage; Private Party to take responsibility for all waste management and disposal in collaboration with MCLM.

- 1.25 Adherence to MCLM waste management policy required during construction / refurbishment and maintenance. in order to limit waste and pollution as a result of the construction works.
- 1.26 Building Commissioning Process: Monitoring will be carried out by the responsible independent certifier / 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.
- 1.27 The Private Party must provide access to environmental officers at MCLM to conduct environmental audits.
- 1.28 All areas within KGR must be monitored on a daily basis and the Private Party will be required to complete compliance checklists for scrutiny by MCLM when requested.
- 1.29 Hygiene Audits: The Private Party must conduct hygiene audits at the KGR on a quarterly basis and furnish MCLM with the outcomes within five (5) business days of its completion. In the event the Private Party fails to conduct hygiene audits, then MCLM shall have the right to conduct or commission such an audit, and the costs thereof shall be borne by the Private Party.

SCHEDULE 9

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT,
EXPANSION [CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT
AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

FINAL MAINTENANCE BOND

[Issued as a separate schedule]

FORM OF FINAL MAINTENANCE BOND

to be provided to the Mogale City Local Municipality (“**MCLM**”).

WHEREAS:

- A. MCLM has entered into a Public Private Partnership agreement for the design, refurbishment, expansion [construction] operation, maintenance, management and finance of the Krugersdorp Game Reserve located in Mogale City (the “**PPP Agreement**”) with [INSERT] (the “**Private Party**”)
- B. The Private Party is required under the provisions of clause 29.4 of the PPP Agreement to obtain or procure this bond (the “**Bond**”) to be provided to MCLM.
- C. We have agreed to provide you such Bond.

We, the undersigned

_____ and _____
(Name) (Name)

acting herein as

_____ and _____
(Position) (Position)

of [INSERT] (the “**Bank**”)

being duly authorised to sign and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors of the Bank, a certified copy of which is

annexed hereto, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that:

The Bank shall pay amounts not exceeding **[INSERT]** in aggregate (the “**Maximum Amount**”) without delay, objection or argument, to MCLM on receipt by the Bank of the first written demand of MCLM being received at the Bank’s counter situated at **[INSERT]**, attention **[INSERT]**, declaring that the amount is due and payable and without proof of any breach or other default, in a certificate in the form attached, **hereto as Annexure A** signed by an authorised representative of MCLM certifying that MCLM is entitled to draw on this Bond pursuant to the provisions of Clause 29.4 of the PPP Agreement (the “**Certificate**”). MCLM may make partial and/or multiple demands under this Bond provided that the aggregate amounts paid under this Bond shall not exceed the Maximum Amount.

The demand for payment together with this Bond and the Certificate shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.

Neither the failure of MCLM to enforce strict or substantial compliance by the Private Party with its obligations nor any act, conduct, or omission by MCLM prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Private Party or any other person or by amendment to or variation or waiver of terms of the PPP Agreement or any related document (the “**Underlying Documents**”) will discharge the Bank from any liability under this Bond. For the avoidance of doubt, the Bank’s liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Private Party or any other person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.

1. This Bond shall:-

1.1. remain in full force and effect from the date hereof, and shall expire automatically, whether or not returned to the Bank or Private Party, on the earlier of:

1.1.1. 18 months after the date of issue of this Bond; or

- 1.1.2. a substitution thereof by another bond to the satisfaction of MCLM; or
- 1.1.3. the date when the Bank has paid to MCLM an amount which is equal to, or amounts which in aggregate equal, the Maximum Amount.

2. This Bond shall:-

- 2.1. exist independently of the PPP Agreement or any amendment, variation or novation thereof;
- 2.2. not be ceded, assigned or otherwise transferred by MCLM, or otherwise dealt with in any manner whatsoever by MCLM (save for the purposes and in the manner referred to above and in the PPP Agreement);
- 2.3. be returned to the Bank on its expiry in accordance with Clause 1.1.1 above; and
- 2.4. be governed by the laws of the Republic of South Africa.

3. The Bank shall make any payment demanded under this Bond free of deduction, withholding or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to MCLM equal the amounts that would have been paid to MCLM had no such deduction or withholding been made or been required to be made.

4. Addresses and Notices

- 4.1. The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this Bond as follows:-

MCLM: [INSERT]

Email: [INSERT]

The Bank: [INSERT]

Email: [INSERT]

- 4.1.1. 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.
- 4.1.2. All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.

4.1.3. Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.

4.1.4. A notice sent by one party to another party shall be deemed to be received:-

4.1.4.1. on the same day, if delivered by hand;

4.1.4.2. on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission and confirmed by post.

4.2. 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*.

5. Words and phrases not defined herein shall have the meanings ascribed to them in the PPP Agreement unless the context otherwise requires.

SIGNED at _____ on this the _____ day of _____

For and on behalf of

[INSERT]

Name:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____

For and on behalf of

[INSERT]

Name:

Capacity:

Who warrants his authority hereto

Annexure A – Form of Certificate

CERTIFICATE

[INSERT DATE]

TO:

Dear Sirs

Capitalised terms used in this certificate shall have the meaning ascribed thereto in the written agreement entered into between **[INSERT]** and **[INSERT]** in respect of the Project (the “**PPP Agreement**”).

As permitted in clause 1 of the Final Maintenance Bond, we hereby demand that an amount of **[INSERT AMOUNT]** be paid to MCLM on/by **[INSERT DATE]**.

I declare that the aforesaid amount is due and payable and certify that MCLM is entitled to draw on the Final Maintenance Bond pursuant to the provisions of clause 25 of the PPP Agreement.

The above amount is to be paid into the following bank account:
[INSERT].

[INSERT NAME]
MCLM REPRESENTATIVE
Date

**SCHEDULE 10
INSURANCES**

TO THE

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT,
EXPANSION [CONSTRUCTION] OPERATION, MAINTENANCE,
MANAGEMENT AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

SIGNED at [] on this [] day of [] 2025

**by THE ACCOUNTING OFFICER
(duly authorised)
for and on behalf of
THE MOGALE CITY LOCAL
MUNICIPALITY**

**by []
(who warrants his authority hereto)
for and on behalf of
{PRIVATE PARTY}**

PART A : INSURANCES REQUIRED DURING CONSTRUCTION PHASE

1. CONSTRUCTION ALL RISKS INSURANCE

Cover Required

The construction all risks insurance policy issued in respect of the Works is to provide indemnity against loss of/or damage to the permanent and/or temporary Works including all materials for the incorporation therein.

