



MANAGEMENT AGREEMENT

ENTERED INTO BETWEEN

SOUTH AFRICAN NATIONAL PARKS

AND

[] PROPRIETARY LIMITED

IN RELATION TO SKUKUZA SAFARI LODGE

IN THE

KRUGER NATIONAL PARK

MAY 2022

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1. PARTIES

the parties to this agreement are:

- 1.1 SANParks; and
- 1.2 [.....] PROPRIETARY LIMITED.

2. INTRODUCTION

- 2.1 Pursuant to the **RFP**, SANParks has invited bids from suitably qualified and experienced operators to provide the Management Services, with the view to achieve the following objectives:
 - 2.1.1 revenue generation;
 - 2.1.2 promotion of tourism; and
 - 2.1.3 protection of biodiversity and conservation.
- 2.2 In accordance with the open tender process which it conducted, SANParks has appointed the Operator to provide the Management Services.
- 2.3 SANParks and the Operator enter into this Agreement to regulate their relationship on the terms and conditions set out below.

3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement the following terms shall, unless inconsistent with the context in which they appear have the following meanings and expressions derived from those terms that shall bear corresponding meanings:
 - 3.1.1 **“Assessment Rates”** - all assessment rates, fees, levies, or charges and any increase thereon, payable from time to time to any Responsible Authority having jurisdiction over the Skukuza Facility

- or any building thereon by the owner thereof irrespective of the name by which they may be called;
- 3.1.2 **“Associated Agreement”** - the Operator’s contracts with Subcontractors or sub-concessionaires related to the execution and/or fulfilment of the terms and conditions of this Agreement;
- 3.1.3 **“Auditors”** - means duly appointed auditors of SANParks from time to time;
- 3.1.4 **“Bank”** - any 1 (one) of The Standard Bank of South Africa Limited, Absa Bank Limited, Nedbank Limited, FirstRand Bank Limited or Investec Bank Limited or any other bank approved in writing by SANParks in its sole and absolute discretion;
- 3.1.5 **“Management Fee”** - that portion of the Management Fee that is a percentage of the Gross Revenue of the Business, which percentage is detailed in Clause 22 and **Schedule 7**;
- 3.1.6 **“B-BBEE Act”** - the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
- 3.1.7 **“Bid Submission”** - the bid submitted by the Operator in response to the RFP and accepted by SANParks, appointing the Operator to provide the Management Services;

- | | | | |
|--------|--|---|---|
| 3.1.8 | “Black Economic Empowerment” or “BEE” | - | shall have the meaning ascribed to it in the B-BBEE Act; |
| 3.1.9 | “Black People” | - | shall have the meaning ascribed to it in the B-BBEE Act; |
| 3.1.10 | “Business” | - | the hotel and conference business conducted as a going concern upon the Skukuza Facility; |
| 3.1.11 | “Business Assets” | - | the operational assets utilised for the conduct of the Business; |
| 3.1.12 | “Business Day” | - | any day other than a Saturday, Sunday or national public holiday in South Africa; |
| 3.1.13 | “Capital Expenditure” | - | any expenditure treated as capital expenditure under GRAP or IFRS as used by SANParks; |
| 3.1.14 | “Change in Control” | - | any change whatsoever in Control of the Operator, whether effected directly or indirectly; |
| 3.1.15 | “Commencement Date” | - | 1 st April 2023 or such earlier or later date as may be determined by SANParks in writing; |
| 3.1.16 | “Companies Act” | - | the Companies Act, No. 71 of 2008; |
| 3.1.17 | “Conference Facility” | - | Nombolo Mdhluli Conference Centre situated at Skukuza Rest Camp; |
| 3.1.18 | “Confidential Information” | - | any information or know-how in whatever form relating to the |

business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or finances of either of the Parties;

- 3.1.19 **“Consents”** - all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the attainment of any of the Management Services;
- 3.1.20 **“Consumer Protection Act”** - the Consumer Protection Act, No. 68 of 2008;
- 3.1.21 **“Control”** - in relation to any entity, the ability, directly or indirectly to: (i) direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights; or (ii) appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);
- 3.1.22 **“Corrupt Act”** - shall have the meaning ascribed to it in Clause 30;
- 3.1.23 **“CPI”** - the average rate of change (expressed as a percentage) in the

- Consumer Price Index for all urban areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it, which change shall be determined by comparing the most recently published index with the index published in respect of the corresponding month in the previous period;
- 3.1.24 **“EBITDA”** Earnings before interest, tax, depreciation and amortization;
- 3.1.25 **“EIA” or “Environmental Impact Assessment”** - the process of assessing the environmental effects of a development or an activity and its subsequent operation, carried out in accordance with the applicable Regulatory Provisions and guidelines;
- 3.1.26 **“EME”** - shall have the meaning ascribed to it in the Amended Tourism Sector Code published in November 2015;
- 3.1.27 **“Environment”** - the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or collection of organisms, including all or any of the following: air (including the air within any building or the air within any other man-made or natural

- structure above or below ground),
water (including inland waters,
groundwater and water in drains and
sewers) and land;
- 3.1.28 **“Environmental Laws”** - any Laws in respect of the Environment, including, without limitation, the following statutes: the National Water Act, No. 36 of 1998; the Water Services Act, No. 108 of 1997; the National Environmental Management Act, No. 107 of 1998; the National Environmental Management: Protected Areas Act, No. 57 of 2003; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, No. 15 of 1973; and the National Heritage Resources Act, No. 25 of 1999;
- 3.1.29 **“Environmental Specifications”** - the requirements, conditions, obligations and specifications detailed in **Schedule 3**;
- 3.1.30 **“Expiry Date”** - the last day of the month in which the 10th (tenth) anniversary of the Commencement Date occurs;
- 3.1.31 **“Financial Year”** - the period from 1 April to 31 March in any given year for purposes of financial reporting of the Operator;
- 3.1.32 **“Force Majeure”** - has the meaning ascribed to it in Clause 27;

- 3.1.33 **“Good Industry Practice”** - the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Agreement; seeking in good faith to comply with all its contractual obligations herein and all applicable Regulatory Provisions;
- 3.1.34 **“GRAP”** generally recognised accounting practice complying in all material respects with the standards issued from time to time by the Accounting Standards Board;
- 3.1.35 **“Gross Revenue”** - shall have the meaning ascribed to it in Clause 22;
- 3.1.36 **“IFRS”** - International Financial Reporting Standards, being a set of accounting standards and interpretations developed by the International Accounting Standards Board (IASB);
- 3.1.37 **“Intellectual Property Rights”** - all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or form part of pending applications), utility models,

- applications for any of the a foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the *sui generis* rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws or any other jurisdiction;
- 3.1.38 **“Interim Period”** - the period between the Signature Date and the Commencement Date;
- 3.1.39 **“Key Performance Indicators” or “KPIs”** - the key performance indicators referred to in clause 10 and **Schedule 13**, in terms of which SANParks will evaluate the performance of the Operator from time to time;
- 3.1.40 **“KNP”** - Kruger National Park;
- 3.1.41 **“KNP Tariffs”** - the tariffs stipulated by SANParks for Utility Charges and any other fees, levies and the like, in respect of cost of recoveries incidental to goods and/or services provided by SANParks in KNP, as may be reviewed by SANParks annually;
- 3.1.42 **“Laws”** - the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;

- 3.1.43 **“Legislation”** - all applicable statutes, statutory instruments, by-laws, Regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having force of law in South Africa;
- 3.1.44 **“Licensed Intellectual Property”** - all Intellectual Property to be used in the provision of the Management Services by the Operator or a Subcontractor under licence from any third party, as replaced and/or upgraded from time to time;
- 3.1.45 **“Local”** - the geographic area to be specified in writing by SANParks, being either within a 50 (fifty) kilometre radius of the Skukuza Facility or within a 50 (fifty) kilometre reach of the boundary of the KNP fence (but excluding areas that fall within the boundaries of the neighbouring countries);
- 3.1.46 **“Losses”** - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature that have or may result in adverse financial consequences to the Management Services;
- 3.1.47 **“Management Committee”** - the joint committee established by SANParks and the Operator for the purpose of coordinating and monitoring the provision of the

- Management Services;
- 3.1.48 **“Managing Executive”** - the most senior manager of KNP, designated as such by SANParks from time to time;
- 3.1.49 **“Management Fee”** - the fee payable by SANParks to the Operator in respect of the Management Services, as detailed in Clause 22 and **Schedule 7**;
- 3.1.50 **“Management Services”** - operating, managing and maintaining the Skukuza Facility in accordance to terms and conditions set out in this Agreement;
- 3.1.51 **“Minister”** - Minister of Forestry, Fisheries and the Environment in South Africa or any minister that assumes the responsibility for the KNP in the future;
- 3.1.52 **“Operator”** - [] Proprietary Limited, Registration Number [], a company duly incorporated and in accordance with the Companies Act;
- 3.1.53 **“Park Management Plan”** - the management plan for KNP developed by SANParks in consultation with the local authorities, organs of state and other stakeholders and approved by the Minister as provided for in the Protected Areas Act, the objective of which is to ensure the protection, conservation and management of

- KNP in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which KNP was declared a national park in terms of the Protected Areas Act;
- 3.1.54 **“Park Rules”** - the environmental rules in respect of KNP, as may be revised and/or updated by SANParks from time to time;
- 3.1.55 **“Parties”** - collectively, SANParks and the Operator;
- 3.1.56 **“Party”** - SANParks or the Operator, as the case may be;
- 3.1.57 **“Person”** - any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;
- 3.1.58 **“PFMA”** - the Public Finance Management Act, No. 1 of 1999;
- 3.1.59 **“Procurement Policy”** - means a policy to be prepared by the Operator and approved by SANParks for the procurement by the Operator of goods and services relating to the Management Services in respect of the Skukuza Facility, which policy must be in accordance with the requirements of the Constitution of the Republic of South Africa Act, No. 108 of 1996, the procurement laws

- governing SANParks and the procurement policies of SANParks, as may be amended from time to time;
- 3.1.60 **“Protected Areas Act”** - the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);
- 3.1.61 **“QSE”** - shall have the meaning ascribed to it in the Amended Tourism Sector Code published in November 2015;
- 3.1.62 **“Rand” or “R”** - the South African Rand, the lawful currency of South Africa;
- 3.1.63 **“Regulations”** - regulations issued in terms of the Protected Areas Act;
- 3.1.64 **“Regulatory Provisions”** - (a) the environmental guidelines (“Environmental Specifications”) for operators operating within KNP which is further described in **Schedule 3**, as same may be revised and updated by SANParks from time to time, and (b) collectively the Laws, and standards of the State and any Relevant Authority which in any way affects or applies to the conduct of the Management Services and/or this Agreement from time to time or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Park Rules and Park Management Plan;

- 3.1.65 **“Responsible Authority”** - the South African national and/or provincial and/or local governmental authority having jurisdiction over any or all of the Parties or any subject matter of this Management Agreement. A Responsible Authority shall, for the avoidance of doubt, not include any provider of Utilities;
- 3.1.66 **“Restricted Enterprise”** - a person restricted from contracting with SANParks and/or a Responsible Authority as a result of being listed either on –
1. the Register for Tender Defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act No. 12, 2004;
 2. the Disqualified Directors' Register (maintained by the Companies and Intellectual Property Commission) in terms of Section 69(13) of the Companies Act; and/or
 3. any other relevant listing required by Law;
- 3.1.67 **“RFP”** - the request for proposals and the information memorandum issued by SANParks during August 2018 2021 calling for proposals for the provision of Management Services;
- 3.1.68 **“SANParks”** - South African National Parks, a juristic person established in terms of section 5 of the National Parks Act,

- No. 57 of 1976 and continuing to exist as such in terms of the provisions of section 54 of the Protected Areas Act;
- 3.1.69 **“SANParks Default”** - shall have the meaning ascribed to it in Clause 29;
- 3.1.70 **“Schedules”** - the schedules to this Agreement, as amended, replaced and varied from time to time;
- 3.1.71 **“Shareholders”** - the registered members of the Operator from time to time;
- 3.1.72 **“Signature Date”** - the date of signature of this Agreement by the last signing Party;
- 3.1.73 **“Skukuza Facility”** Skukuza Safari Lodge, a 3 star facility as fully defined in **Schedule 1**, comprising 128 rooms, with a combination of 8 luxury suites, standard rooms and family rooms, including universal access rooms and the Conference Facility; all situate at Skukuza Rest Camp, KNP;
- 3.1.74 **“South Africa”** - the Republic of South Africa;
- 3.1.75 **“State”** - the Government of South Africa, acting directly or through its lawfully designated representatives;
- 3.1.76 **“Subcontractors”** - any subcontractor of the Operator who has contracted directly with the Operator in respect of any of the Management Services;

- 3.1.77 **“Term”** - a period of ten (10) years reckoned from the Commencement Date, but subject to early termination in accordance with the terms and conditions of this Agreement;
- 3.1.78 **“Termination Amount”** - the amount payable by a Party on termination of this Agreement in accordance with its terms;
- 3.1.79 **“Termination Date”** - any date of termination of this Agreement in accordance with its terms at any time prior to the Expiry Date;
- 3.1.80 **“Transferrable Licenses Intellectual Property”** - any Licensed Intellectual Property that the Operator is entitled to transfer to SANParks;
- 3.1.81 **“Treasury Regulations”** the Treasury Regulations issued under the PFMA that apply to SANParks and/or this Agreement;
- 3.1.82 **“Utilities”** - facilities such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes relevant provider thereof;
- 3.1.83 **“Utility Charges”** - charges or fees in respect of consumption of the Utilities used at the Skukuza Facility as provided by SANParks, the Relevant Authority or any other supplier;
- 3.1.84 **“VAT”** - value added tax, as defined in the VAT Act or any similar tax which is

imposed in place of or in addition to such tax; and

- 3.1.85 **“VAT Act”** - Value Added Tax Act, No. 89 of 1991, as amended from time to time.

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

- 3.2.1 any reference to any legislation is to such legislation as at the Signature Date and as amended, re-enacted or substituted from time to time thereafter;
- 3.2.2 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 Agreement;
- 3.2.3 for the purposes of any clause in this Agreement, that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Managing Executive: Tourism Development and Marketing;
- 3.2.4 references to “indexed to CPI” in relation to any amount of money shall mean that such amount has been expressed in prices as at the Commencement Date and shall be escalated annually as at each anniversary thereof with reference to the then most recent publication of the CPI;
- 3.2.5 references to “Parties” shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;
- 3.2.6 references to a “person” shall include an individual, firm, company, corporation, juristic person, and any trust, organisation, association or partnership, whether or not having separate legal personality;
- 3.2.7 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;

- 3.2.8 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;
- 3.2.9 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this 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 Agreement or any part of it;
- 3.2.10 words importing the singular number shall include the plural and *vice versa*, and words importing either gender or the neuter shall include both genders and the neuter;
- 3.2.11 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;
- 3.2.12 general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words; and
- 3.2.13 when a number of days are prescribed in this Agreement, such number shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day.

4. PRECEDENCE OF DOCUMENTS

- 4.1 In the event of a dispute as to the nature, content and extent of the Management Services, the order of precedence in the interpretation of the rights and obligations of the Parties in terms hereof shall be as follows:
 - 4.1.1 this Agreement;

4.1.2 its Schedules;

4.1.3 the RFP and Information Memorandum; and

4.1.4 the Bid Submission.

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

4.3 The Operator shall provide Management Services in terms of this Agreement, unconditionally and without further attaching its own conditions thereto or making performance of its obligations subject to any terms or conditions contrary or in addition to the terms of the Agreement.

5. **APPOINTMENT**

5.1 SANParks hereby appoints the Operator, which accepts such appointment with effect from the Signature Date, to provide the Management Services in accordance with the terms and conditions set out in this Agreement.

5.2 The legal relationship between SANParks and the Operator shall be that of principal and agent. Accordingly, the appointment in terms of clause 5.1 shall not, and no other provision of this Agreement shall be construed as creating any partnership or joint venture or similar relationship between SANParks and the Operator.

6. **DURATION**

6.1 During the Interim Period the SANParks and Operator shall collaborate and work with each other to do all things necessary to prepare for the implementation of this Agreement.

6.2 The provision of the Management Services shall commence on the Commencement Date and endure for the Term.

7. **MANAGEMENT SERVICES**

7.1 **Operation, Management and Maintenance by the Operator**

Without limiting the general duties and responsibilities of the Operator in terms of this Agreement, the Operator undertakes to at all times during the Term, perform the terms and conditions set out in this Agreement and in particular the duties normally carried out by a management services provider of a hotel, tourism and conference facility, which shall include but not be limited to the following:

7.1.1 Maintenance

- 7.1.1.1 The general provision of control, operating, management, maintenance and cleaning services in accordance with the terms and conditions set out in **Schedule 12;**
- 7.1.1.2 Performing regular inspections of the Skukuza Facility and preparing inspection reports on an annual basis and submitting same to SANParks;
- 7.1.1.3 Appointment of service providers on behalf of, and at the cost of, SANParks, subject to prior written consent of the Management Committee;
- 7.1.1.4 Ensuring all goods and/or services are procured in accordance with the Procurement Policy;
- 7.1.1.5 Ensuring the provision of proper and adequate security services at Skukuza Facility and the supervision thereof and the maintenance of optimal security from time to time; and
- 7.1.1.6 Drawing up detailed maintenance, future refurbishment and potential expansion plans, including but not limited to anticipated action programs and cost schedules, where necessary in consultation with professional consultants at SANParks' cost, which shall be pre-approved by SANParks;

7.1.2 Financial, Accounting and Secretarial

- 7.1.2.1 Operate and maintain a discrete bank account, which shall be held in the name of SANParks and controlled exclusively by SANParks ("**the Designated Account**"). For the avoidance of doubt, the Operator shall have the right to view the Designated Account, but shall not have the power transact on it. All interest earned on the Designated Account shall be for the benefit of SANParks;
- 7.1.2.2 Ensuring that all income derived from the Business is deposited into the Designated Account;
- 7.1.2.3 Collection of income, VAT and other charges due by guests and/or visitors and where applicable, the prompt following up of late payments in accordance with

- agreed arrears policy;
- 7.1.2.4 Preparation of detailed monthly reports, including monthly disbursement statements, and reports regarding the performance of the Business, in the terms, form and substance determined by SANParks from time to time;
- 7.1.2.5 Preparation of detailed annual budget of anticipated income and capital expenditure, in the terms, form and substance determined by SANParks from time to time;
- 7.1.2.6 Preparation of detailed monthly reports of actual financial results and updating on a monthly basis of the analytical forecasts of anticipated income and capital expenditure for the Financial Year;
- 7.1.2.7 Supplying SANParks with all material financial information timeously (for purpose of this clause, on 3 (three) Business Days written notice) as provided in this Agreement, provided that SANParks shall be entitled to require the Operator to provide any financial information relating to the Business, which should reasonably be in the possession of the Operator, on reasonable notice;
- 7.1.2.8 Maintenance of financial and administrative records of the Business in accordance with GRAP, any other relevant or applicable Laws and SANParks' applicable policies;
- 7.1.2.9 Ensuring that all financial and administrative records referred to in clause 7.1.2.8 are –
- 7.1.2.9.1 available at all reasonable times for inspection by SANParks or its duly appointed agents or advisors;
- 7.1.2.9.2 kept in the format acceptable to SANParks and/or the Auditors; and
- 7.1.2.9.3 delivered to SANParks on the Termination Date.
- 7.1.2.10 Payment of expenditure referred to in clause 11;
- 7.1.2.11 Prepare monthly distribution reports to SANParks (or its duly appointed agent) of such net amount as may be available after deductions and provisions and within such time periods as agreed with SANParks;
- 7.1.2.12 Submission of a detailed disbursements statement report clearly showing the calculation methods used in respect of distributions referred to in clause 7.1.2.11;
- 7.1.2.13 Provision of accounting services as may be agreed with SANParks and the

Auditors;

- 7.1.2.14 Timeous and efficient answering of all Auditors' queries that may be raised by the Auditors or Auditor General ("AG") during the preparation of the financial year-end information and/or statements;
- 7.1.2.15 General co-operation with the Auditors and/or the AG in respect of any other information they may require;
- 7.1.2.16 Provision of all financial or any other information required by SANParks from time to time;
- 7.1.2.17 Continuous (i.e. 5 (five) days prior to every Management Committee meetings) delivery of monthly management packs reflecting information as required by SANParks from time to time;
- 7.1.2.18 Implementation and maintenance of adequate internal controls;
- 7.1.2.19 Implementation and maintenance of sufficient risk management procedures;
- 7.1.2.20 Co-ordination of the periodic review of internal controls and risk management procedures by the Auditors;
- 7.1.2.21 Attending, reporting and carrying out all secretarial functions at Management Committee meetings;
- 7.1.2.22 In the event that SANParks suffers any direct, proven loss as a result of the Operator not properly maintaining financial and administrative records and/or in the event that additional costs in excess of the budgeted costs for conducting financial audits are incurred, the Operator shall reimburse SANParks for the direct, proven loss suffered and/or for the additional costs incurred, which amount shall be payable on demand.