Insured Parties (to be named in the policy)

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in the Works as well as any other parties with an insurable interest in the Project.

Deductibles

A maximum of R [•] in respect of all claims.

Period of Insurance

The policy shall be effective for a period commencing from the effective date of the D&C Subcontract and maintained until the actual completion of the Works plus the defects liability period thereafter.

Gross Premium

R [•].

Exclusions

[•]

Extensions

- Consequences of defective design/workmanship/materials (Minimum Design Exclusion 4 (DE4) or equivalent)
- Inland transit and temporary storage
- Costs and expenses (with or without damage to the Works)
- Professional fees
- Free issue materials
- Expediting expenses following a loss
- Escalation during the Works period and reinstatement period up to 20% (twenty percent) of the D&C Subcontract value

- Devaluation/revaluation up to 20% (twenty percent) of the D&C Subcontract value
- Other property insured
- Off-site storage
- Plans and documents
- Beneficial use / property taken over
- Multiple insured clause

2. **THIRD PARTY LIABILITY INSURANCE**

Cover Required

The third party liability policy is to provide indemnity against all third party claims arising out of:

1. Loss, destruction or damage to real or personal property;
2. Injury to, or disease or death of persons; and
3. Legal costs of the insured parties in respect of any claims,

arising out of the performance of the D&C Subcontract.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in the Works as well as any other parties with an insurable interest in the Project.

Limit of Indemnity

R [•] any one occurrence

R [•] in the aggregate for the removal of or interference with support.

Deductible

A maximum of R [•] in respect of all claims.

Period of Insurance

The policy shall be effective for a period commencing from the effective date of the D&C Subcontract and maintained until the actual completion of the Works plus the defects liability period thereafter.

Gross Premium

R [•]

Exclusions

[•]

Extensions

- Liability to employees
- Sudden and accidental seepage and pollution
- Legal costs and expenses in addition to policy limit
- Cross liability
- Removal of support
- Defamation
- Statutory legal defence costs
- Wrongful arrest
- Emergency medical expenses
- Trespass and nuisance
- Multiple insured's clause

3. **PROJECT DELAY**

Cover Required

This policy is to provide indemnity for the loss of anticipated revenue and additional expenses incurred resulting from the occurrence of an indemnifiable loss or damage from perils insured against under the appropriate construction all risks insurance.

Insured Parties

MCLM, the Private Party and the Lenders.

Indemnity Period

24 (twenty four) months.

Deductible

A maximum of [•] days in respect of all claims.

Period of Insurance

The policy shall be effective for a period commencing from the effective date of the D&C Subcontract and maintained until the actual completion of the Works plus the defects liability period thereafter.

Gross Premium

R [•]

Extensions

- Additional increase cost of working
- Alternative working
- Manufacturers and suppliers premises
- Prevention of access
- Failure of Utilities
- Claims preparation costs
- Multiple insured's clause

4. **PROFESSIONAL INDEMNITY INSURANCE**

Cover Required

This policy is to provide protection against breach of duty owed in a professional capacity involving liability arising by reason of error, omission or professional negligence in the design and supervision of the Works and shall extend to include coverage for rectification prior to handover.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in the Works as well as any other parties with an insurable interest in the Project.

Limit of Indemnity

R [•] each and every loss limited to R [•] Rand) in aggregate for a period of [•] including the maintenance / defects liability period not exceeding 12 (twelve) months.

Deductible

A maximum of R [•] in respect of all claims.

Period of Insurance

The policy shall be effective for a period of 30 (thirty) months (including 12 (twelve) months maintenance/defects liability period) commencing from the effective date of the D&C Subcontract. The cover is retroactive from the date of inception of the conceptual design.

Gross Premium

R [•]

Exclusions

R [•]

Extensions

- Indemnity to others
- Cross liabilities
- Including supervision
- Multiple insured clause

5. **SASRIA**

Cover Required

This policy is to provide cover for:

1. All acts which cause loss by any organisation, body or person, group of persons, the aim of which is to overthrow or influence the Government, by force, fear, terrorism or violence;
2. All acts aimed to cause loss or damage in order to further any political aim or bring about social or economic change or in protest against the Government; and
3. Any riot, strike, lock-out, labour disturbances, public disorder, civil commotion or any act or activity directed to bring about the foregoing.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in the construction works as well as any other parties with an insurable interest in the Project.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Sum Insured

R 657 146 000.00 (six hundred and fifty seven million one hundred and forty six thousand Rand).

Deductible

[●%] of D&C Subcontract value with a minimum of R[●] and a maximum of R [●] in respect of theft claims only.

Gross Premium

R [●]

Exclusions

- War
- Warlike operations
- Military power
- Martial law
- Civil war
- Nuclear/chemical/biological terrorism
- Confiscation, dispossession by any lawfully constituted authority

6. **SASRIA (ADVANCE LOSS OF STANDING CHARGES)**

Insured Parties

MCLM, Private Party, Lenders and Subcontractors.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Sum Insured

(List of Standing Charges & Sum Insured to be provided)

Gross Premium

[•]

PART B : INSURANCES REQUIRED DURING OPERATIONS PERIOD

1. ASSETS ALL RISKS INSURANCE

Cover Required

This policy will provide protection against loss of or damage to the Project Assets, including buildings, plant and machinery, all contents, stock, fixtures and fittings caused by perils including but not limited to fire, lightning, explosion, storm, tempest, flood, earthquake, electrical and mechanical breakdown and impact.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in undertaking the Operations as well as any other parties with an insurable interest in the Project.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Sum Insured

To represent the new replacement value of the Project Assets insured in terms of the policy, at all times.

Deductibles

A maximum of R [●] in respect of all claims.

Gross Premium

R [●]

Exclusions

- War, nuclear risks
- Wear, tear, normal upkeep, gradual deterioration
- Inherent defect or vice

Extensions

- Accidental discharge of fire protection devices

- Additional costs – necessarily and reasonably incurred with consent of Insurer to reinstate damaged property including costs to expedite repairs
- Automatic reinstatement of sum insured
- Mechanical/electrical breakdown
- Property in course of construction or erection (incidental)
- Capital additions – up to 20% (twenty percent) of total Project Asset value
- Debris removal costs
- Documents and records
- Architects, surveyors and consulting engineers fees
- Temporary removal/repairs
- Multiple insured clause

2. **BUSINESS INTERRUPTION**

Cover Provided

This policy is to provide indemnity against loss of revenue and additional expenses incurred, resulting from the occurrence of an indemnifiable loss or damage insured against under the assets all risks policy.

Insured Parties

MCLM, the Private Party and the Lenders.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Sum Insured

R [●]

Deductibles

A maximum of 7 (seven) days in respect of all claims.

Gross Premium

R [●]

Exclusions

- War, nuclear risks
- Wear, tear, normal upkeep, gradual deterioration
- Inherent defect or vice

Extensions

- Additional increase in cost of working
- Extended premises
- MCLM
- Salvage sale
- Failure of Utilities

3. **THIRD PARTY LIABILITY INSURANCE**

Cover Required

The third party liability policy is to provide cover against all third party claims arising out of:

1. Loss, destruction or damage to real or personal property;
2. Obstruction, loss of amenities, loss of use of land, water, building, property or right of way;
3. Liability that may result from latent defects or removal of or weakening of support to property;
4. Injury to, or disease or death of persons;
5. Legal costs of the insured parties in respect of any claims,

arising out of the performance of the Operations Subcontract.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in undertaking the Operations as well as any other parties with an insurable interest in the Project.

Limit of Indemnity

Minimum R [●]

Deductible

A maximum of R [●] in respect of all claims.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Gross Premium

R [●]

Exclusions

- Liability arising out of the use, ownership or control of motor vehicles, marine craft, aircraft and hovercraft
- Gradual pollution and/or contamination
- Fines, penalties
- Professional indemnity/liability
- War/nuclear risks

Extensions

- Liability to employees
- Sudden and accidental seepage and pollution
- Legal costs and expenses in addition to policy limit
- Cross liabilities
- Wrongful arrest, defamation and dismissal
- Trespass and nuisance

4. FIDELITY GUARANTEE INSURANCE

Cover Required

This policy is to provide indemnity against losses incurred due to the dishonesty of employees, including collusion with others.

Insured Parties

The Private Party and other parties with an insurable interest in the Project to the extent required by any agreement with such other party.

Limit of Indemnity

R [●] per event and in the annual aggregate (based on [●] employees).

Deductible

A maximum of R [●] in respect of each and every claim.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Gross Premium

R [●]

Exclusions

- Exemplary, aggravated or punitive damages
- Costs incurred in connection with legal proceedings
- Loss of potential income not yet earned other than in consequence or indirect loss
- Loss of trade secrets, confidential processing or confidential information of any kind
- Loss arising out of a breach of duty owned in a professional capacity

Extensions

- Claims preparation costs
- Reinstatement of office records
- Cost of recovery
- Continuity of cover
- Reinstatement of limit of indemnity
- Third party computer fraud (including extortion)
- Computer personnel

5. **SASRIA**

Cover Required

This policy is to provide cover for:-

1. All acts which cause loss, by any organisation, body or person, group of persons, the aim of which is to overthrow or influence the Government, by force, fear, terrorism or violence;
2. All acts aimed to cause loss or damage in order to further any political aim or bring about social or economic change or in protest against the Government; and
3. Any riot, strike, lock-out, labour disturbances, public disorder, civil commotion or any act or activity directed to bring about the foregoing.

Insured Parties

MCLM, the Private Party, Lenders, Subcontractors, subcontractors to the Subcontractors and other consultants engaged in the construction works as well as any other parties with an insurable interest in the Project.

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Sum Insured

R [●]

Gross Premium

R [●]

Exclusions

[•]

6. DIRECTORS AND OFFICERS

Cover Required

This policy is to indemnify the directors and officers of the Private Party, whether past present or future, against any claim made during the period of insurance for a loss arising from an actual or alleged wrongful act.

Insured Parties

All past, present and future directors and officers of the Private Party

Limit of Indemnity

R

[•]

Deductible

Nil

Period of Insurance

This policy shall be effective from Operations Commencement until the Expiry Date of the PPP Agreement, subject to annual renewal of the policy.

Gross Premium

R [•]

Exclusions

[•]

Extensions

- Advancement of costs and expenses
- Outside directorships

SCHEDULE 11

**PUBLIC PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT, EXPANSION
[CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT AND FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

TARGET GROUP TERMS AND PENALTIES

1. The Private Party is obliged to comply with the B-BBEE commitments and specific goals as outlined in the bid submission. The Private Party shall from Operation Commencement Date comply with the commitments and undertakings as set out in its B-BBEE submission. Compliance with the stated B-BBEE commitments and specific goals will be monitored by MCLM within a specific B-BBEE Reporting Period. The “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.

2. B-BBEE Penalties: In the event the Private Party fails to meet the B-BEE commitments and targets at the end of the BBEE Reporting Period, the Private Party shall be subject to the B-BBEE penalties calculated in accordance with the formulae set out as follows:

3. The penalties which shall be levied on the Private Party shall not exceed 5% of the aggregate monthly PPP Fee instalments paid by the Private Party over a period of 12 (twelve) months.
4. Any B-BBEE penalties levied on the Private Party shall be paid by the Private Party to MCLM 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.

**SCHEDULE 14
INDEPENDENT CERTIFIER AGREEMENT**

TO THE

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR THE DESIGN, PUBLIC
PRIVATE PARTNERSHIP FOR THE DESIGN, REFURBISHMENT, EXPANSION
[CONSTRUCTION] OPERATION, MAINTENANCE, MANAGEMENT AND
FINANCE OF
THE KRUGERSDORP GAME RESERVE LOCATED IN
MOGALE CITY**

SIGNED at [•] on this [•] day of [•] 2025

**by THE ACCOUNTING OFFICER
(duly authorised)
for and on behalf of
THE MOGALE CITY LOCAL
MUNICIPALITY**

**[•]
(who warrants his authority hereto)
for and on behalf of
[PRIVATE PARTY]**

INDEPENDENT CERTIFIER AGREEMENT

between

[INDEPENDENT CERTIFIER]

and

THE MOGALE CITY LOCAL MUNICIPALITY

and

[PRIVATE PARTY]