7.1.3 **VAT Management**

- 7.1.3.1 It is recorded that SANParks is a VAT vendor. It is recorded that the Operator will act as agent for and on behalf of SANParks in terms of section 54 of the VAT Act; and the Operator, acting as agent for and on behalf of SANParks, will comply with the requirements set out in section 20 of the VAT Act, as amended, save that SANParks will prepare and submit any VAT returns necessary, based on financial information provided by the Operator.
- 7.1.3.2 SANParks undertakes to immediately inform the Operator should SANParks receive any VAT enquiries from SARS in terms of the Tax Administration Act, No.

28 of 2011 (as amended), as it relates to financial information provided by the Operator upon which SANParks completed and submitted any applicable VAT return.

7.1.3.3 the Operator undertakes to maintain sufficient records as required under section 54(3) of the VAT Act.

7.1.3.4 SANParks acknowledges and accepts that the Operator will take no responsibility for any interest, understatement penalties and late payment penalties levied by SARS, provided that the Operator has calculated the relevant amounts of VAT to be paid correctly and timeously. The Operator hereby indemnifies SANParks against the imposition of any interest, understatement penalties and late payment penalties levied by SARS in the event that the imposition of such interest, understatement penalties and late payment penalties is as a direct result of a calculation or timing error by the Operator.

7.1.4 **Employment of Staff by the Operator**

7.1.4.1 The award of the contract is subject to the transfer of employment in terms of section 197(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995) (as amended) of employees of the Skukuza Facility that elect to be transferred from SANParks to the Operator. Failure to comply with the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995) (as amended) or any amendments to the conditions of employment of such transferred employees in a manner that will have an adverse impact on the employees in any way following the transfer will be considered to be a breach of the Operator's obligations;

7.1.4.2 Procure sufficient resources to enable the Operator to perform its obligations in terms of this Agreement;

7.1.4.3 Employ such employees, whether temporary or permanent, as are reasonably necessary to enable the Operator to comply with its obligations in terms of this Agreement and keep all such employees under its control and management;

7.1.4.4 The Parties hereby agree that SANParks is not the employer of any of the employees and that the relationship between the Operator and SANParks is not intended to result in management and related services to be provided by the Operator becoming a "*temporary employment service*" as this term is defined in section 198 of the Labour Relations Act, No. 66 of 1995 (as amended);

7.1.4.5 The Operator hereby irrevocably indemnifies SANParks and shall keep SANParks indemnified, against all and any claims that may arise against

SANParks, as well as any damage or losses of whatsoever nature that may be suffered by SANParks, pursuant to the employment or termination of employment of its employees;

7.1.4.6 The Operator shall be liable for the payment to the employees of all salaries, employee benefits (including, but not limited to, bonuses, leave pay, and any other costs required to be paid by an employer to an employee in terms of the Law);

7.1.4.7 The Operator shall be liable for the payment of all taxes and levies in respect of the employees, including but not limited to, unemployment insurance in terms of the Unemployment Insurance Act, No. 63 of 2001 (as amended and skills development levies in terms of the Skills Development Levies Act, No. 9 of 1999 (as amended);

7.1.4.8 The Operator hereby irrevocably indemnifies SANParks, and shall keep SANParks indemnified, against all and any claims that may arise against SANParks, as well as any damage or losses of whatsoever nature that may be suffered by SANParks, as a result of the Operator's failure or refusal to pay taxes, levies and charges referred to in clause 7.1.4.7.

7.1.5 **Computer Software and Hardware**

7.1.5.1 The Operator shall ensure that the computer operating system and/or software is compatible with the SANParks system from time to time so as to ensure a seamless integration of data and systems at the Skukuza Facility with those utilised by SANParks throughout its entire operations.

7.1.5.2 The Operator shall ensure the provision of sufficient computer software, hardware and upgrades and replacements in accordance with the terms and conditions of **Schedule 2**; provided that the Operator shall only be entitled to upgrade and/or purchase any additional software and hardware in the event that the existing computer software and hardware is not sufficient or appropriate for the Operator to carry out its duties.

7.1.6 **General**

7.1.6.1 The Operator shall, in the conduct of its duties and functions as manager –

7.1.6.1.1 comply with all reasonable and lawful instructions given to it from time to time by SANParks;

- 7.1.6.1.2 devote such time and attention as may be necessary or required to the performance of its duties and functions as manager;
- 7.1.6.1.3 ensure that at all times it has adequate and properly trained staff and other personnel to discharge its duties and obligations in terms of this Agreement; and
- 7.1.6.1.4 act at a standard which is at least equal to the standard that could reasonably be expected of a good manager of a similar hotel and tourism and conference in South Africa.
- 7.1.6.2 The Operator shall at all times display the highest degree of good faith in the exercise of its powers and performance of duties in terms of this Agreement. In particular the Operator shall at all times exercise its powers and perform its duties for the benefit of SANParks and towards achieving the objectives of SANParks as set out in any business plan of SANParks adopted from time to time;
- 7.1.6.3 The Operator hereby indemnifies SANParks and all its employees, directors and officers, and shall keep SANParks and all its employees, directors and officers indemnified, against any direct loss, reasonable costs, direct or indirect damages (but excluding consequential loss and loss of profit), claim, reasonable expense or proven liability, including but not limited to liability as a result of injury to or death of any person, or direct or indirect damage to or loss or destruction of any property (but excluding consequential loss and loss of profit), to the extent that this is attributable to any gross negligent, negligent or intentional act or omission on the part of the Operator or its employees or sub-contractors;
- 7.1.6.4 The Operator shall be required to establish and maintain an updated data base of suppliers of goods and/or services required in managing of the Business, but subject always to the Procurement Policy.
- 7.1.6.5 The Operator shall be obliged during the Term to undertake the operation, management services and maintenance of the Skukuza Facility and of all of the alterations and developments undertaken thereto by the Operator in accordance with Good Industry Practice;
- 7.1.6.6 The Operator shall compile a status report in relation to the Management Services, which shall be made available to SANParks promptly upon the finalisation thereof, but in any event not later than 5 (five) Business Days after the 25th of each month;

7.1.6.7 The Operator shall not use or process personal information or data pertaining to customers, staff or other officers of SANParks which comes into the Operator's possession pursuant to this Agreement for any purpose other than the provision of the Management Services;

7.1.7 **Environmental Management**

7.1.7.1 The Operator shall comply with the Environmental Specifications set forth in **Schedule 3**;

7.1.7.2 Without limiting the generality of clause 7.1.9.1 above, the Operator shall:

7.1.7.2.1 ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous; and

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

7.1.7.2.3 ensure that the Skukuza Facility achieves and maintains the GSSA EBP 4 Star or similar target;

7.1.7.2.4 ensure that the Operator adheres at all times to the Green Operations Strategy as set out in **Schedule 4**.

7.1.8 **The Operator shall:**

7.1.8.1 operate the Skukuza Facility properly and strictly in accordance with the provisions of the agreed operating manuals and the undertakings made by the Operator in the Bid Submission, specifically acknowledging and considering the unique characteristics of the KNP;

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

- 7.1.8.3 at all times maintain the equipment used in the Skukuza Facility in a clean, orderly and sanitary condition;
- 7.1.8.4 ensure that all personnel and staff employed by the Operator at the Skukuza Facility shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;
- 7.1.8.5 at all times ensure that any products or foodstuffs in stock are fresh, uncontaminated and hygienically and properly stored and shall ensure proper storage, disposal, serving and preparation of all foodstuffs and products;
- 7.1.8.6 conduct hygiene audits at the Skukuza Facility at least on a quarterly basis ("**Hygiene Audit**") and shall furnish SANParks with the outcomes of the Hygiene Audit within five (5) Business Days of its completion;
- 7.1.8.7 at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index;
- 7.1.8.8 ensure that:
 - 7.1.8.8.1 it implements measures to prevent pathogens to be detected on food samples;
 - 7.1.8.8.2 the Skukuza Facility acquires and maintains a certificate of acceptability;
 - 7.1.8.8.3 a cleaning programme in respect of the Skukuza Facility is implemented, including a cleaning schedule and cleaning checklist;
 - 7.1.8.8.4 the staff at the Skukuza Facility is trained in hygiene practices;
 - 7.1.8.8.5 hand washing facilities and proper cleaning chemicals are available;
 - 7.1.8.8.6 food areas are zoned as per food type; and
 - 7.1.8.8.7 the pest control measures such as screening, closure of windows and doors are implemented.
- 7.1.9 The Operator shall ensure that the following packaging is not used on the outside seating area of the Skukuza Facility:
 - 7.1.9.1 condiments sachets and any packaging that may pollute the environment;

7.1.9.2 plastic straws and plastic cutlery;

7.1.9.3 paper serviettes; and

7.1.9.4 butter tubs/pads.

7.1.10 **Operational Standards and Procedures**

7.1.10.1 The Operator undertakes to operate the Skukuza Facility in line with SANParks' Restaurant Procedure Manual, which shall be available for inspection and/or copying by the Operator at all times. The Parties acknowledge that the aforementioned manuals' objective is to assist in the daily operations of the Skukuza Facility and allow for good cooperation between the Parties and may be changed from time to time by mutual agreement in order to satisfy their mutual objectives.

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

7.1.10.3 The Operator shall comply with and subscribe to the minimum standards of responsible tourism as provided for in the Responsible Tourism Requirements – SANS 1162:2016, and adhere at all times to the National Responsible Tourism Guidelines – **Schedule 10**;

7.1.10.4 The Operator shall ensure that all access to the Skukuza Facility complies with the universal accessibility standards stipulated by the Tourism Grading Council of South Africa from time to time.

7.2 **Assessment Rates and Utilities**

7.2.1 SANParks shall be liable for all the Assessment Rates in respect of the Skukuza Facility.

7.2.2 Should the Utilities within the Skukuza Facility or part thereof be provided by SANParks, then SANParks shall -

7.2.2.1 procure that sub-meters in respect of any Utilities are installed in order to monitor consumption or usage thereof by the Skukuza Facility. The Operator shall within

the first month of operation ensure that the sub-meters read and function correctly in order to eliminate conflicts on meter readings during the Term; and

7.2.2.2 the Operator shall pay to SANParks the Utility Charges as measured by such sub-meters, together with VAT thereon, within 7 (seven) days of receipt of an invoice in respect thereof from SANParks.

7.2.3 Should the Skukuza Facility or part thereof be served by a meter or sub-meter which also serves other areas of KNP, then the Operator shall pay to SANParks the Skukuza Facility's share of all the Utility Charges as measured by such meter or sub-meter expressed as a percentage which the total area of the Skukuza Facility bears to the total area of KNP serviced by such meter or sub-meter, together with the VAT thereon.

7.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Utility Charges due and payable by the Operator shall be calculated according to the KNP Tariffs.

7.3 **Consumer Protection Act Requirements**

7.3.1 SANParks shall require the Operator to comply with the provisions of the Consumer Protection Act that affect the Business.

7.3.2 In the event of the Operator failing to comply with the provisions of the Consumer Protection Act applicable to it and fails to remedy such non-compliance before the expiry of the period referred to in a notice by SANParks, SANParks may terminate this Agreement in accordance with Clause 28 by written notice to the Operator.

8. **AUTHORITY OF THE OPERATOR**

8.1 Subject to the terms and conditions set out in clause 11, SANParks hereby gives to the Operator the authority to:

8.1.1 place advertisements and undertake such other publicity campaigns, marketing and promotions as the Operator may deem appropriate;

8.1.2 enter into, settle and execute contracts for the provision of services on behalf of SANParks for maintenance and repairs and for all other purposes as may be

appropriate in the circumstances;

- 8.1.3 acquire equipment, machinery and the like for use in connection with the maintenance of the Skukuza Facility or the performance of the Operator's functions as provided for in the budget approved for by the Management Committee;
- 8.1.4 receive all monies payable to SANParks from time to time and provide receipts therefor and deposit such collections directly into the credit of the Designated Account;
- 8.1.5 instruct attorneys approved by the Management Committee and to take any steps in any court of law to –
 - 8.1.5.1 recover any monies payable to SANParks;
 - 8.1.5.2 enforce any other legal rights;
 - 8.1.5.3 institute and/or defend any action or other proceedings and to withdraw, settle and/or compromise same, including appointment of counsel;
 - 8.1.5.4 defer any matter to mediation or arbitration and to carry out and perform any award made thereunder; and/or
 - 8.1.5.5 sign any documentation, including affidavits, to give effect to the foregoing;
- 8.1.6 procure goods and services in accordance with the Procurement Policy; and
- 8.1.7 generally to do all such things and execute all such documents as may at any time at the absolute discretion of the Operator appear necessary for the proper performance of its duties and obligations in terms of this Agreement.

- 8.2 The Operator warrants that it shall exercise due care and attention in the exercise of its powers and performance of its functions in terms of this Agreement.

9. MANAGEMENT COMMITTEE

- 9.1 The Parties shall establish a Management Committee comprising of not more than 4 (four) members. Each Party shall be entitled to appoint 2 (two) members to the Management Committee.

- 9.2 The Management Committee shall be responsible for the overall co-ordination, supervision and direction of the implementation of this Agreement, including but not limited to –
- 9.2.1 scheduling regular meetings and feedback sessions between the Parties;
- 9.2.2 receiving and considering reports by the Operator regarding the provision of the Management Services at such intervals as SANParks may determine in writing from time to time;
- 9.2.3 approving the operational plan which shall be submitted by the Operator to Management Committee on annual basis, at such intervals as SANParks may determine in writing from time to time; and
- 9.2.4 any other matters which SANParks may assign to the Management Committee from time to time in writing.
- 9.3 The Management Committee shall elect any of its members as the chairperson of its meetings. Such chairperson shall not have a casting vote. The Management Committee shall cause minutes of its meetings to be kept.
- 9.4 A quorum of the meetings of the Management Committee shall be all the majority of members present at the commencement of the meeting and present in attendance throughout, provided at least one member appointed by either Party is in attendance.
- 9.5 Decisions of the Management Committee shall be taken on the basis of unanimity, provided that any matter which requires the approval of each of the Parties or that of its board of directors shall be referred to each of the Parties for decision. The decision of each of the Parties in respect of such matters shall be evidenced by a written resolution of the relevant board of directors.
- 9.6 If a deadlock arises on any decision put to the Management Committee (“Deadlock”), the Management Committee shall, within 5 (five) Business Days of such Deadlock arising, attempt to resolve the differences. If the Management Committee is unable to resolve the Deadlock within the aforesaid time period (“Deadlock Failure”), the Deadlock shall be referred to the respective chief executive officers (“CEOs”) of the Parties or their nominees within 5 (five) Business Days of the Deadlock Failure. A Party may give written notice

referring the Deadlock to the Parties. The notice shall include a summary of the issues in dispute.

9.7 The respective CEOs of the Parties or their nominees shall, within 10 (ten) Business Days of the notice referred to in 9.6, attempt to resolve the Deadlock amicably and in good faith, by means of telephonic conference, or other electronic means, as may be appropriate.

9.8 If the Deadlock is not resolved within the time period referred to in 9.7, the aforesaid respective CEOs or their nominees, as the case may be, shall agree on a time and place for them to meet to try and resolve the Deadlock. In the absence of such agreement, the meetings in respect of any Deadlock shall be at a place and time, nominated for that purpose by the CEO of SANParks, provided that he shall have due regard to the convenience of the place so nominated. Any attempt to resolve a Deadlock in terms of this clause 9.7 shall take place within 5 (five) Business Days of expiry of the period referred to in clause 9.7.

9.9 In the event the Deadlock cannot be resolved, and such Deadlock is material to the relationship between the Parties, the matter shall be dealt with in accordance with the provisions of clause 32.

10. KEY PERFORMANCE INDICATORS (KPI)

10.1 The Operator shall assess the Skukuza Facility and submit its proposals in writing to SANParks as to what it believes will be reasonable KPI benchmarks for it to achieve, within 21 (twenty one) Business Days of the Signature Date.

10.2 SANParks shall assess the submissions from the Operator as provided in terms of clause 10.1 as soon as reasonably possible and in any event within 10 (ten) Business Days of receipt.

10.3 Thereafter the Parties shall engage with each other to settle the KPI's. The Parties shall use their best endeavours to agree on the KPI within 2 (two) months after the Commencement Date. In the event that the Parties are not able to agree on the KPI's or any of them, either Party may refer the dispute to arbitration in terms of this Agreement, after giving the other party 21 (twenty one) Business Days' notice in writing that it is doing so.

10.4 The Operator undertakes that it will perform its duties and functions in terms of this Agreement in accordance with the targets set out in the KPI's as agreed with SANParks or determined in terms of arbitration as the case may be. The due and proper performance of the KPI's by the Operator shall be a material provision of this Agreement.

10.5 The KPIs shall be reviewed by SANParks and the Operator annually at the anniversary of the Signature Date. The provisions of clause 10.3 shall apply, amended as necessary, in regard to any variations to the KPI's.

11. EXPENDITURE

11.1 Capital Expenditure

11.1.1 SANParks shall provide all funding required for Capital Expenditure at the Skukuza Facility in accordance with the operational plan agreed with the Operator from time to time.

11.1.2 The Parties record that some of the Capital Expenditure items as set out more fully in **Schedule 6**, shall not have been provided by SANParks on the Commencement Date ("Outstanding Items"). The Parties agree that –

11.1.2.1 at the commencement of this Agreement the Operator shall confirm the Outstanding Items with SANParks and incur all expenditure related to the procurement and/or installation of the Outstanding Items;

11.1.2.2 upon completion of the procurement and/or installation of the Outstanding Items, the Operator shall render an invoice to SANParks for reimbursement in respect of such expenditure; and

11.1.2.3 SANParks shall settle such invoice within 7 (seven) Business Days of presentation thereof.

11.1.3 The Operator shall upon written request by SANParks render a detailed account of all expenditure incurred by it on behalf of SANParks pertaining to the Capital Expenditure.

11.1.4 No Capital Expenditure shall be incurred if not provided for in the operational plan agreed to by the Management Committee and approved by SANParks.

11.2 Operational Expenditure

11.2.1 The Operator shall provide all funding required for operational expenditure at the Skukuza Facility. The operational expenditure shall entail all expenses that are necessary for the conduct of the Business and shall include, but not be limited to the costs of advertising, consumables, marketing, legal fees, security, utilities, maintenance and repairs, with exception of:

11.2.1.1 insurance expenses for buildings and assets, as detailed in the SANParks asset register; and

11.2.1.2 IT Wi-Fi infrastructure costs.

11.2.2 The Operator shall prepare on an annual basis a budget and cashflow forecast for carrying out the Management Services.

12. CONFLICT OF INTERESTS

12.1 The Operator shall disclose to SANParks in writing of any interests which it or its employees may have, directly or indirectly, in any Person with whom it intends contracting in terms of this Agreement prior to so doing, and shall only be entitled to contract with such Person with the approval of SANParks.

12.2 The Operator shall further disclose any interests which it or its employees may have, directly or indirectly, in any Person who is a party to any of the service agreements to be concluded by the Operator on behalf of SANParks in respect of the Skukuza Facility.

13. ACCESS TO RECORDS

SANParks and the Auditors or their agents shall at all reasonable times have access to all documents in the possession of the Operator relating to the Management Services.

14. DOCUMENTS

The Operator shall (at its cost) keep all documents relating to the Management Services for the Term for a period of 5 (five) years after the termination of this Agreement and shall allow SANParks and the Auditors or their agents access to the documents in the Operator's possession should they require them at any time during the said 5 (five) years period.

15. LABOUR LAWS

- 15.1 The Operator agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in relation to the Business and shall use its best endeavours to ensure similar compliance by its contractors, sub-contractors at all levels, assignees and agents.
- 15.2 The Operator undertakes to promptly notify SANParks upon its employees embarking on and/or participating in any form of strike or industrial action as a result of any dispute between the Operator and its employees for any reason whatsoever.

16. OPERATOR COVENANTS

- 16.1 Subject to the provisions of this Agreement, the Operator shall conduct and manage the Management Services:
- 16.1.1 at its own cost and risk;
 - 16.1.2 in compliance with all applicable Laws, Regulatory Provisions and the Consents;
 - 16.1.3 in compliance with all applicable health and safety standards; and
 - 16.1.4 in accordance with Good Industry Practice.
- 16.2 The Operator shall take all reasonable steps to ensure that all the persons visiting or working at the Skukuza Facility, adhere to, abide by and comply with:
- 16.2.1 all Regulatory Provisions, the Environmental Specifications in respect of KNP and specifically in respect of the Skukuza Facility and the EIA;
 - 16.2.2 the terms of this Agreement; and
 - 16.2.3 any valid and enforceable directives or rules issued by the Managing Executive from time to time. In cases where the Operator believes that the Managing Executive has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Management Services, the Operator shall have the right to appeal against such rule or directive with SANParks and/or any other person

determined by SANParks, in its sole and absolute discretion. SANParks and/or such other person determined by SANParks will verify whether the directive or rule in question was valid and consistent with practice elsewhere in the Park. Pending the results of such an appeal, the Operator shall abide by the said directive or rule.

- 16.3 The Operator shall be responsible for:
- 16.3.1 obtaining and keeping current all the Consents which may be required for the performance of its obligations under this Agreement;
 - 16.3.2 implementing each consent within the period of its validity in accordance with its terms;
 - 16.3.3 undertaking, according to the terms of this Agreement, all of its obligations within the time periods specified;
 - 16.3.4 maintaining and keeping the Skukuza Facility clean including the area of responsibility described in **Schedule 1** hereto; and
 - 16.3.5 maintaining the level 4 accreditation as defined in the GSSA (Green Building Council South Africa) for EBP (Existing Building performance).
- 16.4 Without prejudice to Clauses 16.3.1 and 16.3.2, the Operator shall obtain all necessary permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the relevant Regulatory Provisions governing all facets of the conduct of the Management Services during the Term.
- 16.5 The Operator shall bear all risks and costs with respect to material damage to the Skukuza Facility or the environment caused by the operation of the Skukuza Facility during the Term arising from any act whatsoever, including an omission by the Operator.
- 16.6 The Operator shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any environmental or health hazards and to ensure the health and safety of persons visiting the Skukuza Facility.

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

17. GOOD FAITH

- 17.1 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for, or incidental to, the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 17.2 The Parties undertake to act towards one another in good faith in all respects relating to this Agreement.

18. WARRANTIES

18.1 Operator Warranties

The Operator warrants that:

- 18.1.1 it has taken all necessary actions to authorise its execution of this Agreement;
- 18.1.2 the execution and performance of all of its obligations in terms of this Agreement does not and will not contravene any provision of the founding documents of the Operator as at the Signature Date and the Commencement Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Operator as at the Signature Date and at the Operation Commencement Date;
- 18.1.3 for the Term, no encumbrances shall be granted or created in respect of the Business Assets (other than the Licensed Intellectual Property not owned by the Operator), including that it has not registered or granted any security interests over the Business Assets which could in any manner (whether in contract or in Law) defeat or override SANParks' interest in the Management Services Assets;
- 18.1.4 all Consents required by the Operator to provide the Management Services shall be

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

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

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

- 18.1.10 it is not a Restricted Enterprise;
- 18.1.11 in being awarded its appointment under this Agreement, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a Corrupt Act;
- 18.1.12 as at the Signature Date and as at the Commencement Date:
 - 18.1.12.1 the Operator has an authorised and issued share capital as set out in the Constitutional Documents and all shares in the issued share capital of the Operator are fully paid up; and
 - 18.1.12.2 all shares in the issued share capital of the Operator are legally and beneficially owned by the Shareholders.

18.2 **SANParks Warranties**

SANParks warrants that –

- 18.2.1 it has taken all necessary actions to authorise the execution of this Agreement;
- 18.2.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to any of its assets related to this Agreement;
- 18.2.3 it has lawfully secured the Consents required by it in terms of Law to conclude this Agreement; and
- 18.2.4 no restrictive conditions of title exist over KNP that would in any manner prevent or obstruct the Operator from performing the Management Services

19. THE ENVIRONMENT

- 19.1 During the Term, the Operator shall manage and carry out the Management Services at all times in an environmentally responsible way by adopting methods and practices which are appropriate for the provision of Management Services in a proclaimed National Park and shall adhere to the Regulatory Provisions and the Environmental Specifications.
- 19.2 The Operator shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the environment within the Skukuza Facility and/or KNP.
- 19.3 The Operator shall take all reasonable steps in the conducting of the Management Services to prevent and limit the occurrence of any environmental or health hazards and to ensure the health and safety of others and the general public.
- 19.4 The Operator shall comply with its statutory duties in terms of the Environmental Laws and at all times take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring and in so far as such harm to the environment is authorised by SANParks, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the environment.

20. SANPARKS' UNDERTAKINGS

- 20.1 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or similar acts of SANParks hereunder shall be given, made and done in writing.
- 20.2 SANParks shall continue, in the ordinary course of business, to market and promote the Skukuza Facility and co-operate with the Operator in preparing marketing and promotional material so as to ensure that the Skukuza Facility is properly marketed and promoted as an integral part of the Park and the marketing and promotional programme for the Park as a whole, in accordance with the requirements stipulated in **Schedule 16 – Branding Requirements**.
- 20.3 SANParks will co-operate with and assist the Operator in any manner as may reasonably be necessary to ensure the continued viability of the Skukuza Facility and will not engage

in acts or omissions, which may materially affect the rights or interests of the Operator in respect of the Skukuza Facility.

20.4 Without limiting the generality of Clause 20.3, SANParks reserves the right to, where a dispute that might have a negative effect on SANParks' guests arises as per clause 32, take reasonable actions to prevent inconvenience to SANParks' guests.

20.5 SANParks will operate and manage KNP and will promote it in such manner as may reasonably be necessary to ensure the continued viability and sustainability of KNP as a National Park and as a sustainable and attractive tourist and conservation undertaking.

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

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

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

21. **BLACK ECONOMIC EMPOWERMENT**

21.1 The Operator shall ensure compliance with all Regulatory Provisions relating to B-BBEE.

22. **FINANCIAL PROVISIONS AND PAYMENT**

22.1 **Gross Revenue**

22.1.1 For the purposes of this Agreement "**Gross Revenue**" shall mean:

22.1.1.1 any and all income or revenue received by or accruing to SANParks from all activities carried on, at or by virtue of the Management Services, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of IFRS or GRAP (depending on the principles / standards used by SANParks). Without derogating from its generality, the term "**Gross Revenue**" shall mean revenue before the deduction of:

- 22.1.1.1.1 bad debts (or provisions therefore);
- 22.1.1.1.2 commissions or similar consideration paid or payable;
- 22.1.1.1.3 cash, credit-card or similar discounts or commissions; and
- 22.1.1.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a related party;
- 22.1.1.2 and Gross Revenue shall include:
 - 22.1.1.2.1 commissions received or receivable; and
 - 22.1.1.2.2 rentals and other fees received or receivable;
- 22.1.1.3 but shall exclude:
 - 22.1.1.3.1 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of IFRS or GRAP (depending on the principles / standards used by SANParks);
 - 22.1.1.3.2 interest received or receivable;
 - 22.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
 - 22.1.1.3.4 transfers from reserves; and
 - 22.1.1.3.5 bad debts recovered.

22.2 Management Fees

- 22.2.1 SANParks shall pay the Management Fee to Operator each and every month from the Commencement Date.
- 22.2.2 The monthly Management Fee payable by SANParks will be calculated using the formula set out in **Schedule 7 – Management Fees**.

- 22.2.3 For purposes of reconciling the Management Fees payable by SANParks in any given Financial Year, the Operator shall, within 120 (one hundred and twenty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, whereafter SANParks shall verify and reconcile the Management Fees due against the Management Fees actually paid in the relevant Financial Year.
- 22.2.4 In the event that subsequent to the enquiry contemplated in clause 22.2.3 above, the Management Fees paid by SANParks are less than the Management Fees due to the Operator in the relevant Financial Year (the “**Outstanding Fees**”), SANParks shall pay the Outstanding Fees to the Operator within 7(seven) Business Days of demand.
- 22.2.5 All Management Fees or other amounts payable by the SANParks to the Operator in terms of this Agreement shall be exclusive of VAT.

22.3 **Taxes**

- 22.3.1 The Operator will be responsible for all taxes of general application in respect of the Management Services or any other activities conducted by it pursuant to this Agreement. These taxes will exclude any capital gains tax, income tax; VAT or other taxation on income which is earned by SANParks or, notwithstanding this Agreement, any tax payable by SANParks.
- 22.3.2 All payments to be made by either Party to the other in terms of this Agreement shall be free of set-off or any other deductions whatsoever and shall be paid by way of electronic funds transfer into the bank account specified by that Party in its invoices or in otherwise in writing from time to time.

23. **PERFORMANCE BOND**

- 23.1 The Operator shall provide to SANParks the Performance Bond which shall be operative from the Signature Date, in favour of SANParks issued by a bank or financial institution acceptable to SANParks substantially in the format specified in **Schedule 15 – Performance Bond**.

- 23.2 The Operator shall maintain a valid Performance Bond (in accordance with the provisions hereof) from the Signature Date until 90 (ninety) Business Days after the expiry or earlier termination of this Agreement.
- 23.3 Within 90 (ninety) Business Days of the expiry or earlier termination of this Agreement, SANParks shall release all or so much of the Performance Bond as shall remain undrawn after such expiry or termination.
- 23.4 The amount to be guaranteed by the Performance Bond for the first twelve months period as from the Signature Date shall be the sum of R250 000.00 (two hundred and fifty thousand rand).
- 23.5 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the anniversary of this Agreement, such that the amount to be guaranteed by the Performance Bond for the relevant year is not less than the amount indicated in Clause 23.4 as adjusted to reflect changes in the CPI since Bid Submission.
- 23.6 The Performance Bond shall secure the Operator's performance under this Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Operator of this Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Operator of any Regulatory Provision(s), Laws, Legislation or Environmental Specifications and payment obligations hereunder. The Performance Bond may also be called upon for any delay in the payment of sums due by the Operator to SANParks for any cause howsoever arising.
- 23.7 Prior to enforcing the Performance Bond, SANParks shall give notice to the Operator, informing the Operator of the breach giving rise to the right of enforcement of the Performance Bond. If such breach is not remedied within the remedy period, SANParks may enforce the Performance Bond.
- 23.8 The Performance Bond may only be enforced to the extent of any costs, losses, damages or expenses suffered or incurred and/or reasonably expected to be suffered or incurred as a result of the breach that gave rise to the right to enforce the Performance Bond.

24. **INSURANCE**

- 24.1 With effect from the Commencement Date the Operator irrevocably indemnifies, holds and undertakes to hold SANParks harmless against all losses suffered and/or damages incurred of whatsoever nature and howsoever arising, by SANParks out of or, in the widest sense, in connection with the entering into by SANParks of this Agreement.
- 24.2 Subject to the provisions of this Agreement, SANParks, its servants and other agents shall be relieved of all liability and indemnified for any loss or damages suffered as a result of:
- 24.2.1 a breach of any of the Operator's warranties; and
- 24.2.2 any breach of the provisions of this Agreement by the Operator or its employees, agents or Subcontractors, whether such breach occurs before or after the loss suffered by SANParks, provided that the aforesaid shall only apply if such breach is the fundamental cause of such loss.
- 24.3 The Operator hereby warrants that it possesses, as at the Commencement Date, valid and sufficient indemnity insurance against any liability that it may incur in terms of this Agreement, including, but not limited to:
- 24.3.1 public liability and third party insurance;
- 24.3.2 employer's liability insurance; and
- 24.3.3 business interruption insurance.
- 24.4 The Operator shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 24 and undertake not to commit any act or permit any act to be committed or omit to do anything which in any way affects or vitiates such insurance policy or policies.
- 24.5 The Operator undertakes to provide SANParks with certified copies of the certificates of insurance and certified copies of the insurance policies within seven (7) days of the Commencement Date to be attached to this Agreement as **Schedule 14**. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.

- 24.6 SANParks shall insure all the buildings / physical structures, and all the internal and movable assets of the Skukuza Facility with a reputable insurance firm.

25. AUDIT RIGHTS

- 25.1 The Operator shall maintain (or procure that its staff will maintain, as the case may be) an appropriate and reasonable audit trail of all:

25.1.1 financial transactions relating to the Management Services and invoices arising out of this Agreement; and

25.1.2 non-financial transactions relating to implementation of this Agreement.

- 25.2 The Operator shall provide (or procure, as the case may be) that SANParks, its internal audit staff, its Auditors or other consultants (as notified in writing) have access at all reasonable times to:

25.2.1 Skukuza Facility (or any part of that facility);

25.2.2 the Operator's staff responsible performing or who have performed Management Services; and

25.2.3 all data and records relating to the provision of the Management Services, whether held by the Operator or its staff;

25.2.4 review the content of and to determine compliance by the Operator or any of its staff with:

25.2.4.1 the terms and conditions of this Agreement; and

25.2.4.2 all applicable Laws and regulatory requirements arising out of or in connection with the implementation of this Agreement.

- 25.3 The Operator shall provide (or procure that its staff will, as the case may be) all reasonable assistance and co-operation as may be required by SANParks, its internal audit staff and Auditors or consultants in performing any audit or inspection as envisaged in this clause 24.

25.4 The Operator shall maintain and provide SANParks access (or procure that its staff will, as the case may be) to all records, documents and other information required to meet SANParks' audit and inspection rights under this Agreement until the later of 5 (five) years after:

25.4.1 Termination Date; or

25.4.2 Expiry Date,

whichever is the earlier.

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

25.6 SANParks may, on reasonable suspicion of fraud or fraudulent misrepresentation by the Operator which has a direct impact on SANParks and without any prior notice to the Operator, meet and consult with the Operator's auditors regarding the Operator's accounts and operations from time to time at the cost of SANParks, subject to Clause 25.8 below.

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

25.8 Notwithstanding the provisions of Clauses 25.6 and 25.7 above, if the investigations conducted conclude that the Operator has committed a fraud or fraudulent misrepresentation, as contemplated in Clauses 25.6 and 25.7 above, then the Operator shall be liable for the reasonable costs of meeting(s) and/or audit(s).

26. **SANPARKS STEP-IN**

26.1 If SANParks reasonably believes that it needs to take any action in connection with the Management Services because a serious and urgent risk arises to the health or safety of persons or property, or to the Environment, or to national security and/or to discharge a statutory duty, then SANParks shall in its sole discretion be entitled to take action in accordance with the following provisions, provided that SANParks must cease to exercise

its rights in terms of this Clause when the reason for the exercise of the rights no longer applies.

26.2 If pursuant to Clause 26.1 SANParks wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Operator in writing of -

26.2.1 the action it wishes to take;

26.2.2 its reasons for taking such action;

26.2.3 the date when it wishes to commence such action;

26.2.4 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

26.2.5 to the extent practicable, the effect of such action on the Operator and its obligations to perform the Management Services during the Step-in Period.

26.3 Following the service of the notice referred to in Clause 25.2, SANParks shall take such action as notified thereunder and any ancillary action as it reasonably believes is necessary (the "Necessary Action") and the Operator shall give all reasonable assistance to SANParks in the conduct of such Necessary Action.

26.4 If the Operator is not in breach of any of its obligations under this Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and such action prevents the Operator from providing any part of the Management Services:

26.4.1 the Operator shall be relieved from such obligations; and

26.4.2 in respect of the time period over which such Necessary Action is conducted and provided that the Operator provides SANParks with such reasonable assistance as SANParks may need in the conduct of such Necessary Action (such assistance, however, to be at the expense of SANParks to the extent of any incremental costs).

26.5 If the Necessary Action is taken as a result of a breach by the Operator of any of its obligations under this Agreement, then for so long as and to the extent that such Necessary

Action is taken and prevents the Operator from performing any of its obligations, the Operator shall be relieved from such obligation.

26.6 The relief of the Operator's obligations as contemplated in Clause 26.5 above shall apply only if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Operator Default, then SANParks must serve a notice in terms of Clause 25 (*SANParks' Options*) requiring the Operator to remedy the Operator Default or to put forward a Remedial Programme.

26.7 Where the provisions of Clause 26.5 apply, the Operator shall be liable to SANParks for an amount equal to SANParks' reasonable costs of taking any Necessary Action as contemplated in Clause 26.5.