TABLE OF CONTENTS

1. PARTIES.....	160
2. INTRODUCTION.....	160
3. DEFINITIONS.....	160
4. APPOINTMENT AND ACCEPTANCE	162
5. DURATION OF AGREEMENT	162
6. REPRESENTATIVES.....	Error! Bookmark not defined.
7. PROJECT DOCUMENTS.....	163
8. CERTIFICATION SERVICES.....	164
9. THE EXERCISE OF REASONABLE SKILL, CARE AND DILIGENCE	166
10. GENERAL RIGHTS AND OBLIGATIONS OF MCLM AND THE PRIVATE PARTY.....	167
11. LIMITATION OF RIGHTS	167
12. FEES PAYABLE AND PAYMENT.....	167
13. OWNERSHIP AND PUBLICATION REPORTS	169
14. CONFIDENTIALITY	169
15. NO AGENCY OR PARTNERSHIP.....	170
16. TERMINATION	170
17. BREACH OF AGREEMENT	171
18. DISPUTE RESOLUTION	172
19. AMENDMENTS, VARIATIONS AND ADDITIONS TO THE AGREEMENT 174	
20. NOTICES	174
21. GENERAL.....	175

INDEPENDENT CERTIFIER AGREEMENT

1. PARTIES

1.1. THE MOGALE CITY LOCAL MUNICIPALITY

1.2. [PRIVATE PARTY]

1.3. [INDEPENDENT CERTIFIER]

2. INTRODUCTION

2.1. The Mogale City Local Municipality ("**MCLM**") wishes to have the facilities at the Krugersdorp Game Reserve upgraded and has concluded a Public private Partnership agreement with the [Private Party] to undertake these upgrades.

2.2. It is a requirement of the PPP Agreement that the Private Party appoint an Independent Certifier with the approval of MCLM to carry out the functions and duties assigned to the Independent Certifier in the PPP Agreement.

2.3. The Independent Certifier is an independent expert willing to provide the Certification Services to the Private Party and MCLM.

3. DEFINITIONS

3.1. Unless inconsistent with the context, terms defined in the PPP Agreement which are used herein have the meaning given to them in the PPP Agreement and the rules of interpretation as set out in clause 4 (*Interpretation*) of the PPP Agreement, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings;-

3.1.1. "**Agreement**" means this agreement;

3.1.2. "**Certification Services**" means the services to be performed by the Independent Certifier in terms of clause 8;

3.1.3. "**Contract Period**" means the period from the signature date of this Independent Certifier Agreement to the date of issue of the Completion Certificate, unless this Agreement is terminated or cancelled earlier in accordance with its terms;

3.1.4. "**Designer's Completion Certificate**" a certificate issued by the designer of the Facilities (appointed by the D&C Subcontractor) in compliance with regulation 9(2)(h) of the construction regulations promulgated under the Occupational

Health and Safety Act, 1993 and published under Government Notice R1010 in Government Gazette 250207 OF 18 July 2003;

- 3.1.5. **“Final Inspection Notice”** means the notice issued by the Private Party to the Independent Certifier stating that the Private Party has complied with its obligations in respect of the Works under the PPP Agreement and that the Facilities are ready for final inspection;
- 3.1.6. **“Independent Certifier”** refers to [], the service provider providing the Certification Services in terms of this Agreement;
- 3.1.7. **“Parties”** means MCLM, the Private Party and the Independent Certifier and *“Party”* shall, as the context requires, be a reference to any one of them;
- 3.1.8. **“Quarter”** means the three month period ending on 30 June, 30 September, 31 December and 31 March, or such shorter period as determined from the Effective Date under the PPP Agreement until the first of the dates specified above; and
- 3.1.9. **“VAT”** means value-added tax as defined in the Value-Added Tax Act, 1991.
- 3.2. In this Agreement, except where the context otherwise requires:-
 - 3.2.1. the masculine includes the other genders;
 - 3.2.2. the singular includes the plural; and
 - 3.2.3. any reference to a natural person includes a body corporate, firm or association.
- 3.3. The headings of the clauses of this Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.
- 3.4. Words and phrases defined in any clause shall bear the meanings assigned thereto.
- 3.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it was a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the definition clause.
- 3.6. The rule of construction that the contract shall be interpreted against the Party responsible for drafting or preparation of the Agreement, shall not apply.

4. **APPOINTMENT AND ACCEPTANCE**

- 4.1. The Private Party, with the consent of MCLM, hereby appoints the Independent Certifier to execute the Certification Services and the Independent Certifier accepts such appointment subject to the terms and conditions set out herein.
- 4.2. The appointment of the Independent Certifier shall not create an employment contract or relationship between the Parties and the Independent Certifier shall therefore not be entitled to any benefits that the employees of MCLM or the Private Party are entitled to.
- 4.3. The Independent Certifier shall owe a duty of care to both the Private Party and MCLM.

5. **DURATION OF AGREEMENT**

This Agreement shall commence on the later of the signature date of this Independent Certifier Agreement or the PPP Agreement.

6. **REPRESENTATIVES**

- 6.1. The Independent Certifier undertakes to perform the Certification Services in close consultation and co-operation with the Private Party representative and the MCLM representatives, whose identities shall be notified to the Independent Certifier within 7 days of signature hereof (collectively the **"Representatives"**).
- 6.2. The Independent Certifier shall report to the Representatives on all matters relating to compliance by the Private Party of its obligations under the PPP Agreement for the purposes of obtaining the Completion Certificate.
- 6.3. The Independent Certifier shall report to the Representatives on any anticipated delays in the Scheduled Service Commencement Date.
- 6.4. The Independent Certifier shall attend and report at regular meetings with the Representatives on his activities relating to the Project and the progress of the Project, such meetings are anticipated to be held on a monthly basis.
- 6.5. The Independent Certifier shall comply with all reasonable instructions given to it by the Representatives for the purposes of the Independent Certifier conducting the Certification Services, except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Certification Services or its responsibilities under this Agreement, or prejudice or might prejudice the exercise by the Independent Certifier of its professional, fair and

impartial judgment under this Agreement. In the event that a dispute arises between the Representatives and the Independent Certifier in respect of any instructions given by the Representatives to the Independent Certifier in accordance with this clause, such dispute shall be referred to dispute resolution in terms of clause 18 (*Dispute Resolution*); save that where a dispute arises between MCLM and the Private Party in respect hereof, such matter shall be resolved in accordance with the PPP Agreement.

- 6.6. All instructions to the Independent Certifier shall be given in writing by the Representatives.

7. PROJECT DOCUMENTS

- 7.1. The Independent Certifier shall familiarise itself with the Project Documents to the extent necessary to perform its obligations in terms of this Agreement.

- 7.2. The Private Party shall ensure that the requisite information and documentation is provided to the Independent Certifier to enable it to discharge its responsibilities and duties in terms of this Agreement. This information includes, but is not limited to, the following:-

- 7.2.1. a copy of the Works Programme as amended from time to time;
- 7.2.2. the Scheduled Operations Commencement Date to the PPP Agreement, as well as details of any change to the Scheduled Operations Commencement Date in accordance with the PPP Agreement;
- 7.2.3. copies of working drawings, schedules and specifications prepared by the Private Party and Subcontractors sufficient to demonstrate compliance by the Private Party and Subcontractors with the requirements of the PPP Agreement and the Facilities Specifications;
- 7.2.4. copies of the Private Party's correspondence relating to building control matters;
- 7.2.5. detailed summaries of the Private Party's quality control and quality assurance records;
- 7.2.6. copies of the Private Party's commissioning reports;
- 7.2.7. copies of as-built drawings, operating and maintenance manuals; and
- 7.2.8. a copy of the health and safety plan of the Private Party.

- 7.3. Within 5 (five) Business Days of termination or cancellation of this Agreement in accordance with clauses 16 (*Termination*) and or 17 (*Breach of Agreement*) or expiration of the contract period, the Independent Certifier shall deliver all copies of the Project Documents in its possession in whatever format held by the Independent Certifier as well as all other documentation, maps, drawings, records and any other material made available to it to the Representatives.

8. **CERTIFICATION SERVICES**

- 8.1. The Independent Certifier shall:-

- 8.1.1. inspect and monitor the progress of the Works in order to assess whether they are being undertaken in accordance with the Project Documents, Facilities Specifications and so as to certify that the Operations Specifications can be met;
- 8.1.2. audit and monitor the commissioning of the Works in order to be able to assess compliance with and in accordance with the Project Documents and obtain records of the commissioning and test data;
- 8.1.3. ensure that the Project Assets have been supplied and fitted in accordance with the PPP Agreement;
- 8.1.4. obtain a copy of the certificate of occupation in respect of the Facilities from the relevant local authority and a copy of the Designer's Completion Certificate; and
- 8.1.5. monitor the Private Party's obligations under the Occupational Health and Safety Act and compliance by the Private Party, Subcontractors and each of their respective employees, as well as each of the Independent Certifier's agents, representatives and employees performing the Certification Services at the Facilities, with the health and safety plan of the Private Party, the health and safety specification of MCLM, the environmental management plan of the Private Party in carrying out their obligations.

- 8.2. As soon as practically possible and in any event, no later than 5 (five) Business Days after receipt of the Final Inspection Notice from the Private Party, the Independent Certifier shall commence and shall, within 22 (twenty two) Business Days from commencement, complete, an inspection of the Facilities in order to determine whether in his reasonable opinion:-

- 8.2.1. all of the Works in respect of the Facilities have been completed in accordance with the Facilities Specifications and have been

satisfactorily commissioned by passing all the requisite tests;
and

- 8.2.2. the Facilities are able to support the Operations to be provided by the Private Party.
- 8.3. Forthwith upon his completion of the inspection of the Facilities, the Independent Certifier shall advise the Private Party and MCLM whether or not, in his reasonable opinion, the requisites of clauses 8.2.1 and 8.2.2 have been met.
- 8.4. Forthwith upon being advised by the Independent Certifier that he is of the reasonable opinion, having undertaken an inspection of the Facilities, that the requisites of clauses 8.2.1 and 8.2.2 have been met, the Private Party shall request the Independent Certifier to issue a Completion Certificate. The Independent Certifier shall issue the Completion Certificate to the Representatives within 3 (three) Business Days of receipt of the Private Party's request.
- 8.5. In the event that the Independent Certifier is of the reasonable opinion, having undertaken an inspection of the Facilities, that the requisites of clauses 8.2.1 and 8.2.2 have not been met, the Independent Certifier shall forthwith issue a notice ("Independent Certifier Notice") to the Representatives, such notice to specify the matters which, in the reasonable opinion of the Independent Certifier, are required to be satisfied in order for the Completion Certificate to be issued.
- 8.6. The Private Party shall notify the Independent Certifier once it considers that it has satisfied the matters outstanding as specified in the Independent Certifier's Notice. Within 3 (three) Business Days of receipt of such notice from the Private Party, the Independent Certifier shall conduct an inspection of such outstanding works, and shall:
 - 8.6.1. notify the Representatives if all items listed in the Independent Certifier's Notice have been attended to, to his reasonable satisfaction, and issue the Completion Certificate to the Representatives;
 - 8.6.2. in the event that the Independent Certifier is not, in his reasonable opinion, satisfied that the matters outstanding as specified in the Independent Certifier's Notice have been rectified, forthwith issue a Further Independent Certifier's Notice to that effect to the Representatives, such Further Independent Certifier's Notice to set out details in respect of such outstanding matters. The provisions of clause 8.5 and this clause shall apply *mutatis mutandis* until all the matters specified outstanding in the Further Independent Certifier's Notice have been rectified to the reasonable satisfaction of the

Independent Certifier and the Completion Certificate is issued to the Representatives or the PPP Agreement is terminated.

- 8.7. The Completion Certificate issued to the Representatives in accordance with clause 8 shall be final and binding.