27. **FORCE MAJEURE**

27.1 **Definition and Procedure**

27.1.1 For the purposes of this Agreement, "Force Majeure" means any of the following events or circumstances which are beyond the reasonable control of the party giving notice of force majeure, including but not limited to:

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

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

27.1.1.3 chemical or biological contamination of the Skukuza Facility from any of the events referred to in Clauses 27.1.1.1 and 27.1.1.2 above, that directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

27.1.2 Subject to Clause 27.1.3, the Party claiming relief shall be relieved from liability under this Agreement to the extent that it is not able to perform all or a material part of its

obligations under this Agreement as a result of an event of Force Majeure.

- 27.1.3 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 27.1.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavors to remedy its failure to perform; and
- 27.1.3.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under Clause 24.
- 27.1.4 The Party claiming relief shall serve written notice on the other Party within fifteen (15) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure Event.
- 27.1.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further period of 5 (five) Business Days. The written notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 27.1.3.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it and/or its effects.
- 27.1.6 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations will be resumed.
- 27.1.7 If, following the issue of any notice referred to in Clause 27.1.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.
- 27.1.8 Neither SANParks nor the Operator shall have any right to payment or otherwise in relation to the occurrence of an event of Force Majeure.

- 27.1.9 The Parties shall endeavor to agree any modifications to this Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. This Agreement shall terminate in terms of Clause 27.2 if no such agreement is reached.

27.2 Termination for Force Majeure

If, in the circumstances referred to in Clause 27.1.9, the Parties have failed to reach agreement on any modification to this Agreement pursuant to that Clause, within one hundred and eighty (180) days of the date on which the Party affected serves notice on the other Party in accordance with that Clause, either Party may at any time afterwards terminate this Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any material obligation under this Agreement.

28. OPERATOR DEFAULT

28.1 Definition

"Operator Default" means any of the following events or circumstances:

- 28.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, No. 24 of 1936 or the Companies Act) being entered into by or in relation to the Operator;
- 28.1.2 a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any business rescue proceedings, winding-up, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of the Operator (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);
- 28.1.3 the Operator ceasing to carry on business;
- 28.1.4 a resolution being passed or an order being made for the business rescue proceedings, winding-up, liquidation or dissolution of the Operator (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);

- 28.1.5 the Operator commits a breach of any of its material obligations under this Agreement, which is not specifically mentioned in this Clause 27.1. For the avoidance of doubt for the purposes of this Agreement a failure to comply with any of the obligations imposed on the Operator as set out in the **Schedules** to this Agreement shall be deemed to be a breach of a material obligation;
- 28.1.6 The Operator or any of its directors or officers is found guilty of a criminal offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 100,000 (one hundred thousand Rand) or imprisonment for a period exceeding six (6) months unless such finding is the subject of an appeal that is being diligently pursued by the Operator or relevant director or officer;
- 28.1.7 the Operator or any of its directors or officers falsifies any report, document or information that is provided by the Operator to SANParks;
- 28.1.8 breach of any provision of this Agreement has occurred at least 3 (three) times in any Financial Year and the Operator having failed to remedy such breach within the time stipulated therefor in terms of a breach notice issued to it by SANParks in terms of this Agreement;
- 28.1.9 the Operator breaches any of the provisions relating to its financial obligations in terms of this Agreement;
- 28.1.10 the Operator fails to obtain and maintain any insurances as required in terms of this Agreement; or
- 28.1.11 the Operator fails to commence trading at the Skukuza Facility on the Commencement Date.

28.2 SANParks' Options

- 28.2.1 On the occurrence of an Operator Default, or within a reasonable time after SANParks becomes aware of the same, SANParks may:
- 28.2.1.1 in the case of any of the Operator Default referred to in Clauses 28.1.1; 28.1.2; 28.1.3; 28.1.4; 28.1.6, 28.1.7, 28.1.8 and 28.1.10 terminate this Agreement in its entirety by notice in writing having immediate effect;

- 28.2.1.2 in the case of any other Operator Default referred to in Clauses 28.1.5, 28.1.9 and 28.1.11, serve notice of default on the Operator requiring the Operator to remedy the Operator Default referred to in such notice of default (if the same is continuing) within ten (10) Business Days of such notice of default; or
- 28.2.1.3 request that the Operator put forward, within 10 (ten) Business Days of a notice of default, a reasonable programme for remedying the Operator Default or to remedy the underlying cause of such Operator Default ("**Remedial Programme**"). The Remedial Programme shall specify in reasonable detail the manner in and the latest date by which, such Operator Default is proposed to be remedied. The Operator shall only have the option of putting forward a Remedial Programme if it first notifies SANParks within 5 (five) Business Days of such notice of Operator Default that it proposes to do so.
- 28.2.2 If the Operator Default is notified to the Operator in a notice of default in terms of Clause 28.2.1.2 and the Operator Default is not remedied before the expiry of the period referred to in the notice, then SANParks may terminate this Agreement with immediate effect by written notice to the Operator.

28.3 **Remedy Provisions**

- 28.3.1 Where the Operator puts forward a Remedial Programme in accordance with Clause 28.2.1.3, SANParks shall have 20 (twenty) Business Days from receipt of the same within which to notify the Operator that it does not accept the Remedial Programme, failing which SANParks shall be deemed to have accepted the Remedial Programme. SANParks shall act reasonably in rejecting the Remedial Programme and shall give reasons for its decision. Where SANParks notifies the Operator that it does not accept the Remedial Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedial Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedial Programme (as the same may have been amended by agreement) will remedy the Operator Default in a reasonable manner and within a reasonable time period.
- 28.3.2 If -
- 28.3.2.1 the Operator Default is not remedied before the expiry of the period referred to in the notice; or

- 28.3.2.2 where the Operator puts forward a Remedial Programme which has been accepted by SANParks, the Operator fails to achieve any material element of the Remedial Programme or to complete the Remedial Programme by the specified end date for the Remedial Programme; or
- 28.3.2.3 any Remedial Programme put forward by the Operator is rejected by SANParks as not being reasonable, and the dispute resolution procedure does not find against that rejection,
- 28.3.3 then SANParks may terminate this Agreement in its entirety by written notice to the Operator with immediate effect; provided that for the purposes of Clause 27 if the Operator's execution of the Remedial Programme is adversely affected by the occurrence of an event of Force Majeure, subject to the Operator complying with the mitigation and other requirements in this Agreement concerning Force Majeure, the time for execution of the Remedial Programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the Force Majeure event which is agreed by the Parties.

28.4 **SANParks' Costs**

- 28.4.1 The Operator shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 28 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).
- 28.4.2 SANParks shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of SANParks (to terminate or otherwise) under this clause, are in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Operator (or to take any action other than termination of this Agreement).

29. **SANPARKS DEFAULT**

29.1 **Definition**

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

29.1.1 a breach by SANParks of the material obligations under this Agreement which substantially frustrates or renders it impossible for the Operator to perform its obligations under this Agreement for a continuous period of at least three (3) months; and

29.1.2 a breach by SANParks of its obligations under this Agreement to make payment of any amounts due and payable to the Operator for a continuous period of at least thirty (30) days.

29.2 **Termination for SANParks Default**

29.2.1 On the occurrence of a SANParks Default, or within ten (10) days after the Operator becomes aware of same, the Operator may serve notice on SANParks of the occurrence (and specifying details) of such SANParks Default. If the relevant matter or circumstance has not been remedied or rectified within thirty (30) days of such notice, the Operator may serve a notice on SANParks terminating this Agreement with immediate effect.

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

30. **CORRUPT GIFTS AND FRAUD**

30.1 **Definition and Warranty**

The Operator warrants that in entering into this Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this Agreement immediately in terms of Clause 28.1.5.

"Corrupt Act" means:

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

30.1.2 for doing or not doing (or for having done or not having done) any act in relation to the

obtaining or performance of this Agreement or any other contract with SANParks or any other organ of state; or

30.1.3 for showing or not showing favor or disfavor to any person in relation to this Agreement or any other contract with SANParks or any other organ of state;

30.1.4 entering into this Agreement or any other contract with SANParks or any other organ of state in connection with which commission has been paid or has been agreed to be paid by the Operator or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to SANParks;

30.1.5 committing any offence:

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

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

30.1.5.3 at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with SANParks or any other public body; or

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

30.2 **Termination Amount for Corrupt Gifts and Fraud**

30.2.1 The Operator shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 30 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

30.2.2 The rights of SANParks (to terminate or otherwise) under this Clause are in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Operator (or to take any action other than termination of this Agreement).

31. EFFECTS OF TERMINATION

31.1 Termination

Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this Clause 31 (*Effects of Termination*).

31.2 Transfers to SANParks on Termination

On termination of this Agreement for any reason in accordance with its terms after the Commencement Date the Operator shall:

- 31.2.1 procure that any Transferable Licensed Intellectual Property procured either by the Operator or a Subcontractor and required for the continued performance of the Management Services after the Termination Date shall be provided to SANParks and SANParks shall be granted a perpetual non-exclusive, royalty-free licence to use such Transferable Licensed Intellectual Property, irrespective of whether or not such Transferable Licensed Intellectual Property is owned by the Operator or a Subcontractor, or not;
- 31.2.2 deliver to SANParks (as far as not already delivered to SANParks) one complete set of:
 - 31.2.2.1 maintenance, operation and training manuals for the Skukuza Facility and where they do not exist, the Operator has an obligation in terms of this Agreement to acquire or prepare them; and
 - 31.2.2.2 the historical operating data and plans of the Skukuza Facility, its furniture, fittings and equipment in a format acceptable to SANParks;
- 31.2.3 use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical equipment used or made available by the Operator under this Agreement and included in the Management Services are assigned, or otherwise transferred, to SANParks;
- 31.2.4 ensure that provision is made in all relevant contracts of any description whatsoever to which the Operator or any Subcontractor is a party to ensure that SANParks will be

in a position to exercise its rights, and the Operator will be in a position to comply with its obligations in accordance herewith;

- 31.2.5 remove from the Skukuza Facility all property not owned by SANParks and if it has not done so within 10 (ten) Business Days after any notice from SANParks requiring it to do so, SANParks may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred for the credit of the Operator;
- 31.2.6 deliver to SANParks:
 - 31.2.6.1 any keys, remote access apparatus and computer access cards to the Skukuza Facility;
 - 31.2.6.2 without prejudice to Clause 39 (*Intellectual Property of SANParks*), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Skukuza Facility, including without limitation, the Transferable Licensed Intellectual Property;
 - 31.2.6.3 complete asset registers and data registers pertaining to the Management Services; and
 - 31.2.6.4 vacate the Skukuza Facility and shall leave same in a safe, clean and orderly condition.

31.3 **Transitional Arrangements**

- 31.3.1 For a period of 12 (twelve) months both before and after the Expiry Date or in the case of any earlier termination after the Commencement Date for the period from the service of notice of termination to 12 (twelve) months after the Termination Date, the Operator shall have the following obligations -
 - 31.3.1.1 the Operator shall co-operate fully with SANParks and/or any successor providing services to SANParks in the nature of any of the Management Services or any part thereof in order to achieve a smooth transfer and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of SANParks employees and members of the public;
 - 31.3.1.2 if SANParks wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or

similar to, the Management Services or any of them) following the expiry or earlier termination of this Agreement, the Operator shall co-operate with SANParks fully in such tender process including (without limitation) by:

- 31.3.1.2.1 providing any information which SANParks may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Operator (and, for the purposes of this Clause 31.3.1.2.1, “commercially sensitive” shall mean information which would if disclosed to a competitor of the Operator or Subcontractor give that competitor a competitive advantage over the Operator or Subcontractor and thereby prejudice the business of the Operator or Subcontractor).

31.4 Continuing Obligations

Save as otherwise expressly provided in this Agreement -

- 31.4.1 termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Expiry Date or Termination Date, as the case may be; and
- 31.4.2 termination of this Agreement shall not affect the continuing rights and obligations of the Operator and SANParks under this Clause 31 or under any other provision of this Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

31.5 Termination by reason of Expiry

- 31.5.1 For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary in this Agreement -
 - 31.5.1.1 if this Agreement terminates on the Expiry Date; or
 - 31.5.1.2 if this Agreement terminates as a result of a SANParks Default, a Operator Default, an event of Force Majeure or a Corrupt Act.
- 31.5.2 SANParks shall not be liable for payment of any compensation to the Operator or any Subcontractor or any third party by virtue of any transfer or other effect of termination provided for in this Clause 31 (*Effects of Termination*).

32. DISPUTE RESOLUTION

32.1 Referable Disputes

The provisions of this Clause 32 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

32.2 Internal Referral

32.2.1 Unless otherwise stipulated in this Agreement, if a dispute arises in relation to any aspect of this Agreement, the Parties shall through mutual consultation, without involving any third parties, use their reasonable endeavours to resolve the dispute within 10 (ten) Business Days of written request therefor by either Party. The Parties agree that such consultations shall be conducted among the CEOs of the Parties or their nominees.

32.2.2 In the event that the dispute remains unresolved for the aforementioned period, either Party shall be entitled to refer the matter to arbitration.

32.3 Arbitration

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

32.3.2 The arbitration shall be:

32.3.2.1 held and will be completed as soon as possible;

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

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

32.3.2.4 in Gauteng;

32.3.2.5 conducted in the English language; and

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

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

- 32.3.3 The Parties shall agree on the arbitrator within 7 (seven) Business Days of delivery of the arbitration notice, and failing such agreement, the arbitrator shall be appointed by the secretariat of AFSA on the basis that the arbitrator shall, if the matter in dispute is, or matters are, principally:
- 32.3.3.1 a legal or deemed legal matter, be a practising attorney or advocate of at least 15 (fifteen) years' standing;
 - 32.3.3.2 an accounting matter, be a practising chartered accountant of at least 15 (fifteen) years standing; or
 - 32.3.3.3 any other matter, be any independent person in the relevant field of not less than 10 (ten) years standing.
- 32.3.4 AFSA's decision regarding the appointment of the arbitrator, including the determination whether a dispute is principally a legal, accounting or other matter, shall be final and binding upon the Parties.
- 32.3.5 If two or more disputes are referred to arbitration at the same time, some being of an accounting or general nature and others of a legal nature, unless otherwise agreed and such disputes shall all be deemed to be legal matters.
- 32.3.6 The decisions of the arbitrator/s may be subjected to appeal by either Party in terms of the AFSA Rules. If no appeal is initiated, the arbitrator's award will be final and binding on the Parties, and at the instance of either of them may be made an order of any court to whose jurisdiction the Parties are or either of them is subject.
- 32.3.7 Notwithstanding the provisions of this Clause 32.3.7, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted by way of notice of motion by any of the Parties against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

32.4 **Performance to Continue**

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

33. **CHANGES IN CONTROL**

For the Term, the Operator shall procure that there is no Change in Control in the Operator (or in any company of which the Operator is a subsidiary) without the prior written approval of SANParks, which approval shall not be unreasonably withheld.

34. **CESSION, TRANSFER AND SUBSTITUTED ENTITY**

34.1 **Transfer by the Operator**

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

34.1.1 this Agreement or any Associated Agreement; or

34.1.2 any of its rights, interests or obligations thereunder,

save, in each case, to the extent required for the financing of the operation of the Skukuza Facility.

34.2 Subject to the provisions of Clause 34.1, the Operator may cede, delegate, assign, encumber or transfer the operation of the whole or a part of the Skukuza Facility, provided that:

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

34.2.2 the Operator shall not be absolved from any liability, existing or future, of the Operator in terms of this Agreement;

34.2.3 the third party to whom the Operator cedes, delegates, assigns or transfers its rights and/or obligations, as the case may be ("**Assignee**"), shall be bound by all the same

terms and conditions as set out in this Agreement as if originally a party hereto.

34.3 Substitute Entity

34.3.1 Upon the occurrence of an event in Clause 28 entitling SANParks to terminate this Agreement, and upon the expiry of the remedy period (in the event a remedy period is provided), or, where no remedy period is provided, upon the occurrence of such event, SANParks shall have the right, subject to the PFMA, to appoint a substitute entity, that the substitute entity nominated by SANParks-

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

34.3.1.2 has the financial and technical capability sufficient to perform and assume the obligations of the Operator under the Agreement.

34.3.1.3 The Operator shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 34.3 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

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

34.4 Disposal of Shares

34.4.1 SANParks will, notwithstanding the provisions of Clause 34, approve any sale of shares or other beneficial interest in the Operator and permit that the Shareholders or beneficiaries sell any such shares or beneficial interest where such change does not bring about a Change in Control and provided that:

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

34.4.1.2 the sale of such shares or beneficial interest does not alter the financial, B-BBEE and technical capability of the Operator to perform and assume the obligations of the Operator in terms hereof; and

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

35. INTELLECTUAL PROPERTY OF SANPARKS

- 35.1 Nothing anything contained in **Schedule 16** – Branding Requirements, all Intellectual Property Rights whatsoever, whether capable of registration or not, regarding SANParks' name, trademarks, logos, image and all other intellectual property matters relating to SANParks, including its name, trademarks, logos and/or image shall remain the sole property of SANParks.
- 35.2 Subject to Clauses 35.1 and Clause 35.3, SANParks shall, on prior written application by the Operator and only to the extent necessary for the Operator to perform the Management Services, grant a non-exclusive revocable right and licence to the Operator to use SANParks' trademarks and logos for a period not to exceed the remainder of the Term.
- 35.3 In order to establish and maintain standards of quality and propriety acceptable to SANParks, in the event that the Operator desires to use SANParks' trademarks or logos in any way, the Operator shall first submit the concept or a sample of the proposed use to SANParks for approval, which shall be in its sole and absolute discretion. SANParks shall use reasonable endeavours to advise the Operator of its approval or disapproval of the concept or sample within 20 (twenty) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Operator shall not depart therefrom in any respect without SANParks' further prior written approval.
- 35.4 If at any time SANParks revokes its approval for the specified use of any trademark or logo, the Operator shall forthwith discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which SANParks has revoked its approval. The costs incurred by the Operator as a result of such revocation shall be borne by the Operator if the grounds for the revocation include any ground described in Clause 35.5.
- 35.5 SANParks may revoke its approval immediately upon 10 (ten) Business Days written notice to the Operator if the Operator, any Subcontractor or any of its or its Subcontractors' officers, directors or employees commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency and, in SANParks' reasonable opinion, materially prejudices the reputation and public goodwill of SANParks.

- 35.6 The Operator acknowledges that the name(s) of SANParks (the "**Protected Names**") are associated with and peculiar to SANParks and are the Intellectual Property of SANParks. Consequently, the Operator agrees that the sole and exclusive ownership of the Protected Names shall vest in SANParks.
- 35.7 In circumstances where the Operator 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 Agreement and with the prior approval of SANParks. On termination or expiry of this Agreement, the Operator 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.
- 35.8 Within 60 (sixty) Business Days after the Expiry Date or the Termination Date and where the Operator has operated a company utilising any of the Protected Names with the permission of SANParks, the Operator shall either:
- 35.8.1 de-register the company bearing any of the Protected Names; or
- 35.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 35.9 The naming of the Operator's business operation shall be undertaken in consultation with SANParks and subject to SANParks' approval. In circumstances where the name chosen by the Operator and approved by SANParks is not part of SANParks' intellectual property, then the rights of SANParks contemplated in this Clause 34 shall not be applicable and the intellectual property shall be the sole property of the Operator.
- 35.10 SANParks may at its discretion allow its own name, logo and or other branding on the stationery of the Operator, at cost to the Operator. The Operator may not use SANParks name, logo or other branding without written consent from SANParks for any reason whatsoever.
- 35.11 SANParks reserves the right to disallow the Operator to apply its own name, logos or other branding to the Skukuza Facility in any manner, or otherwise to stipulate the placement and size of such names, logos or other branding. If so allowed by SANParks, the name, logo or other branding of the Operator shall not conceal, obstruct, compete with the name or logo of SANParks, or be contrary to the professional image of SANParks at any time or in any manner. Any such branding of the Operator shall be at cost to the Operator.

36. INTELLECTUAL PROPERTY OF THE OPERATOR

- 36.1 The Operator shall, in respect of all Intellectual Property that is owned by it and any of its Subcontractors, on termination of this Agreement in accordance with its terms after the Commencement Date, grant to SANParks a non-exclusive, royalty free licence to use such Intellectual Property for the Management Services or any operational and maintenance services to be provided in the future by or for SANParks in relation to the Skukuza Facility, or any facilities that succeed them (the "**Permitted Purposes**"). Those licences shall be capable of being freely transferred by SANParks to third parties at no cost, for the Permitted Purposes, but to no other parties without the prior written consent of the Operator.
- 36.2 In the event that any Intellectual Property is not owned by the Operator but was specifically developed for the Management Services, whether or not it is Licensed Intellectual Property, the Operator shall ensure that it is at all times after the Commencement Date entitled to –
- 36.2.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Operator, to use that Intellectual Property for the Permitted Purposes. Those licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or
- 36.2.2 assign all of its rights in and to that Intellectual Property to SANParks on the basis that those rights shall be capable of being further assigned to third parties for the Permitted Purposes.
- 36.3 In the event that any Licensed Intellectual Property is not owned by the Operator but is specifically required in order to operate any of the Transferable Licensed Intellectual Property for the Permitted Purposes, the Operator shall, upon termination of this Agreement in accordance with its terms after the Commencement Date, procure that a license for such Licensed Intellectual Property is issued in the name of SANParks for a period equal to the difference between the Termination Date and the Expiry Date had this Agreement not terminated early, provided that the Operator shall not be required to procure same where this Agreement terminates on the Expiry Date.
- 36.4 In the event that the Operator uses any Intellectual Property owned by any third party in the Management Services, other than Intellectual Property which is the subject of Clause 36.1, the Operator shall prior to using any such Intellectual Property ensure the consent of

the relevant owner in order to ensure that the Operator is at all times after the Commencement Date entitled to –

- 36.4.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Operator, to use that Intellectual Property for the Permitted Purposes, which licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or
- 36.4.2 assign all of the Operator's rights in and to such Intellectual Property to SANParks, on the basis that those rights shall be capable of being further assigned by SANParks to third parties at no cost, for the Permitted Purposes.
- 36.5 If the owner of Intellectual Property contemplated in Clause 36.3 withholds or denies such consent, the Operator shall not use any such Intellectual Property for the Management Services without the prior written approval of SANParks.
- 36.6 The Operator indemnifies SANParks against any liability or costs which SANParks suffers or incurs as a result of the infringement of any third party rights arising from the use by SANParks, any Responsible Authority, or any third party who is licensed to use any Intellectual Property for the Permitted Purposes, or to whom any rights in respect of the Intellectual Property are assigned for the Permitted Purposes, in accordance with the provisions of that licence or assignment, save to the extent that such liability or cost was occasioned by any intentional act or omission by an indemnified party in question, or by its gross negligence.

37. **AMENDMENTS**

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

38. **ENTIRE AGREEMENT**

- 38.1 Except where expressly provided otherwise in this Agreement, this 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 Agreement.

38.2 Each of the Parties acknowledges that:

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

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

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

39. **VARIATION, CANCELLATION AND WAIVER**

39.1 No provision of this 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 Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

39.2 Any relaxation or delay (together "**Relaxation**") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Relaxation constitute a waiver of any other right (whether against that Party or any other person).

39.3 The waiver of any right under this 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.

- 39.4 The expiry or termination of this Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance of or in terms of this Agreement.

40. **SEVERABILITY**

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

41. **GOVERNING LAW AND JURISDICTION**

- 41.1 This Agreement is to be governed by and construed in accordance with the laws of South Africa.
- 41.2 Each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with the Management Services and this Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

42. **CONFIDENTIALITY**

- 42.1 For purposes of this Clause, "**Confidential Information**" means all information or data disclosed under and/or pursuant to this Agreement, whether communicated orally or in writing by either Party to the other or by the representatives of one Party to the representatives of the other and shall include commercially sensitive information contained in any internal document of a Party regarding the nature of its business, operations, processes, intentions, product information, know-how, trade secrets, software, market opportunities, customer and business affairs, but shall exclude information which is prohibited from release for national security reasons.
- 42.2 Each Party shall keep all Confidential Information of the other Party confidential while this Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason. Each party also use reasonable endeavours to prevent its employees, agents and Subcontractors from making any disclosure to any person of any Confidential Information

of the other Party while this Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason.

42.3 The provisions of Clause 42.2 shall not apply to -

42.3.1 any disclosure of information that is reasonably required by persons engaged in the performance of the restricted Party's obligations under this Agreement;

42.3.2 any matter which a Party can reasonably demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 42 (*Confidentiality*);

42.3.3 any disclosure which is required by any Law (including any order of a Court of competent jurisdiction), or the rules of any stock exchange or governmental or regulatory authority having the force of Law;

42.3.4 any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;

42.3.5 any provision of information to the advisors of the receiving Party, or to any funders or potential funders, but in the latter case, only to the extent reasonably necessary to enable a decision to be taken on whether that potential funder will become a funder;

42.3.6 any disclosure by SANParks of information relating to the design, construction, operation and maintenance of the Management Services; or

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

42.4 The disclosures permitted under Clauses 42.3.5, 42.3.6 or 42.3.7 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 42 (*Confidentiality*) from the intended recipients.

43. **NOTICES**

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

43.2 The addresses for Notices are as follows:

SANParks:

Marked for the attention of the CEO:

c/o Legal Services

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5000

Facsimile: (012) 343-0155

E-mail: fahlaza.monaledi@sanparks.org

Operator:

Marked for the attention of the Directors: _____

Telephone: _____

Facsimile: _____

E-mail: _____

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

43.3.1 on the same day, if delivered by hand;

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

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

44. COUNTERPARTS

This 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 Agreement for all purposes.

SIGNED AT ON THE 202_.

For and on behalf of
SOUTH AFRICAN NATIONAL PARKS

who warrants his authority hereto

SIGNED AT ON THE 202_.

For and on behalf of
THE OPERATOR

who warrants his authority hereto

45. SCHEDULE 1 - DESCRIPTION OF SKUKUZA FACILITY

45.1 Introduction

SANParks has developed the Skukuza Safari Lodge adjacent to the Conference Facility in the Kruger National Park. The design is based on the following:

- 45.1.1 A 3-star facility offering 4-star service and price;
- 45.1.2 128 keys (256 bed) with a combination of 8 luxury suites, standard rooms and family rooms including universal access rooms;
- 45.1.3 Staff accommodation facilities in Skukuza for essential staff, majority of staff will stay outside of the Park; and
- 45.1.4 Green building initiatives to ensure the greenest lodge possible within the framework of international best practice.

45.2 Lodge Vision

The Kruger National Park offers a wide range of accommodation choices; from camping to luxury concession lodges. Prior to the development of the Skukuza Safari Lodge, Skukuza Camp only offered camping, chalets and corporate style houses, with a limited number of 'rooms' available for the conference centre. This resulted in the conference centre being under-utilised as the accommodation available could not provide adequately for conference guests. Skukuza Safari Lodge has subsequently been built to develop additional accommodation choices with the intent of:

- 45.2.1 Provide accommodation for conferences and attract the MICE market with its own requirements and needs; and through them attract guests who would for the first time be exposed to the Kruger National Park;
- 45.2.2 Meet the needs of the local emerging tourist market that would be exposed to Kruger (perhaps for the first time) and may become loyal to Kruger Park;
- 45.2.3 Draw the International Group Tourist and FIT market for whom camping or self-catering would not be attractive; and

45.2.4 Attract the corporate and business market.

45.2.5 The vision of the Skukuza Safari Lodge is to widen the guest base for SANParks and Kruger National Park; and to provide an acceptable hotel style accommodation option for tourists and delegates of the conference centre.

45.3 **Underlying Principles**

The following underlying principles needs to be taken into consideration:

45.3.1 Skukuza Safari Lodge and the adjacent Conference Centre are designed to operate as one business entity. It is managed independently from other services and products of the camp.

45.3.2 Rooms are loosely based on a 4-star standard, but graded as 3-star.

45.3.3 Safari activities (game drives, day walks, bush braais) are to be provided by the Skukuza Rest Camp.

45.3.4 No room service is envisaged, but snack menu take-aways are permitted.

45.3.5 The room stock is on the Lodge Property Management System (PMS) and is managed from the lodge. Room stock must be linked to SANParks room stock on the SANParks website.

45.3.6 The lodge has its own stand-alone website (<https://skukuzalodge.com/>). Inventory should also be on the SANParks website.

45.3.7 The lodge complies with all the relevant Universal Access legal requirements.

45.3.8 Green principles have been applied in the construction process and the Operator is expected to apply green principles in the management of the property.

45.3.9 Minimising noise is important in the Kruger National Park. The Operator is responsible for controlling noise levels on the property.

45.3.10 The Operator shall ensure that condiments sachets, paper serviettes, butter

tubs/pads, straws and any packaging that may pollute the environment are not used at Skukuza Safari Lodge or conference centre.

45.3.11 **Green Principles**

Green principles were carefully considered in the design and building of the lodge. It is a fundamental requirement for the Operator to develop and implement green standard operating procedures and standards in all activities included in the management of the property. The Operator needs to subscribe to becoming a member of the GBCSA and maintain its membership annually on an ongoing basis. The principles are further described in Schedule 4 of the Information Memorandum.

The following water allowance will apply:

- Guests: 250 litres per person per day
- Overnight staff:
 - House / flats: 250 litres per person per day
 - Stay-over units: 100 litres per person per day
- Day staff: 40 litres per person per day

The provisions of the KNP Water Use Protocol will apply and failure to remain within the water allocation following a water audit and management action will be deemed as breach of contract by the Operator.

45.3.12 **Safety and Security**

The Skukuza Safari Lodge falls within the KNP Safety and Security Plan:

- Operator to provide security staff to patrol 24 hours in liaison with Park Management;
- CCTV: high resolution, wide angle surveillance cameras have been provided for at staff entrances and other public areas;
- There is no separate search room at the security gate for staff at the back of house, but the gents and ladies ablution facilities are next door if required;
- All visitor access will be via the Skukuza Rest Camp security entrance gate;
- All staff access will be via the back of house entrance and security or the Skukuza Airport;

- No staff will be allowed to walk through Skukuza Safari Lodge unless it is required as part of their duties; and
- All the delivery vehicles will only use back of house access and not via the Skukuza Rest Camp. Delivery times will be in accordance with the gate open/close times. All delivery vehicles will comply with the maximum load capacity and speed limits as per KNP rules and regulations.

45.3.13 **Parking and Porte Cochère**

- Bulk parking is catered for at the conference centre and lodge.
- SANParks envisions that guests to the Skukuza Safari Lodge will access the hotel via the Kruger Gate and thereafter leave their vehicles at the “Park & Ride” Facility for the duration of their stay. SANParks has not yet commenced with the development of the park and ride at Kruger Gate, but ultimately still intends on implementing it. The Operator must take cognisance of this and implement incentive models once this has been constructed.
- Porte Cochère: roofed at the entrance.
- There is ample turning and parking space for tour buses and other large vehicles.
- Sedan style parking bays: 70% of the number of rooms has been provided for. No parking is under cover.
- Disabled parking: as per government requirements has been provided for.
- Game Drive vehicles: an area has been provided for to accommodate drop off and pick up for game drives.

45.3.14 **Gardens and Pool**

- Natural garden with established trees and indigenous plants are part of the court yard area. Minimal garden maintenance is required.
- A lap pool is in the centre of the court yard area.

45.3.15 **Curios**

- No provision has been made at the lodge. There are curios shops in the camp.
- The Operator may include their own curios subject to agreement by SANParks.

45.3.16 **Gymnasium**

A small gymnasium has been built for exclusive use by lodge guests. It is stocked

with basic equipment.

45.4 **Front Office: Reception, Reservations, Concierge and Reception Public Areas**

45.4.1 **General**

- ATMs are already in the park.
- Operator to consider FOREX requirements for guests.
- All offices and desks have internet connectivity.
- All offices have telephones.

45.4.2 **Rooms Division Manager/Front Office Manager**

- Provided for close to reception with a view of the lobby and reception desk.

45.4.3 **Reservations**

- A Property Management System (PMS) and Point of Sale (POS) System has been procured and is in implementation. Please refer to Schedule 3 of the Information Memorandum for details of the systems.
- The room stock must be interfaced with the SANParks system so that reservations can be made from the SANParks website as well as the Operator's website.
- Reservations office is situated in the Front of House section.

45.4.4 **Reception**

- Multi-functional check-in desk that caters for both group and individual check-ins with space for three computer terminals, two printers and a photocopier.
- Filing space at desk for stationery and pit files.
- Telephone points and telephones.

45.4.5 **Porters/Concierge**

- Concierge desk.
- Counter and seated desk space are provided for.

- Lockable and extensive luggage room.

45.4.6 **Reception and Lounge Public Areas**

General lounge and waiting area.

45.4.7 **Information/Research Area**

- An area is provided for that SANParks envisions will, in conjunction with the Operator, be developed into an Information Nook/Space. Aspects of sightings, wildlife, research projects and the Skukuza Safari Lodge area will be featured.
- The guest office is located adjacent to this area.

45.5 **Rooms**

45.5.1 **Bedrooms**

- Three star graded with 4-star comfort and space.
- 128 units:
 - 120 x rooms (universal, double and twin configurations), including:
 - 87 standard rooms (king size bed or two single twin beds)
 - 20 family rooms (adjoining rooms with the standard room features)
 - 13 universal rooms (with easy access for wheelchairs - both hearing and sight impaired guest needs were considered in the design and must form part of the telephony)
 - 8 x luxury suites (two double beds)

45.5.2 **General Room Features**

- Door: self-closing, key card system, peep hole, wishbone lock
- Flooring: carpeting

- Air-conditioning
- Electrical supply: Normal points conveniently placed, international plug points, TV Point
- Telephone
- Built in lighting, bedside lamp, desk top lamp
- TV – flat screen fitted onto wall
- DSTV
- Full length mirror and dressing table mirror
- Luggage rack
- Wardrobe with long hanging space, shelving
- Electronic safe in wardrobe
- Built in dressing table / coffee station / desk space
- Built in headboard
- Balcony: 2 x chairs, 1 x table, sliding door to balcony, balcony floor tiled
- Stool, office style chair, arm chair or couch depending on room type
- Coffee table
- Bedside table
- 8 x luxury suites: two double beds
- 120 x standard/universal rooms: king size bed or two single twin beds, or king size mattress converters
- Mosquito screens provided

45.5.3 **Bathrooms**

- Bathroom is separate from bedroom with a closing door leading to bedroom. No bath tub.
- Tiled flooring.
- Semi-solid door.
- Steam extraction.

- Lighting fluorescent/LED.
- Vanity, single basin with standard cobra fittings, low flow water pressure.
- Press-down plug.
- Mirror above basin.
- Large shower stall, standard rectangular shower head – low flow water pressure.
- Toilet.
- Single towel rail, 2 x single hooks.
- Soap caddy in shower (depending on design).

45.5.4 Suites

- Same as above but with a bath tub and shower.
- Separate toilet at entrance to suite.
- Kitchen area provided; equipped with a fridge and Nespresso machine.

45.6 Food & Beverage and Public Areas

45.6.1 Overview

- Dining facilities are mainly buffet to cater for conferences and accommodate large volumes of meal requirements. Although there is a semi equipped satellite conference kitchen in the conference centre, it is envisaged that, if the lodge is booked for a conference, guests will make use of the meal facilities at the lodge.
- A la carte snack meals are catered for in the open air, roofed veranda area adjacent to the main bar.
- All day snack menu (inclusive of kiddies menu) to serve in the public lounge next to the reception area.
- Coffee/tea be served from reception or bar area.
- No room service is offered; however, snack menu take-aways are permitted as well as packaged ice to be collected by guests for use in the guest room.
- Wi-Fi available in all areas.
- All food and beverage facilities are open to rest camp residents and day-visitors.

45.6.2 **Buffet Restaurant**

- Centrally situated off reception. Design gives a cordoned off effect.
- Can be operational for breakfast, lunch and dinner.
- Welcome area: 2 x entry areas with desk and telephone.
- Space for Computer and POS terminal.
- Seating: 240 in configurations of 2, 4 and 6's.
- Buffet: 1 large equipped buffet.
- Central display area: multi-purpose use.

45.6.3 **Public Lounge – Reception Area**

- Public lounge with a configuration of lounge seating flows from the reception area.
- Snack menu can be served

45.6.4 **Main Bar and Veranda**

- Main bar and veranda area is one functional area.
- Wine and drinks for restaurant served from the service area in the main bar.
- Seating: restaurant tables & chairs (can be used as an overflow area when restaurant is full) and lounge style seating, 6 bar stools.
- Bar counter: u-shaped with 2 x POS facility for waiters and service bar area.
- Lockable liquor and glassware storage.
- Glass washing area with small glass dishwasher.
- Back of house storage space in bar.

45.6.5 **Veranda**

- Flows from the main bar area.
- Open air, roofed area with configuration of lounge and table seating.
- All day snack menu available.

- Waiter station with POS at the bar counter.
- 2 x waiter stations at the entrances.

45.6.6 **Small Bar/Cocktail Bar**

- An area has been allocated and equipped to serve as an ad-hoc bar area for cocktail parties and other smaller functions.
- It is used mainly as a multi-functional and semi children-friendly area. The Operator to develop according to the guests' needs.

45.6.7 **Boardroom**

- 1 x boardroom equipped with a conference table and an informal lounge seating area. The room has two doors, making provision for this room to be split into two separate meeting rooms. A central divider would need to be installed by the Operator.

45.6.8 **Front Office Back of House**

- Duty Manager's Office.
- General Food and Beverage Administration Office.
- Open plan office with 2 desks for reservations and 1 for cash-ups.
- Area for multi-function printer.
- Stationery store.
- IT distribution room.
- Walk-in safe.
- Front Office Manager office and assistants area.
- Purchasing Manager office.
- Debtors/Creditors Manager office.
- Toilets and kitchen.

45.6.9 **Food and Beverage Back of House**

- Goods receiving office.

- Liquor cellar.
- Beer cellar.
- Crockery, cutlery and glass stores in kitchen.
- Cleaning equipment store.