9. **THE EXERCISE OF REASONABLE SKILL, CARE AND DILIGENCE**

- 9.1. The Independent Certifier must exercise reasonable skill, care and diligence in the discharge of its obligations under this Agreement.
- 9.2. In undertaking the Certification Services, the Independent Certifier shall exercise that degree of skill, prudence, diligence and foresight which would reasonably and ordinarily be expected from a person in the built-environment industry with skills in engineering and architecture seeking in good faith to comply with its contractual obligations, complying with all applicable laws and regulations, and order or directive of its governing authority.
- 9.3. The Independent Certifier shall ensure that reasonable levels of care and responsibility will be exercised by all parties and individuals under the control of the Independent Certifier when such party or individual uses items belonging to MCLM and the Private Party or any member of MCLM and the Private Party in the performance of its contractual obligations and in general in the performance of the Independent Certifier's duties and responsibilities as stipulated in this Agreement.
- 9.4. The Independent Certifier shall not offer or give to or accept from any member, employee or representative of MCLM and/or the Private Party any gift or consideration of any kind.
- 9.5. Without prejudice to its obligations under this Agreement or otherwise in law, the Independent Certifier shall maintain professional indemnity insurance with a limit of indemnity of **[INSERT]** for any one claim in respect of any neglect, error or omission on the Independent Certifier's part in the performance of its obligations under this Agreement for the period as from Commencement Date and expiring 5 (five) years after the date of issue of the Completion Certificate. The Independent Certifier shall maintain such insurance with reputable insurers carrying on business in South Africa, who are acceptable to the Private Party and MCLM, such acceptance not to be unreasonably withheld or delayed. The Independent Certifier shall, prior to commencing the provision of the Certification Services produce for inspection by the Representatives, documentary evidence that such insurance is being properly maintained. This clause shall survive termination of this Agreement.

10. **GENERAL RIGHTS AND OBLIGATIONS OF MCLM AND THE PRIVATE PARTY**

- 10.1. MCLM and the Private Party shall render such assistance to the Independent Certifier as shall reasonably be required for the carrying out by the Independent Certifier of its duties under this Agreement.
- 10.2. The Private Party shall allow the Independent Certifier access to the Facilities at all times reasonably required in order for the Independent Certifier to carry out its duties under this Agreement.
- 10.3. In the event that a matter is referred to dispute resolution in terms of clause 18 (*Dispute Resolution*), the Independent Certifier shall continue with its Certification Services until the Completion Certificate has been issued; save that if the Private Party and MCLM agree that the Independent Certifier is in breach of its obligations under this Agreement, MCLM and Private Party may suspend the obligations of the Independent Certifier under this Agreement and the provisions of clause 17.1.1 (*Breach of Agreement*) shall apply *mutatis mutandis*.

11. **LIMITATION OF RIGHTS**

- 11.1. The Independent Certifier shall have no authority to approve or accept the Private Party's performance of its obligations under the PPP Agreement as being discharged except insofar as is required for the purposes of issuing the Completion Certificates.
- 11.2. The Independent Certifier shall not have the power or authority to enter into any agreement or to otherwise bind or incur any liability on behalf of MCLM or the Private Party.

12. **FEES PAYABLE AND PAYMENT**

- 12.1. The Private Party shall pay to the Independent Certifier a maximum amount of R(Rand) including disbursements and VAT for the Certification Services ("the Fee").
- 12.2. Subject to this clause 12, the Fee shall be paid to the Independent Certifier by Private Party on the following basis:
 - 12.2.1. 10% (ten percent) of the Fee will be retained as a retention amount until the Completion Certificate has been issued ("the Retention Amount").
 - 12.2.2. Subject to clause 12.3, the total Fee less the Retention Amount, will be divided into monthly payments based on the estimated length of the contract period in accordance with the Scheduled Operations Commencement Date, to be paid monthly in arrears.

- 12.3. The Representatives shall review the monthly payments on a quarterly basis. At the end of each Quarter:-
- 12.3.1. to the extent that there has been a change in the Scheduled Operations Commencement Date during any Quarter (“the Revised Scheduled Operations Commencement Date”), the monthly fee payable by the Private Party to the Independent Certifier shall be the total remaining fee (that is, the Fee less any payments made up until the date of the determination that such change is made less the Retention Amount) divided by the number of remaining months to the Contract Period according to the Revised Scheduled Operations Commencement Date;
- 12.3.2. to the extent that there has been a Variation (as contemplated in the PPP Agreement) prior to the Scheduled Operations Commencement Date, the Parties shall agree on an appropriate adjustment to the Fee and the provisions of clause 12.2 shall *mutatis mutandis* apply.
- 12.4. The Independent Certifier shall submit an invoice for interim payments together with the monthly progress report for acceptance by the Representatives at the monthly progress meetings held in terms of clause **Error! Reference source not found.** (*Representatives*).
- 12.5. All invoices shall be duly signed by the Independent Certifier before being submitted to the Representatives. Upon receipt of such invoice together with its monthly progress report, the Representatives shall approve such invoice or raise any queries in respect of such invoice within 7 (seven) Business Days of receipt thereof, failing which it shall be deemed to have been approved by the Representatives.
- 12.6. In the event that the monthly progress report is not attached to the invoice and submitted by the Independent Certifier to the Representatives in accordance with clause 12.4, the Representatives shall not be obliged to approve payment (nor shall such approval be deemed) of that portion of the Fee in respect of which the monthly progress report is outstanding.
- 12.7. If any invoice is not certified and approved by the Representatives, it shall provide reasons for such refusal to and shall certify such portion of the invoice, if any, as is not in contention.
- 12.8. The Private Party shall pay the invoice submitted by the Independent Certifier within 30 (thirty) Business Days of approval or deemed approval thereof by the Representatives.
- 12.9. Without prejudice to the rights of MCLM and the Private Party under clauses 10.3 (*General Rights and Obligations of the Private Party and*

MCLM) and 17.1.1 (*Breach of Agreement*), if the Certification Services have not been rendered to the satisfaction of the Representatives, the Representatives may require the Independent Certifier to rectify or improve the work done before payment is made for that portion of work outstanding.

- 12.10. If any overpayment of whatever nature has been made to the Independent Certifier the latter will be obliged to repay such amount to the Private Party who shall be entitled to deduct such amount from any amounts due to the Independent Certifier.

13. **OWNERSHIP AND PUBLICATION REPORTS**

- 13.1. All documents furnished or supplied by the Representatives, MCLM and the Private Party and all documentation, information and data prepared by the Independent Certifier in connection with this Project and this Agreement, shall become the property of MCLM.
- 13.2. The copyright of all such documents will vest in MCLM and may not be reproduced, published, used or circulated by the Independent Certifier to any other person outside the Project or to any institution in any way, without the prior written approval of MCLM.
- 13.3. The Independent Certifier hereby indemnifies MCLM and the Private Party against any action or claim that may be brought against the former on the grounds of an alleged infringement of copyright or any other intellectual property.

14. **CONFIDENTIALITY**

- 14.1. The Independent Certifier undertakes to keep and hold secret and confidential any information disclosed to it in performing its obligations under this Agreement and not to disclose same to any other person in any way whatsoever without the prior written consent of MCLM and the Private Party, and shall ensure that all such information shall be disclosed only to its staff members who have signed undertakings of secrecy and confidentiality.
- 14.2. The Independent Certifier undertakes to ensure that all copies of all reports generated by it will be identified by a specific number and that such numbers will be collated on a master distribution list to enable management of security of documents.
- 14.3. All information pertaining to the Project acquired by the Independent Certifier from MCLM or the Private Party shall be treated as confidential by the Independent Certifier and:-
 - 14.3.1. shall not be used by the Independent Certifier for any purpose other than the purpose of this Project;

- 14.3.2. shall not be reproduced, distributed or otherwise made available to any other party;
 - 14.3.3. shall remain the property of MCLM and be returned to MCLM on demand;
 - 14.3.4. all information prepared in undertaking its obligations under this Agreement shall become the property of MCLM;
- unless otherwise agreed to by MCLM and the Private Party.

15. NO AGENCY OR PARTNERSHIP

The relationship between the Parties is that of independent contracting parties and in the circumstances shall not imply any partnership in the legal sense, nor shall it constitute any Party to be the agent or authorised representative of another Party.

16. TERMINATION

- 16.1. MCLM and the Private Party shall have the right to terminate the Agreement upon the occurrence of any of the following events:-
 - 16.1.1. the PPP Agreement is terminated for any reason whatsoever;
or
 - 16.1.2. on commencement of any act of insolvency event committed by the Independent Certifier under Section 8 of the Insolvency Act, 1936 (as if it were a natural person), which results in a creditor seeking an order to liquidate the Independent Certifier, or if the Independent Certifier is unable to pay its debts as described in the Companies Act, 2008, the granting of any judgment which is not subject to appeal or, if it is, such appeal is not diligently pursued, or the passing of any resolution, for the dissolution and/or judicial management and/or liquidation of the Independent Certifier, except for the purposes of amalgamation or reconstruction on terms approved in advance by MCLM and Private Party in writing; or
 - 16.1.3. if a change of control of the Independent Certifier occurs without the consent of MCLM and the Private Party (not to be unreasonably withheld or delayed). A change of control means an event where there shall be a beneficial change in the ownership of the Independent Certifier and where applicable, a single person or group of persons acting in concert acquires control of the Independent Certifier or any interest in the voting

share capital of the Independent Certifier as a result of which that person or group of persons have an interest in more than 50% (fifty percent) of the voting share capital of the Independent Certifier.

- 16.2. Notwithstanding clause 16.1, MCLM and Private Party may jointly terminate this Agreement at any time, by giving 1 (one) month's written notice to the Independent Certifier. In such event, the Independent Certifier fee in clause 12.1 shall be reduced by an amount equal to the amount relating to that portion works not yet completed in accordance with Appendix 1.

17. **BREACH OF AGREEMENT**

- 17.1. In the event of a breach by the Independent Certifier of any of the terms and conditions of the Agreement, and in the event that the Independent Certifier fails to remedy such breach within 3 (three) Business Days after receiving written notice from the Representatives to do so, the Representatives shall be entitled to exercise all or any number of the following rights:-
- 17.1.1. the Representatives may suspend the obligations of the Independent Certifier under this Agreement and appoint a third party of its choice (in respect of whose costs the Independent Certifier shall be liable) to assume the obligations of the Independent Certifier under this Agreement, including the duty to issue Completion Certificates in accordance with clause 8 (*Certification Services*), and the Independent Certifier shall give access to and make available the Project Documents, as well as all information and documentation in its possession specified in clause 7.2 (*Project Documents*), to such third party;
 - 17.1.2. to claim specific performance from the Independent Certifier and/or claim such damages as it may have suffered;
 - 17.1.3. to cancel this Agreement and claim all damages as it may have suffered; and/or
 - 17.1.4. to suspend further payments to the Independent Certifier.
- 17.2. Should the Independent Certifier dispute the existence of a breach the matter may be referred at the request of any Party to dispute resolution in terms of clause 18 (*Dispute Resolution*).
- 17.3. In the event of any breach by MCLM and the Private Party of the terms and conditions of this Agreement, and in the event of MCLM and the Private Party remaining in default after 30 (thirty) Business Days written

notice calling for rectification of the matter, the Independent Certifier shall be entitled to:-

- 17.3.1. claim specific performance from MCLM and the Private Party and claim such damages as it may have suffered; and
- 17.3.2. cancel this Agreement and claim all damages as it may have suffered.
- 17.4. The provisions of clauses 17.2 and 18 (*Dispute Resolution*) shall apply *mutatis mutandis* in the event of MCLM and the Private Party disputing the existence of a breach entitling the Independent Certifier to the rights and remedies envisaged in clause 17.3.
- 17.5. In the event that the existence of a breach is disputed in terms of clause 17.2 or clause 17.4 and referred to dispute resolution in accordance with clause 18 (*Dispute Resolution*), the Representatives may suspend the obligations of the Independent Certifier and the provisions of clause 17.1.1 shall apply *mutatis mutandis*.

18. **DISPUTE RESOLUTION**

18.1. Any dispute between the Parties in regard to:-

- 18.1.1. the interpretation of;
- 18.1.2. the effect of;
- 18.1.3. the Parties' respective rights and obligations under;
- 18.1.4. a breach of; or
- 18.1.5. any matter arising out of,

this Agreement shall be decided by arbitration in the manner set out in this clause; save that any matters arising in relation to the subject matter referred to in clause 8.1 (*Certification Services*) for the purposes of the issuing of the Completion Certificates or matters outstanding as specified in the notice referred to in clause 8.5 (*Certification Services*) may not be disputed by the Parties and accordingly this clause 18 shall not apply in regard thereto. The said arbitration shall be held subject to the provisions of this clause:-

- 18.2.1. at Mogale City;
- 18.2.2. informally;

18.2.3. otherwise in accordance with the provisions of the Arbitration Act, 1965,

it being the intention that if possible it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.

18.3. The arbitrator shall be if the question in issue is:-

18.3.1. primarily an accounting matter an independent accountant with no less than 10 (ten) years standing agreed upon between the Parties;

18.3.2. primarily a legal matter, a practising senior counsel with no less than 10 (ten) years standing agreed upon between the Parties; and

18.3.3. any other matter an independent person agreed upon between the Parties.