45.6.10 **Kitchen**

- The kitchen is designed for buffet and à la carte snack or light menu.
- As the lodge is situated far from large bakeries, a bakery section is included in kitchen.
- Goods delivery and receiving close to the back entrance of the kitchen.
- Chef's office.
- Dry store.
- 2 x walk in fridges and 1 x walk in freezer.

45.7 **Housekeeping Back of House**

- It is estimated that room attendants clean about 12 rooms per day.
- Each block has one small storage area for housekeeping trolleys and supplies.
- Dry cleaning service is not provided.
- Guest laundry can be offered.

45.8 **Stores, Laundry and Linen Room**

45.8.1 **Laundry**

- Housekeeping back of house is situated in a separate building behind the lodge, with laundry equipment is installed in a dedicated laundry room. All water and other connections are installed.

45.8.2 **Linen Room**

- Linen room shelving for a 3 par stock level.
- A sewing area where linen can be mended.

45.8.3 **Housekeeping Administration**

- 1 x Housekeeping Manager office.
- 2 x supply stores - room and bathroom amenities and chemical store.

45.8.4 **Human Resources**

- 3 x offices.
- 1 x training room.

45.8.5 **Staff Areas**

- Male and female staff toilets – back of house building.
- Disabled staff toilet adjacent to staff entrance.
- Male and female staff change rooms.
- Space for 50 lockable lockers in each to be supplied by the Operator.
- Full length mirror in each.
- 1 x Staff Canteen – not equipped. Operator to equip and furnish – please ensure this is in the CAPEX budget.

45.8.6 **Other**

- 1 x Technical Store/Office - located in back of house area.
- 1 x Technical Workshop.
- Goods receiving at back of house area and kitchen. Space large enough for trucks to offload and turn.
- 1 x Security office where CCTV and fire systems are controlled.
- Lockable refuse store.

46. SCHEDULE 2 – ICT INFRASTRUCTURE

46.1 IT Backbone and Cabling Infrastructure

An IP network has been installed throughout the lodge. From the server room, optical fibre cable runs to switches located in the electronics cupboards in each wing and the central area. From these switches Ethernet cables are used to connect to each guest room or to the work stations in the administration or back of house areas. Each switch has a UPS backed socket outlet.

46.2 Hardware and Software

The following is in place:

- Local server hardware and software.
- Desktop and laptop computers and associated software.
- Printers.
- Wi-Fi APs.
- Telephones (VOIP)
- PMS – Oracle Opera Property Management (Operator to take over contract from SANParks).
- POS – Oracle MICROS Symphony (Operator to take over contract from SANParks).
- SANParks will provide the credit card speed points for the Lodge and Conference Facility.

46.3 Main IT Server

A local server is in place at the Lodge that functions as a bridge to link all communications, business Management software and IT related functions to the hosted facilities on the SANParks main server systems based in Pretoria.

46.4 Active Networking Equipment

Active networking equipment is in place in the form of switches and Wi-Fi access points.

46.5 **Wi-Fi**

Wi-Fi access provided throughout all public areas and all guest rooms.

46.6 **Telecommunications and Data**

Incoming Telecommunications Services provided via the existing telecommunication and data links to the Internet. This link extends to the Conference Facility and the Lodge. All voice and data traffic to be via this link.

47. SCHEDULE 3 – ENVIRONMENTAL GUIDELINES FOR OPERATORS OPERATING WITHIN THE SOUTH AFRICAN NATIONAL PARKS

47.1 Introduction

47.1.1 This is an undertaking by the Private Party to conduct, manage and carry out the Project at all times in an environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park.

47.1.2 The Private Party must take all reasonable steps in conducting the Project to prevent and limit the occurrence of any Environmental and/or health hazards and to ensure the health and safety of the Private Parties, the general public, and the surrounding environment.

47.2 Legislative Basis for these Guidelines

SANParks is bound by a number of statutes with relevance to environmental management of Parks, including (without limitation) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEM:PAA); the National Water Act, 1998 (Act No. 36 of 1998); the Water Services Act, 1997 (Act No. 108 of 1997); the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA); the National Environmental Management: Air Quality Act, 2004 (Act No 39 of 2004); the Hazardous Substances Act, 1973 (Act No 15 of 1973); and the National Heritage Resources Act, 1999 (Act No 25 of 1999).

The authorisation of any development and activities in a Protected Area is governed by the NEMA and the NEM:PAA. Any changes to infrastructure or operations require written approval from SANParks and are subject to the prescribed policies and procedures.

The process for the development, refurbishment, maintenance, and operation of any commercial facilities must be undertaken as per SANParks internal policies and procedures, and authorisations obtained by the Department of Forestry, Fisheries and the Environment (DFFE) and other relevant permit issuing authorities.

Given that the development is taking place within a National Park, a scoping report must be submitted to DFFE, the "relevant environmental authority" as defined in the EIA

Guideline documents.¹

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

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

47.3 **Guidelines Based on SANParks Internal Requirements**

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

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

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

The Environmental Guidelines set out and referred to in this document must be regarded as the first step in SANParks' efforts to compile a comprehensive Environmental Management System (EMS) for the entire Parks. Once in place, the EMS will likely be modified and refined over time, as and when needed to take into account new information, standards and conditions. Private Parties must therefore be aware that the terms and

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

conditions set forth in these Guidelines are subject to amendment. Private Parties will be expected to comply at all times with the provisions of the Environmental Guidelines as they may change from time to time.

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

47.4 Precautionary Principle

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

47.5 Legislative Requirements

- 47.5.1 All legislative requirements must be understood and complied with.

47.6 Regulatory Provisions

- 47.6.1 The Private Party must adhere to the Regulatory Provisions and the Environmental Specifications, as amended from time to time.
- 47.6.2 The Private Party must comply with its statutory duties in terms of the Environmental Laws and to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring or, in so far as such harm to the Environment is authorised by SANParks, to minimise and rectify such pollution or degradation of the Environment.

47.7 SANParks Requirements

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

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

47.8 Environmental Responsibility

- 47.8.1 SANParks has an active role to play in Responsible Tourism and expects the same from Private Parties that operate in National Parks. SANParks subscribes to the minimum standard of Responsible Tourism (SANS 1162) and expects the same from Private Parties that operate commercial outlets in National Parks.
- 47.8.2 The Private Party must conduct, manage and carry out the Project at all times in an environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park.
- 47.8.3 The Private Party must take all reasonable steps in conducting of the Project to prevent and limit the occurrence of any environmental or health hazards and to ensure the health and safety of the Private Parties and the public.

47.9 Environmental Impact

- 47.9.1 The Private Party must bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Facility and the Protected Area.
- 47.9.2 The Private Party must subscribe to the South African Sustainable Seafood Initiative (SASSI) and only sell/include fish on the menu with green status or SASSI certified.

47.10 Code of Conduct

- 47.10.1 The Private Party must induct all staff employed on the Kruger National Park's Code of Conduct.
- 47.10.2 The Code of Conduct must be understood by the Private Party and complied with.

47.11 Water Management and Guidelines

- 47.11.1 Water conservation measures must be implemented by the Private Party in the design and implementation of their operations;
- 47.11.2 The Private Party must:
 - 47.11.2.1 Monitor the use of water;
 - 47.11.2.2 Educate staff via on-site notices on the use of water;
 - 47.11.2.3 Set water usage targets (monitored weekly/monthly) and manage these targets; and
 - 47.11.2.4 Aim to avoid accidental loss through effective maintenance, installing quality storage and reticulation systems, and implementing leak detection systems.

47.12 Energy use

- 47.12.1 The Private Party must:
 - 47.12.1.1 To measure energy use and continuously aim to implement measures to reduce energy usage until optimal levels are reached;
 - 47.12.1.2 Monitor the use of energy;
 - 47.12.1.3 Educate staff via on-site notices on the use of energy;
 - 47.12.1.4 Set energy usage targets (monitored weekly/monthly) and manage these targets.

47.13 Chemical Substances

- 47.13.1 The Private Party must not sell or use (including staff of the Private Party) any of the chemicals that are banned from use in National Parks (as determined by any Environmental Manager in National Parks);
- 47.13.2 All chemicals listed as “Prohibited” may not be brought into, sold, or used in any National Park by the Private Party. The products include items such as Rattex, Finale, Dyant, Doom, and Target (an extensive list is available);
- 47.13.3 The Private Party must ensure safe storage and disposal of chemicals and their containers;

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

47.13.5 The Private Party must use environmentally friendly and biodegradable detergents and cleaning agents;

47.14 Waste Management

47.14.1 Liquid Wastes

47.14.1.1 Liquid waste refers to the sewerage as well as grey water;

47.14.1.2 The Private Party must manage liquid waste in accordance with national and local legislation requirements;

47.14.1.3 The Private Party must design management techniques to be both economically viable and environmentally sustainable;

47.14.1.4 The Private Party must implement waste procedures that optimise the principles of waste reduction and waste recycling and ensure that the end product does not pollute the environment;

47.14.1.5 The Private Party must install a grease trap for:

47.14.1.5.1 Pot and rinse sinks attached to dish washers;

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

47.14.1.5.3 Soup kettles or similar devices;

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

47.14.1.6 The Private Party must implement processes and procedures which stipulate the following:

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

- 47.14.1.6.2 That grease traps are cleaned daily; and
- 47.14.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorised facility.
- 47.14.2 **Solid Wastes**
 - 47.14.2.1 The Private Party must manage all waste that is generated in such a way that direct and indirect impacts are kept to a minimum.
 - 47.14.2.2 The Private Party must achieve Solid Waste Management Best Practices, which implies the following:
 - 47.14.2.2.1 Manage solid waste from source to disposal;
 - 47.14.2.2.2 Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;
- 47.14.3 The Private Party must include the following policies in waste management:
 - 47.14.3.1 **Green Procurement Policy:** This policy defines the procedures that the Private Party will implement to ensure that all produce, containers, and packaging comes from suppliers that under-write environmental principles and that waste be recyclable as far as possible;
 - 47.14.3.2 **Hazardous Waste Policy:** The Hazardous Waste Policy defines procedures that the Private Party will implement to manage any hazardous waste, to ensure that it is firstly minimised, but also that it is stored and discarded in a safe and legal way.
- 47.14.4 The Private Party will follow the following guidelines to minimise the effect of the solid waste on the ecosystem:
 - 47.14.4.1 Minimise solid waste production at all sources, by striving for the minimisation of all waste.
 - 47.14.4.2 Maximise the recycling of solid waste. Glass, tin, paper, and cardboard must be sorted on site for recycling, while actual recycling will take place off site at the authorised waste disposal site.
 - 47.14.4.3 All waste must be removed to the respective approved camp waste disposal site

and incinerator for disposal and recycling. The dumping and disposal of waste other than at the authorised waste site is strictly prohibited and failure to comply may result in a penalty.

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

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

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

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

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

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

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

47.14.4.9.2 Paper serviettes;

47.14.4.9.3 Butter tubs/pads;

47.14.4.9.4 Plastic straws; and

47.14.4.9.5 Plastic cutlery.

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

47.14.4.10.1 Promoting an ethic amongst guests and staff alike.

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

47.15 Pest Control

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

47.15.2 Where and if required the Private Party must control bats as outlined in SANParks Integrated Pest Management Plan.

47.15.3 The Private Party must make use of preferred pest control chemicals as prescribed by SANParks.

47.16 Visual Impacts

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

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

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

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

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

47.17 Monitoring

47.17.1 The Private Party agrees to cooperate with SANParks in compiling a monitoring checklist that encompasses all environmental conditions. The checklist would be used for auditing purposes and would be conducted on a quarterly basis; and

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

47.17.3 SANParks has the right to undertake necessary conservation management activities in all of the Project Sites.

47.17.4 The Private Party must participate in any relevant SANParks-Private Parties forums and comply with any standards thereby agreed or established.

47.18 Operator Environmental and Green Operating Plan

48. SCHEDULE 4 – GREEN BUILDING INITIATIVES AND OPERATIONS STRATEGY

48.1 Green Operation Qualification Criteria

- 48.1.1 The Operator is to submit brief method statement confirming the process and methodology that will be applied to obtain the GSSA EBP 4-Star target or similar and maintain its membership annually on an ongoing basis.
- 48.1.2 The Operator needs to confirm that the Skukuza Safari Lodge will be operated in accordance with the green star rating or similar
- 48.1.3 The Operator needs to adhere to the Green Operations Strategy submitted as part of its Bid Submission.

49. SCHEDULE 5 – OPERATOR BUSINESS AND OPERATIONAL PLAN

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

49.1 Operator Business and Operational Plan

50. SCHEDULE 6 – CAPITAL AND OPERATIONAL EXPENDITURE

50.1 **Operator Financing & Capital Plan**

51. SCHEDULE 7 – OPERATOR MANAGEMENT FEE

51.1 Management Fee

51.1.1 Under the Management Agreement, the Management Fee payable by SANParks, in arrears, a monthly fee equal to ____% of Gross Revenue.

51.2 The Management Fee shall accrue and be payable by SANParks to the Operator within 7 (seven) business days following the end of each month, free of deduction or set-off.

51.3 No Management Fees shall be payable prior to the Effective Date of the Management.

51.4 Any overdue payment by either SANParks or the Operator shall be subject to an interest charge as per SANParks' Financial Rules and Regulations.

51.6 Operator Management Fee Submission

52. SCHEDULE 8 – OPERATOR’S PREQUALIFICATION RESOLUTION

52.1 Lodge Operator Qualification Criteria

The following shall constitute the mandatory requirements of this bid, and Operators are required to comply with the following qualification criteria:

52.1.1 Financial capacity

Given the fact that the project is of a high value and may entail risk to both the preferred Operator and SANParks, it is important that interested parties demonstrate financial strength. In this regard:

- 52.1.1.1 the interested party must submit audited or independently reviewed financial statements corresponding to the last four (4) years;
- 52.1.1.2 the Net Asset Value of the interested party must be at least R15 million. If the interested party is a consortium or joint venture, it must demonstrate financial strength with reference to the asset value of its partners / shareholders in proportion to their shareholding;
- 52.1.1.3 the interested party must demonstrate to SANParks that they have sufficient cashflow to fund at least three months operational expenditure of the lodge and conference centre; and
- 52.1.1.4 the interested party must also demonstrate, to SANParks’ satisfaction, that it (or in the case of a consortium or joint venture, its partners / shareholders) is solvent. A letter from a qualified auditor confirming that the asset value exceeds the stipulated amount and that the interested party is solvent, must be provided in this regard.

52.1.2 Tourism experience

The project requires interested parties with substantial experience and expertise in the tourism market. Interested parties are therefore required to provide examples of similar projects conducted by the interested parties. If the interested party (“Bidding Company”) consists of multiple partners or is a new company created for the purposes of the management opportunity, then it can meet this criterion with reference to the qualifications of any one of its parent shareholders or partners in the Bidding Company, provided that the relevant shareholder / partner holds at least 30% of the

total equity in the company that will undertake this management opportunity. The interested party must be able to meet this tourism track-record requirement in the following ways:

- 52.1.2.1 A Hotel Operator or Hospitality Management company.
- 52.1.2.2 Experience: Proven ability to manage at least two properties of 100 beds each, currently in operation, or at least one property of 200 beds, currently in operation. Properties must be graded as at least 3 or 4 star, according to the Tourism Grading Council, with supporting evidence of such provided for bid purposes.
- 52.1.2.3 Operator must have been in existence for a minimum of 5 years.
- 52.1.2.4 Operator must have proven experience in conferencing and events.
- 52.1.2.5 To verify that a bidder meets the required tourism experience qualification requirements, SANParks may conduct due diligence site visits at a bidder's facilities to verify the bidder's tourism experience. This would only apply to shortlisted bidders who meet the qualifying score on the functionality phase evaluation criteria. The submission of a bid implies agreement with this requirement.
- 52.1.3 **Green Operation Commitments**
 - 52.1.3.1 The Operator is to submit brief method statement confirming the process and methodology that will be applied to obtain the GSSA EBP 4-Star target or similar and maintain its membership annually on an ongoing basis.
 - 52.1.3.2 The Operator needs to confirm that the Skukuza Safari Lodge will be operated in accordance with the green star rating or similar.
- 52.1.4 Failure to meet these qualification requirements will be seen as a material breach of the contract which will result in termination.

52.2 Operator Prequalification Resolution

53. SCHEDULE 9 – OPERATOR CONSTITUTIONAL DOCUMENTS

54. SCHEDULE 10 – NATIONAL RESPONSIBLE TOURISM GUIDELINES FOR SOUTH AFRICA

54.1 Guiding Principles for Economic Responsibility

Tourism still plays a relatively small role in the South African economy and it has a long way to go if it is to fulfill its potential to significantly contribute to national income. Traditionally the main focus of governments has been on the growth in international arrivals and total foreign exchange earnings, and is now on fostering entrepreneurial opportunities for the historically disadvantaged, poverty relief, employment and local economic development. Both domestic and international tourism can create employment; it is a relatively labour intensive industry and it employs a multiplicity of skills from accountants and hairdressers to tour guides and trackers. Tourism can provide very good skills development opportunities for local communities.

The White Paper concluded in 1996 that tourism development in South Africa had largely been a missed opportunity; and that the focus on a narrow market has reduced the potential of the industry to spawn entrepreneurship and to create new services, like local entertainment and handicrafts, and to drive local economic development. In fact formal tourism sector provides major opportunities for the informal sector. Tourists travel to the 'factory' to consume the product; they travel to the destination to enjoy their holiday. Tourism is a "final good", all the final touches have to be provided in South Africa and so the value is captured here. The value of a taxi ride from the airport, wildlife viewing and restaurant meals all accrue to the local economy – the challenge is to maximise it by reducing leakages and developing the multiplier effect. Tourist enterprises attract domestic and international tourists and create opportunities for small entrepreneurs and economic linkages, for example agriculture, hunting, handicraft production, and a wide range of service industries which tourists are likely to consume in the destination.

South Africa is now beginning to work on maximising the local economic benefits which tourism can bring to an area; there is much to be gained from creating a more diversified tourism product and marketing a wider range of experiences, activities and services to tourists. Established enterprises can gain by encouraging and assisting the development of complementary product – the larger and more diversified the local tourism base, the more successful enterprises in the area will be. The White Paper identified a wide range of opportunities for historically disadvantaged groups ranging from small guesthouses, shebeens and restaurants with local cuisine, through community tour guiding, music, dance and story-telling, arts and crafts, traditional hunting and medicine to laundry, gardening and

specialty agriculture. Tourism provides particular opportunities for local economic development in rural areas where it can provide people with an alternative to moving to urban areas. Tourism must be market related. If community-based and other tourism development processes are not planned, implemented and managed according to market demands then far too many South Africans, especially the poor, are facing not merely “missed” opportunities, but the hard realities of failed or under-performing products to which tourists simply do not come. The African cultural tourism experience needs to be woven into the fabric of the mainstream South African tourism product.

Domestic tourism plays an important part in the South African tourism sector and it is expected to continue to grow, as historically disadvantaged people become tourists and travellers themselves. Whether the tourists are domestic or international, their expenditure in local communities contributes to the economic development of the area. The greater the proportion of total tourism spending that stays in the local area, the stronger and more diverse the local economic base. The multiplier effect is greatest where the local linkages are strongest – the imperative is clear, source the inputs for all tourism enterprises as locally as possible in order to maximize local economic benefit and to assist in diversifying the local economy. Reducing economic leakages from the local area and increasing linkages will bring significant local economic development and assist in local economic diversification. Similarly, the development of complementary product will strengthen the local economy and local enterprises, groups of established enterprises working together can make a significant difference. Strong economic linkages at the local level were identified in the White Paper as a critical success factor in the local economy.

There is an increasing aspiration for Fair Trade in Tourism in several of the international originating markets; part of a trend towards increasing demand for equitably traded products. Increasing numbers of consumers are purchasing products that demonstrably benefit local communities more fairly than competitor products. The IUCN South Africa Fair Trade in Tourism marketing initiative has identified a set of principles that embody a strong commitment to responsible tourism. It is a good example of a responsible tourism marketing association with a vision of just, participatory and ethical tourism that provides meaningful benefits to hosts and visitors alike. The principles of Fair Trade should be part of the culture of responsible tourism.

54.2 **Economic Objectives and Indicators**

54.2.1 **Assess economic impacts as a pre-requisite to developing tourism**

- (a) Extend the season of enterprises by developing new products to create better employment conditions and to provide a stronger base for local economic development. Monitor occupancies or seasonality of employment over the year to show progress in extending the season.
- (b) The historically disadvantaged are a significant emerging domestic tourism market. Identify and encourage commercial responses to this opportunity.
- (c) Recognize that our cultural heritage should not only be assessed in economic terms, and that tourism can create revenue from cultural heritage, traditional ways of life and wildlife and habitats.
- (d) Encourage business relationships between foreign entrepreneurs and local and emerging entrepreneurs.
- (e) Always consider the opportunity costs of tourism for local communities and their livelihoods, and be prepared to accept that there may be more appropriate economic opportunities for the area. Maintain and encourage economic diversity, avoid over dependency on tourism.
- (f) Plan initiatives and investment to contribute to the broader local economic development strategy (for example, Integrated Development Plans (IDP's) for the area).
- (g) Planning authorities need to consider how they can intervene to avoid tourism developments where they may cause adverse effects such as local land price inflation, loss of access to resources or undermining sustainable livelihoods.
- (h) Exercise a preference for business and land tenure arrangements that directly benefit local communities and/or conservation.
- (i) Conduct market and financial feasibility assessments before raising expectations and exposing the community or local entrepreneurs to risk.

54.2.2 **Maximizing local economic benefits – increasing linkages and reducing leakages**

- (a) Encourage all establishments to upgrade their standards of service, particularly small, medium and micro-enterprises and emerging entrepreneurs, and to

maximize their revenue earning potential by adding value.

- (b) Encourage the informal sector to become part of the formal sector.
- (c) Buy locally made goods and use locally provided services from locally owned businesses wherever quality, quantity, and consistency permits. Monitor the proportion of goods and services the enterprise sourced from businesses with 50 km and set 20% target for improvement over three years.
- (d) Help local communities or emergent entrepreneurs to develop their product so that it can be more easily used by others and marketed to tourists.
- (e) Co-operate with other formal sector businesses to maximize benefits for local community enterprises – for example, a community laundry or tailoring business may only be viable if a group of enterprises commit to source supplies there. Showcase the initiative and be explicit about whether community projects are funded by tourism revenue to the enterprise, donations from tourists or tour Operators, or funds from donor aid agencies.
- (f) Give customers the opportunity to purchase locally produced crafts and curios, set targets to increase the proportion of sales of goods sourced within 20 km of the enterprise. Assist local craft workers to develop new products to meet market demand as evidenced in the enterprise.

54.2.3 Ensure communities are involved in and benefit from tourism

- (a) Government and established businesses need to redress previous imbalances, and to enable the historically disadvantaged to engage in the tourism sector. For example, they should source 15% of services and 15% of products, increasing by 5% per year, for 3 years, from historically disadvantaged groups, and/or individuals, and report on purchasing activities.
- (b) Work closely with local communities, small, medium and micro-enterprises and emerging entrepreneurs to develop new products that provide complementary products for formal sector tourism enterprises.
- (c) Develop partnerships and joint ventures in which communities have a significant stake, and with appropriate capacity building, a substantial role in Management. Communal land ownership can provide equity in enterprises.
- (d) Identify projects that the enterprise can support that will benefit the poor. Identify at least one project.
- (e) Assist the development of local communities and emergent entrepreneurs with

visitor feedback on their products.

- (f) Consider guaranteeing loans for promising projects in communities or with emerging entrepreneurs, and providing marketing, training and managerial support.
- (g) Foster the development of community-based tourism products by providing marketing and mentoring support.
- (h) Encourage visitors to spend more money in the local economy, and to visit local bars and restaurants and participate in tours to local areas, bringing business to local communities. Where appropriate treat this as part of the business of the enterprise and charge a booking fee or commission, or sell craft and local food products through the mainstream enterprise.
- (i) Encourage tour Operators be more innovative in their itineraries, by for example including shebeens, local museums, arts and craft shops and local ethnic restaurants in their tour itineraries, and by doing so encourage visitor spend.
- (j) Consider using local entrepreneurs (particularly emerging and historically disadvantaged entrepreneurs), experienced consultants and non-governmental organisations in developing community initiatives.
- (k) Be transparent when reporting community benefits distinguish between benefits to employees, benefits to emerging or community based entrepreneurs and community benefits, for example leasehold payments that go to community projects (grinding mills or school books) or are distributed as household income in the local area.
- (l) Consider establishing targets to monitor progress in achieving objectives.

54.2.4 Marketing & Product Development

- (a) Lack of market access is a major constraint on the growth of new enterprises. Enterprises should provide information about local services and attractions provided in local communities, and encourage their clients (individuals and Operators) to use them.
- (b) Consider co-operative advertising, marketing and the promotion of new and emerging products and attractions.
- (c) Ensure that the visual way in which the product is presented includes local cultural elements and emphasizes the richness of the local complementary product.

- (d) Consider developing and marketing fairly traded tourism products.
- (e) Foster the development of access opportunities for all visitors and potential visitors, regardless of physical or mental conditions of the visitor. Public authorities and enterprises need to understand and embrace financial incentives that enhanced accessibility will create, and the positive image such 'access to all' will provide.

54.2.5 **Equitable Business**

- (a) Enterprises should pay fair prices for local services purchased or packaged as part of mainstream itineraries. Beware of abusing market power and imposing unfair commissions or pushing down prices inequitably.
- (b) Develop transparent systems of sharing the benefits of tourism through equitable contracts. (E.g., this can be applied through tendering processes.)
- (c) When entering into agreements with local communities or emerging entrepreneurs ensure that the risk is equitably shared.
- (d) Recruit and employ staff in an equitable and transparent manner and maximize the proportion of staff employed from the local community. Set targets for increasing the proportion of staff and/or of the enterprise wage bill going to communities within 20 km of the enterprise.
- (e) Develop a community labour agreement with targets for employment and for progression. Recognize that the enterprise can play a significant role in increasing the skills and capacity of the local community and that the enterprise benefits from that.
- (f) Go beyond the bare minimum wage rate and invest in local staff – quality is dependent upon well-motivated staff.

54.3 **Guiding Principles for Social Responsibility**

Batho Pele: Putting People First – One and all should get their fair share

Tourism and the travel industry “is essentially the renting out for short-term lets, of other people’s environments, whether that is a coastline, a city, a mountain range or a rainforest.” Tourism is dependent upon the social, cultural and natural environment within which it occurs, and its success is dependent upon the environment that it operates within. Good relationships with neighbours and with the historically disadvantaged make good business

sense. These relationships need to be based on trust, empowerment, co-operation and partnerships. Too few of the benefits from tourism currently accrue to local communities whose environment is visited.

As was pointed out in the White Paper, the majority of South Africans have never been meaningfully exposed to the tourism sector. In the new South Africa, the government's objective is to ensure that all citizens have equal access to tourism services as consumers and providers. Enterprises and communities need to identify ways in which they can provide a range of tourism experiences sufficiently wide to be accessible to the average South African. Programmes are being established to allow South Africans, and particularly front-line tourism employees, to become "tourists at home". To this end, the notion of *Batho Pele* is a guiding principle.

The opportunity costs of the creation of national parks and subsequent reduced access to natural and cultural resources was often borne by local disadvantaged communities in the past. Such communities did not perceive or receive any significant direct benefits from the change in land use from conservation and tourism. Communities must be empowered to take part in the Management of areas so that they can have a say in the distribution of the benefits and the sustainable use of their environment. Efforts are not being made to enable local communities to experience wildlife in the parks.

One of the key challenges for business, local government and educators is to develop knowledge amongst the historically disadvantaged regarding what tourism is, and how it can benefit local communities. In the 1996 White Paper the involvement of local communities and historically disadvantaged groups was identified as a critical success factor. Communities need to be involved in the planning, decision-making and the development of tourism; and in all operational aspects of the industry as tourists, employees and entrepreneurs. Social exclusion has contributed to the historically narrow, myopic focus of the industry in South Africa. Responsible tourism is about enabling and encouraging historically disadvantaged local communities to access lucrative tourism markets. This is to overcome the problem of visitors being kept within the hotels and resorts and only venturing out to 'sanitized' places of interest. For example, local shebeens and craft vendors rarely see a tourist.

One of the key challenges for the formal sector is to develop ways of engaging with community entrepreneurs and community groups to develop new products and diversify the industry. The success of township tours is one example of the product development opportunities that exist in the new South Africa. Much more effort needs to be made to

improve the linkages between the formal and informal sectors of the tourism sector. The exclusion of the historically disadvantaged has contributed towards poverty and crime – the ‘township tours’ demonstrate that where local guides act as hosts, and where there are clear benefits both to communities and to historically disadvantaged entrepreneurs, tourists can have a good experience and be assured of their safety. In 1995, involving local communities in tourism, creating employment, training, and awareness programmes were identified as solutions to the problem of security for tourists. There is much still to be done and this is a core challenge for responsible tourism. National priorities for action are described within 3.1: Social objectives and indicators.

The meaningful involvement of historically disadvantaged communities as employees and as entrepreneurs in South Africa is a priority. This requires both market access and capacity building. Training at all levels is essential to the development of a more inclusive industry, able to demonstrate its social responsibility and to develop new products which meet the cultural and “meet the people” interests of tourists. The development and delivery of new quality products for the changing market place is of central importance to enable the historically disadvantaged to become part of mainstream tourism. It is also required for social justice and the avoidance of exploitation of local cultures and community groups. The value of the culture of historically disadvantaged people needs to be recognized and new tourism products developed. Their awareness of the opportunities in tourism needs to be a key element in training and education, and it is important that these opportunities be presented in a realistic commercial framework.

54.4 Social Objectives and Indicators

54.4.1 Involve the local community in planning and decision-making

- (a) Understand the historical, political and cultural context of local and host communities, and historical relationships with tourism development and protected areas.
- (b) Creating opportunities and eliminating barriers to access mainstream tourism markets for local communities, historically disadvantaged people and individuals.
- (c) Understand the local, safety and security, infrastructural, resource, educational, poverty, disability and health constraints (e.g. HIV/AIDS), when designing, operating and marketing tourism.
- (d) Encourage proactive participation and involvement by all stakeholders -

including the private sector, government at all levels, labour, local communities (their leaders and structures) - at all stages of the tourism life cycle.

- (e) Encourage formal and informal sector enterprises to develop effective structures, or join existing bodies, for marketing and tourism development. Create the environment to do so by providing resources, technical and Management capacity.
- (f) Encourage successful entrepreneurs, particularly those from the emerging tourism fraternity, to mentor others.
- (g) Planning authorities should work to include stakeholders as part of a decision-making process at the destination level, to determine what constitutes sustainable levels of tourism in the social, natural, and economic context.
- (h) Programmes of education within school curriculums, and public awareness within communities, are needed regarding the potential positive and negative aspects of tourism.
- (i) Post-employment education and training programmes within the framework of the Skills Development Act and South African Qualifications Authority (SAQA) are required to educate employees regarding the potential pros and cons of tourism, and comparative costs and benefits of alternative enterprises in order to aid decision-making.
- (j) Involve the local communities in growing the local tourism business by using existing facilities and by developing new activities and attractions. Individual enterprises and groups of enterprises need to develop complementary products. (Report number of new activities/ attractions; number of visitors).
- (k) Empower communities to market their cultural traditions and products as assets and enhance their economic opportunities.
- (l) Interpretation material and visitor information centers should be developed in consultation with local communities.
- (m) Integrate community development goals as identified in the Integrated Development Plan (and similar processes) into the enterprise's social and sustainability mission and objectives.

54.4.2 Assess social impacts as a prerequisite to developing tourism

- (a) Identify and monitor potential adverse social impacts of tourism and minimize them in the short and the long-term, and ensure that communities actively

participate in the monitoring.

- (b) Larger enterprises should appoint a member of staff to take responsibility for developing better local relationships and partnerships. Implement social audits of tourism projects. These can be conducted in an inexpensive, rapid and participatory way.
- (c) Consider schemes to encourage local co-operation and civic pride like an “adopt a school” initiative or ‘adopt a street’, or other local area near the enterprise. Work with local government and the local community to identify priority sites, and make them safe and attractive for tourists.
- (d) Enterprises should develop strategies to promote equality in terms of gender, ethnicity, age, and disability, and report progress on implementation.

54.4.3 Maintain and encourage social and cultural diversity

- (a) Develop tourism with dignity, respect and nurture local cultures (including religion), so that they enrich the tourism experience and build pride and confidence among local communities.
- (b) Use tourism as a catalyst for human development, focusing on gender equality, career development and the implementation of national labour standards. (Report on gender equality and career development)
- (c) Tourism development should not compromise respect for social, cultural, and religious rights, or the essential human rights of people to food, a safe and clean environment, work, health, and education.
- (d) Support the development of sustainable local handicraft enterprise by assisting with improvement of design, marketing, production and packaging skills for craft workers in relation to market demand. Consider specifically what can be done to enhance the skills and earnings of women, particularly in rural areas.
- (e) Support visits by local schoolchildren to tourism sites that promote and display their heritage.
- (f) Consider what contributions the enterprise can make to scholarships, local youth sports teams and other community causes. Monitor and report increasing contributions with respect to the number of projects and level of investment.
- (g) Display local cultural artifacts in your enterprise and encourage the development and sale of traditional cultural products, crafts and folklore. Aim for 25% items for sale at enterprise from within 50 km, with tours offered to local markets, and

try to increase these by 25% over 3 years. Provide customer feedback in order to raise standards.

- (h) Be wary of the dangers of commoditization, and encourage craft and other cultural workers to maintain the authenticity and cultural values of their products. Encourage craft workers to explain the cultural values and history of their crafts.
- (i) Give enterprises a local flavour by serving local dishes and source soft furnishings, arts and crafts locally. Monitor the proportion of local dishes on menu and the proportion of furnishings & crafts locally made, and aim to increase these proportions by 25% over 3 years. Visitors expect to find at least one local dish their menus.
- (j) Identify cultural heritage resources in the local area and where there is sufficient demand from tourists and work with the local community to develop them as sustainable tourism attractions. Consider mission settlements, sites of slave occupation, festivals, struggle related monuments and places, rock art sites, cultural monuments, food, drink, arts and crafts, music, dance and storytelling.
- (k) Encourage tourists to show respect by learning a few words of the local language, (and to use them when talking to local people!) and to learn about the host culture and traditions.
- (l) Share enterprise level knowledge regarding informal sector tourism skills and products. Draw the attention of ground handlers, the media and tour Operators to complementary product opportunities in the local community.

54.4.4 **Be sensitive to the host culture**

- (a) Respect, invest in and develop local cultures and protect them from over-commercialisation and over-exploitation. Encourage workers and staff to observe their religious and cultural practices.
- (b) Respect indigenous intellectual property, especially when setting up contractual arrangements for the use of indigenous knowledge.
- (c) Use local guides, and encourage them to continually improve their quality, to ensure that the community speaks for itself and to increase the revenues going into the local community (by higher fees for quality tours). Monitor and report this economic contribution to the community and set targets to increase it annually.
- (d) Develop a local social contract for interactions and behavior between the local

community and tourists (including responsible bargaining), developed with the participation and contributions from the community, and display it prominently for visitors and publicly within the community.

- (e) Create opportunities for visitors to interact with locals in an unstructured, spontaneous manner (e.g. through sporting activities, visits to local schools, shebeens, taverns, restaurants in townships).
- (f) In accordance with the Batho Pele principle, provide visitors with inclusive, honest and reliable information about history and contemporary life in South Africa, local tourism attractions and facilities.
- (g) Promote a sound, proud, service ethic among all participants in the tourism sector.
- (h) Promote and ensure the respect and dignity of people in the development, marketing and promotion of tourism.
- (i) Ensure that tourism does not undermine the resource rights, traditional knowledge and skills of local communities.
- (j) Negative social and cultural impacts associated with tourism, such as increased crime, drug and alcohol abuse, prostitution, and crime should be monitored and be proactively addressed in cooperation with the community.
- (k) Educate tourists regarding local culture and where necessary make them aware of how they should behave to respect it.
- (l) The exploitation of human beings in any form, particularly sexual and when applied to women and children, should be energetically combated with the co-operation of all concerned.

54.5 Guiding Principles for Environmental Responsibility

Responsible tourism implies a proactive approach by the tourism sector to the environment through the promotion of balanced and sustainable tourism. This is particularly important where the focus of the tourism sector and of the activities of tourists is the natural environment, as is the case with wildlife viewing, hunting and marine tourism. There are particular challenges in making nature-based tourism sustainable. Responsible tourism development has to be underpinned by sustainable environmental practices. In the environmental sphere, only conservative decisions based on the precautionary principle can be considered responsible. Cultural heritage is also part of the environment, and the

responsibility of the tourism sector towards the cultural environment was considered in the social responsibility guidelines.

Central to environmental responsibility is thinking about the life cycle impact of an enterprise or product, and so these guidelines apply to the stages of design, planning, construction, operation and decommissioning. The process of managing the business should be fully integrated with environmental Management, throughout the Management Services life cycle (from conceptualization to decommissioning). In constructing concessions and leasehold developments it is particularly important to ensure that during decommissioning it will be possible to remove all structures and restore the area. Larger businesses should be using Environmental Management Systems to exercise environmental responsibility; for businesses above a defined size in each sector, it would be irresponsible to operate without one.

All tourism enterprises can contribute to environmental sustainability by exercising care in purchasing decisions – by seeking out and supporting responsible producers of the products that are required to run the enterprise, and by making clients aware of the responsible purchasing policy. The practical guidelines and indicators that follow are organized around the key environmental elements of responsible tourism identified in the 1996 White Paper.

54.6 Environmental Objectives and Indicators

54.6.1 Assess environmental impacts as a prerequisite to developing tourism

- (a) Plan new developments only in areas where the use of water and other natural resources for tourism will not conflict with local community needs, now or in the foresee-able future. Integrate environmental Management into the Management Services planning cycle.
- (b) Follow best practice guidelines on the design, planning and construction of buildings and associated infrastructure to minimize environmental impacts and to reduce energy requirements for lighting, cooling and heating.
- (c) Use local materials (where sustainable) and local architectural styles on a scale that does not create a negative aesthetic impact.
- (d) Avoid damaging the environmental quality of the enterprise's neighbourhood by noise or light pollution.
- (e) Design buildings with natural ventilation and actively plan to reduce resource

use during the construction and operational phases. Tell visitors what has been done to make the enterprise more environmentally friendly. Quantify the resources “saved”.