18.4. If the Parties cannot agree upon a particular arbitrator within 7 (seven) Business Days after the arbitration has been demanded, the nomination in terms of clauses 18.3.1, 18.3.2 and 18.3.3 as the case may be, shall be made by the President for the time being of the Northern Provinces Law Society within 7 (seven) Business Days after the Parties have so failed to agree.

18.5. The Parties irrevocably agree that the decision in these arbitration proceedings:-

18.5.1. shall be binding on them;

18.5.2. shall be carried into effect; and

18.5.3. may be made an order of any Court of competent jurisdiction.

18.6. This clause 18 shall survive termination of this Agreement for whatever reason.

18.7. This clause shall constitute each Party's irrevocable consent to the arbitration proceedings and no Party shall be entitled to withdraw therefrom or to claim that such Party is not bound by this clause.

18.8. If a Party fails to take part in these proceedings, such conduct shall constitute consent to an award being made against such Party.

19. **AMENDMENTS, VARIATIONS AND ADDITIONS TO THE AGREEMENT**

No amendment, variation or addition will be valid unless reduced to writing and signed by all Parties.

20. **NOTICES**

20.1. Each Party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.

20.1.1. Private Party:

[]

[]

Attention :

Email:

20.1.2. Independent Certifier

[]

[]

Attention :

Email:

20.1.3. MCLM

[]
[]

Attention :

Email:

- 20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.
- 20.3. Any Party may by written notice to the other Parties, change its chosen address or email address number to another physical address or email address provided that the change shall become effective on 10 (ten) Business Day after the receipt of the notice by the addressee in respect of that Party's physical address and on the date set out in the notice in respect of that Party's email address.
- 20.4. Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address shall be deemed to have been received in the case of clause 20.4 on the day of delivery.
- 20.5. Notwithstanding anything to the contrary contained in this clause 20, 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 address or email address.

21. **GENERAL**

- 21.1. The Independent Certifier shall not have the right to assign, cede or transfer any benefit, right or obligation, or any part thereof, in terms of this Agreement to any other person/s or entity without the prior written consent of MCLM and the Private Party.
- 21.2. This is the entire Agreement between the Parties and will only be amended in writing and duly signed by all Parties.
- 21.3. The Agreement shall be governed by, construed and interpreted according to the law of South Africa.
- 21.4. The Parties agree that the North Gauteng High Court, Pretoria (Republic of South Africa) shall have jurisdiction in respect of any matter arising from this Agreement, subject to the provisions of clause 18 (*Dispute Resolution*).
- 21.5. No extension of time, latitude or other indulgence which may be given or allowed by either Party to the other shall constitute a waiver or

APPENDIX 1

**[REDUCTION OF INDEPENDENT CERTIFIER FEE IN TERMS
OF CLAUSE 16.2 – APPENDIX TO BE DEVELOPED]**

15. Contract Management Plan for Monitoring the Krugersdorp Game Reserve

1. PURPOSE OF THE CONTRACT MANAGEMENT PLAN

The purpose of this plan is to ensure the effective monitoring performance management of the contract of the Krugersdorp Game Reserve. The plan aim to ensure compliance with contractual obligations and to achieve the objectives of sustainable conservation and tourism.

2. Roles and Responsibilities

Mogale City Local Municipality

- Monitor contractor performance;
- Conduct scheduled site inspections in line with Clause 42 of the PPP Agreement;
- Facilitate stakeholder engagement;
- Ensure payment schedules align with deliverables; and
- Enforce compliance with contract terms.

Private Party

- Implement and manage game reserve operations;
- Provide regular reports (monthly, quarterly, annual);
- Ensure environmental and regulatory compliance;
- At the end of every Contract Month pay the Fixed Fee; and
- At the end of each PPP Year, the Variable Fee.

3. Performance Monitoring as per the Scope of Work

KEY PERFORMANCE AREAS	KEY PERFORMANCE INDICATORS	PORTFOLIO OF EVIDENCE
1. Operational Efficiency	<ul style="list-style-type: none">• Gate fee collection rate.• Conservation levies collection rate (where applicable).	Signed quarterly performance report.

	<ul style="list-style-type: none"> • Number of visitors per day. • Bed occupancy rate. 	
2. Financial Indicator	<ul style="list-style-type: none"> • Monthly fixed fee transfer. • Monthly variable fee transfer. 	Payment remittance
3. Profitability Indicator	<ul style="list-style-type: none"> • Profit margin. • ROA • ROE 	Signed Bi-Annual Report. Audited Financial Statements.
4. Refurbishing of existing facilities	<ul style="list-style-type: none"> • The Private Party to Construct optional additional facilities and to operate visitors accommodation facilities 	Comprehensive Monthly Reports/Quarterly Reports
5. Developing existing activities	The PP must maintain wildlife tours, educational programmes and adventure activities	A copy of a schedule for wildlife tours and adventure activities
6. General	<ul style="list-style-type: none"> • Attendance of monthly meetings – 90% attendance. 	Attendance register.

4. SCORING GUIDELINES

- 1 = Poor (<59%) – Unacceptable Performance, the performance does not meet the standard expected, the contractor has failed to demonstrate the commitment level expected.
- 2 = Average (60-69%) – Performance not fully effective, performance is below the standard required, it meets some expectations.
- 3 = Above Average (70-79%) – Performance fully effective, performance fully meets standards expected as per the scope.
- 4 = Good (80%-89%) – Performance significantly above expectations; performance is significantly higher than the standard expected.
- 5 = Excellent (90%-100) – Outstanding performance, performance far exceeds the standard expected.

5. Communication

Method	Frequency	Stakeholders
1. Performance Progress Meeting	Quarterly	Project Managers/PP/Contract Management
2. Site Visits	Quarterly	Project Managers
3. Reporting	Monthly/Quarterly/Annually	The Private Party

6. Risk Management

Risk	Mitigation Strategy
Non-compliance with KPIs	Regular monitoring and enforcement of penalties.
Environmental degradation	Immediate corrective action and revised conservation strategies.
Community conflict	Establish grievance redress mechanism.
Financial mismanagement	Strict financial oversight and auditing.

7. Contract Close-Out

Upon completion or early termination:

- Final performance and financial reports must be submitted.
- An exit inspection will be conducted.
- Any outstanding issues must be resolved before final payment.