- (f) Plan new developments to have the lowest possible ecological impact, particularly in environmentally sensitive areas such as the coastal zone, indigenous forests, wildlife habitats and wetlands. Minimize the transformation of the environment around the enterprise.
- (g) When developing plans for a new enterprise include elements, which contribute to the maintenance of biodiversity by planting local indigenous and non-invasive species, which provide habitats for birds, bees, and butterflies.

54.6.2 **Use local resources sustainably, avoid waste and over-consumption**

- (a) Meter the quantity of water consumed and manage consumption and leakage to reduce water consumption by percentage to be agreed per annum for 3 years, and report water consumption and performance in monitoring.
- (b) Measure electricity consumption and introduce energy saving measures to achieve percentage to be agreed reduction in use per annum over three years. This can be done by for example dimming lights, using low energy appliances and light bulbs and enhancing the use of natural ventilation.
- (c) Monitor the use of diesel, paraffin and petrol and set targets to reduce consumption and switch to less polluting fuels.
- (d) Set targets to increase the proportion of energy used from renewable resources – for example solar, wind, hydroelectric (increase by 10% over 3 years). Sustainable use of wood, from indigenous and plantation forests is complex, and great care needs to be taken.
- (e) Install and display appropriate technology to reduce consumption of natural resources, production of waste and incidences of pollution.
- (f) Monitor the sewage system and demonstrate how pure the outflow back into the environment is. If the enterprise has one, make the reed bed a valuable habitat feature.
- (g) Set percentage targets and time scales for the reduction of waste produced, levels of recycling and reuse of waste from the enterprise. Set appropriate targets for reduction and/or recycling of waste produced per year for paper (5%), plastics (5%), metal (5%) and glass (5%). Report on progress towards

percentage targets over 3 years.

- (h) Work with suppliers to minimize the amount of packaging purchased with supplies, and therefore reduce the amount of waste that needs to be disposed of. It may be appropriate for trade associations to conduct these discussions on behalf of members.
- (i) Reduce “food miles” by using locally produced food.
- (j) Enterprises should assist conservation by investing in sustainable trails, hides and interpretation. Tell visitors what the enterprise is doing, and claim credit for activities.
- (k) Encourage the use of environmentally friendly transport.

54.6.3 **Maintain and encourage natural diversity**

- (a) Encourage visitor behaviour that respects natural heritage and has a low impact upon it.
- (b) Discourage the purchase of products that exploit wildlife unsustainably or contribute to the destruction of species or habitats (e.g. some handicrafts; bush meat).
- (c) Look for ways in which the enterprise and its guests can assist with the conservation of natural heritage, for example through removing litter.
- (d) Invest a percentage of profits or turnover in species conservation or habitat restoration and Management. Report the investment, and try to increase this by 5% per year.
- (e) Avoid pollution by using environmentally friendly chemicals, and by using biodegradable soaps and detergents – tell visitors and staff why the enterprise is doing this and how it benefits the environment.
- (f) Work with conservation authorities to ensure that visitors to natural heritage areas are aware of the impacts that they may have on the ecology of the area and how they should behave in order to minimize those impacts.
- (g) Ensure that relevant members of staff are familiar with the issues and ways of avoiding environmental impacts – they should abide by the advice and communicate it to guests, and use the services of companies that abide by local environmental Best Practice.
- (h) Do not market tourism resources to encourage tourists into ecologically sensitive

areas which are vulnerable to irresponsible tourism practices, particular sports or recreational uses discourage these activities (e.g. irresponsible 4x4 use, hunting, diving or sand boarding).

55. SCHEDULE 11 – COMPLIANCE EVENTS

The following Compliance Events will apply to the Management Services:

- 55.1 Provision by the Operator of a Performance Bond in the amount and form indicated in **Schedule 15**; and
- 55.2 The commencement of operations by 1 April 2023 or such other date determined by SANParks.

56. SCHEDULE 12 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE FACILITY

56.1 The Operator must agree to having a maintenance policy, ensuring that the following refurbishment is done:

56.1.1 Short term (Annual)

56.1.1.1 Break down maintenance of all building, equipment and service assets (all infrastructure that forms part of the Lodge and Conference Centre).

56.1.1.2 Maintenance of the fire systems.

56.1.1.3 Servicing of all mechanical and electrical equipment.

56.1.1.4 Replacement of any assets that cannot be maintained.

56.1.2 Medium term (0-5 years)

56.1.2.1 Planned maintenance of all the infrastructure classes.

56.1.2.2 Planned services.

56.1.2.3 Planned replacements.

56.1.3 Long term (5 - 10 years)

56.1.3.1 Planned maintenance of all the infrastructure classes.

56.1.3.2 Planned services.

56.1.3.3 Planned replacements or upgradings

56.2 In addition to the planned maintenance specified above, the Operator must have an ongoing preventative maintenance programme for all the guest rooms and public areas. SANParks is currently procuring a service provider to provide these services.

57. SCHEDULE 13 – KEY PERFORMANCE INDICATORS

58. SCHEDULE 14 – INSURANCE

59. SCHEDULE 15 – FORM OF PERFORMANCE BOND

PART A: FORM OF PERFORMANCE BOND

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

Whereas:

- (a) SANParks has awarded a Agreement for the design, construction, fitting, installation, equipping, commissioning, financing, Operation, Management and Maintenance of the SANParks Skukuza Facility in KNP under a Agreement (hereinafter called the “**Agreement**”) to [] (hereinafter called the “**Operator**”); and
- (b) The Operator is obliged by the terms of the Agreement to provide this Bond to SANParks to secure the performance of its obligations under the Agreement.

We, the undersigned

_____ and _____
(Name) (Name)

acting herein as

_____ and _____
(Position) (Position)

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

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

1. The Bank shall pay an amount not exceeding 12 (twelve) months’ payments of the Base Management Fee, namely an amount of __[.....] in aggregate (the “**Maximum Amount**”) without delay, on receipt by the **Bank** of the first written demand of SANParks that the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to SANParks upon receipt of a certificate in the form attached

signed by an authorised representative of SANParks certifying that SANParks is entitled to draw on this Bond pursuant to the provisions of the Agreement (the “**Certificate**”). SANParks may make partial and/or multiple demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.

2. The demand for payment together with this Bond (or a certified copy hereof) and the Certificate shall constitute prima facie proof of the Bank’s indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of SANParks nor of the Operator respectively to enforce strict or substantial compliance by the Operator or any contractor or sub-contractor with their respective obligations nor any act, conduct, or omission by SANParks or Operator prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Operator, any contractor or sub-contractor or any other person or by amendment to or variation or waiver of terms of the Agreement, any sub-contract or any ancillary or related document (the “Underlying Documents”) will discharge the Bank from liability under this Bond. For the avoidance of doubt, the Bank's liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Operator, any contractor or sub-contractor or any other Person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.
4. This Bond shall:
 - 4.1 remain in full force and effect from the date hereof, and shall expire on the earlier of:
 - 4.1.1 the issuance of a replacement Bond in accordance with the terms of the Agreement;
 - 4.1.2 90 (ninety) Business Days after the expiry or earlier termination of the Agreement; or
 - 4.1.3 the date when the Bank has paid to SANParks an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;
 - 4.2 exist independently of the Agreement or any amendment, variation or novation thereof;

- 4.3 not be ceded, assigned or otherwise transferred by SANParks, or otherwise dealt with in any manner whatsoever (save for the purposes and in the manner referred to above) which has or may have the effect of transferring or encumbering or alienating SANParks' rights hereunder;
 - 4.4 be returned to the Bank on its expiry, cancellation, withdrawal or this Bond being fully drawn; and
 - 4.5 be governed by the laws of South Africa.
- 5. The Bank shall deposit any payment made under this Bond into an account designated by SANParks.
 - 6. The Bank shall make any payment demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to SANParks equal the amounts that would have been paid to SANParks had no such deduction or withholding been made or been required to be made.
 - 7. The obligations of the Bank under this Bond shall not in any way be affected by the invalidity, illegality or unenforceability for any reason of the obligations of the Operator.
 - 8. The Bank shall have no right of recourse or claim of whatever nature against SANParks arising out of its obligation to pay or arising out of actual payment under this Bond to SANParks.
 - 9. Addresses and Notices:
 - 9.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this Agreement as follows:

SANParks:

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The **Bank**:

Telefax: _____

- 9.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.
- 9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.
- 9.5 A notice sent by one party to another party shall be deemed to be received
- 9.5.1 on the same day, if delivered by hand; and
- 9.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.
- 9.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON _____ 202__

AT _____ (Place)

SIGNATURE _____

[NAME]

[TITLE]

WITNESS 1 _____

SIGNATURE_____

[NAME]

[TITLE]

WITNESS 2 _____

PART B: FORM OF CERTIFICATE

To: [Name and address of Bank]

Attention:

From: South African National Parks

Address:

Dated:

Dear Sirs

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

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

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

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

Yours faithfully,

.....

for and on behalf of

South African National Parks

61. SCHEDULE 16 - BRANDING REQUIREMENTS

61.1 Brand Overview

- 61.1.1 Skukuza Safari Lodge effectively falls under three brands:
 - 61.1.1.1 SANParks generic brand.
 - 61.1.1.2 Wild Brand – as applicable for possible hotel/lodge developments in other National Parks
 - 61.1.1.3 Site specific Impala Lily brand
- 61.1.2 The application of elements of the three brands are used on the varying elements of the property, depending on the aspect it is applied on.
- 61.1.3 The Operator may apply its own branding on several aspects.
- 61.1.4 The Operator must accept the branding limitation in that the SANParks Wild and Impala Lily brands take precedence. These form part of the mother brand of SANParks. Should the Operator wish to co-brand, it should acknowledge that the SANParks Wild and Impala Lily brand will be the primary brand and their brand secondary and limited to certain locations subject to SANParks approval;
- 61.1.5 The Operator shall not, in the operation, promotion or marketing of the Skukuza Safari Lodge, be entitled to use, directly or indirectly, any commercial branding similar to any branding used outside of the Protected Area by the Operator, or any of its associated companies or competitors, without the prior written consent of SANParks;
- 61.1.6 Any commercial branding developed by the Operator in respect of the Skukuza Safari Lodge may not be used outside the Protected Area without SANParks' prior written consent; and
- 61.1.7 The use of any branding, logo, trademark, trade name, and get up, signage, outdoor advertising, livery, promotion, promotional or marketing material or other proprietary intellectual property in connection with the Skukuza Safari Lodge shall require the prior written approval of SANParks.

61.2 Marketing Collateral

Sales packs listing conference packages, room rates, etc.	Wild and Operator
Templates for promotions	Wild and Impala Lily and Operator
A separate Skukuza Conference Lodge website	Wild and Impala Lily and SANParks and Operator
Pull Up Posters to use at exhibitions	Wild and SANParks and Operator
Email signatures for all staff with computer access	Wild and Impala Lily and SANParks and Operator
Business Cards	Wild Small, Lodge Name Large and Operator
A4 Folders, Brochures, Fact Sheets	Wild and Impala Lily
Pull Up Posters to use at exhibitions	Wild and Operator
Guest Comment Sheets	Impala Lily

61.3 Staffing Branding Decisions

Logos for chef's jackets	Impala Lily
Signature items: scarves and ties	Wild and Impala Lily
Name badges	Impala Lily

61.4 Lodge Collateral

61.4.1 Front Office and General Administration

Complimentary Slips	Wild and Impala Lily
Letterheads	Wild and Impala Lily and Operator
Registration Cards	Wild and Impala Lily
Luggage Tags	Impala Lily
VIP Welcome Card (Fits into a printer)	Impala Lily
A5 Welcome Template for VIP Arrivals	SANParks, Wild and Impala Lily

61.4.2 Lodge Bedrooms and Suites

Service Directory (no content, only design)	Digital/paper? SANParks, Wild and Impala Lily and Operator
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Escape Notice Boards	Impala Lily
A6 Note Pads	Wild
Maintenance Request Forms	Impala Lily
Safe Instructions	Impala Lily
TV Channel Guide	Wild
Laundry Lists	Impala Lily
Laundry Bag	Impala Lily
Do Not Disturb Signs	Full logo with Wild and Impala Lily
No Smoking Signs	Wild
Turndown sticker for sweet	Impala Lily and Operator
Packaging for rusks or biscuits in rooms	Impala Lily

61.4.3 Hotel Bathrooms

Green in terms of packaging and content.

'Save Water' Notice and 'Towel/Laundrying' Notice	SANParks and Wild
Toilet Paper Sticker – 12mm x 12 mm	Impala Lily
Shoe Mitt	OD Item - Wild
Vanity Kit	OD Item
Shower Cap	Wild
Shower Gel/Body wash	Wild
Shampoo	Wild
Soap	Wild
Hand and Body Lotion	Wild

61.4.4 Conferencing

Conference Pack - Folder	SANParks, Wild and Impala Lily and Operator
A4 Note Pad	SANParks, Wild and Impala Lily and Operator
Logotype Pens	Wild
Conference Menu templates	Wild and Impala Lily
Wine List templates	Wild and Impala Lily

61.4.5 Food and Beverage Areas

Infinity Water Decide on operational implications Can be offered for purchase – consider co-branding	‘Green’ bottled water supply for Housekeeping Conferencing F&B. Bottled on site in logotype bottles. This system could perhaps be implemented in other SANParks properties.
One-Page Menu Template	Wild and Impala Lily
A5R-Page Menu Template	Wild and Impala Lily
A4 Menu page Template	Wild and Impala Lily
A4 Wine List Page Template	Wild and Impala Lily
T-stand Template	Wild and Impala Lily
Table Numbers for the different areas – Buffet, terrace, banquets	N/A
Labels for Buffet Dishes	N/A
Coasters	Impala Lily

62. SCHEDULE 17 - INTEGRATED PEST MANAGEMENT PLAN

63. SCHEDULE 18 – CONSUMER PROTECTION ACT

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

63.1 Purpose and Policy of CPA

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

- 63.1.1 establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- 63.1.2 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:-
 - 63.1.2.1 who are low-income persons or persons comprising low-income communities;
 - 63.1.2.2 who live in remote, isolated or low-density population areas or communities;
 - 63.1.2.3 who are minors, seniors or other similarly vulnerable consumers; or
 - 63.1.2.4 whose ability to read and comprehend any advertisement agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;
 - 63.1.2.5 promoting fair business practices;
 - 63.1.2.6 protecting consumers from:-
 - 63.1.2.6.1 unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
 - 63.1.2.6.2 deceptive, misleading, unfair or fraudulent conduct.

The Private Party shall in the course of operating the Pop Up Wellness & Healing

Experience Facility in the Protected Area observe the following procedures:

63.2 Disclosure and Information

63.2.1 Information in plain and understandable language

Private Party shall be required to produce, provide or display any notice, document or visual representation of anything connected with the Business in plain language

63.2.2 Disclosure of price of products

63.2.3 Private Party shall be required to adequately display a written indication of price in relation to any products to be sold by the Private Party at the Pop Up Wellness & Healing Experience Facility, the price of which should be expressed in South African currency (Rand), and in the following manner:

63.2.3.1 the price should be annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the products or to any band, ticket, covering, label, package, reel, shelf or other thing used in connection with the products or on which the products are mounted for display or exposed for sale; or

63.2.3.2 in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the products in question.

63.2.4 Product labelling and trade descriptions

The Private Party shall not:

63.2.4.1 knowingly apply to any products a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

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

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

63.2.4.3.1 a trade description applied to the products is likely to mislead the consumer as to any matter implied or expressed in that trade description; or

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

63.2.4.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products to be sold at the Addo Pop Up Wellness & Healing Experience Facility such notice shall be in a manner and form as described in CPA and related legislations.

63.2.5 Sales records

63.2.5.1 Private Party shall provide a written record of each transaction to the consumer to whom any service sold.

63.2.5.2 The record must include at least the following information:

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

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

63.2.5.2.3 the date on which the transaction occurred;

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

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

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

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

63.2.5.2.8 the amount of any applicable taxes; and

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

63.3 Fair and Honest Dealing

63.3.1 Unconscionable conduct

63.3.1.1 Private Party or any of its representatives or employees during the course of conducting the Business in the Addo Pop Up Wellness & Healing Experience Facility shall not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar

conduct, in connection with any marketing and/or the offering for sale of any products.

63.3.2 False, misleading or deceptive representations

63.3.2.1 Private shall not, by words or conduct:

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

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

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

63.4 **Quality Service**

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

63.4.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Pop Up Wellness & Healing Experience Facility ;

63.4.1.2 ensuring that the product items provided for sale in the Pop Up Wellness & Healing Experience Facility are free of defects such as freshness, safe, not hazardous to health and are of quality that the consumers are generally entitled to expect.

63.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 63.4.1 above, the consumer is entitled to demand from the Private Party, to either:-

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

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

64. **SCHEDULE 19 – POPIA PROVISIONS**

64.1 **Definitions**

For purposes of this Agreement, the terms:

- 64.1.1 **“Data Subject”** means the Person to whom personal information relates;
- 64.1.2 **“Personal Information”** means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—
 - 64.1.2.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
 - 64.1.2.2 information relating to the education or the medical, financial, criminal or employment history of the person;
 - 64.1.2.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - 64.1.2.4 the biometric information of the person;
 - 64.1.2.5 the personal opinions, views or preferences of the person;
 - 64.1.2.6 correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
 - 64.1.2.7 the views or opinions of another individual about the person; and
 - 64.1.2.8 the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;
- 64.1.3 **“Person”** means a natural or juristic person;
- 64.1.4 **“Process/Processed/Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information,

including—

- 64.1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 64.1.4.2 dissemination by means of transmission, distribution or making available in any other form; or
- 64.1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 64.1.5 “**Responsible Party**” means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.

64.2 DATA PROTECTION AND PROCESSING

- 64.2.1 The Parties hereby warrants, represents and undertakes in favour of each other that they shall at all times strictly comply with all applicable data protection laws and with all the provisions and requirements of each other’s respective data protection policies and procedures which may be in force from time to time.
- 64.2.2 The Parties shall take all appropriate and reasonable steps to ensure that their acts and omissions under this PPP Agreement will not result in the breach of the other Party’s data protection laws and shall, on request, comply with all instructions by the other Party to comply with their respective obligations under applicable data protection laws.
- 64.2.3 Each Party indemnifies the other against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a full indemnity basis), losses and damages arising from or incurred by reason of any wrongful processing of any Personal Information or breach of its obligations under this clause 70.
- 64.2.4 Each Party acknowledges that in discharging its obligations as contemplated in this PPP Agreement, it may have access to Personal Information relating to Data Subjects. Accordingly, each Party shall:
 - 64.2.4.1 process such Personal Information only with the written instructions of the other

Party, unless such Party is required by applicable data protection laws to otherwise process the Personal Information. To the extent a Party is relying on applicable data protection laws as the basis for processing the Personal Information, the such Party shall promptly notify the other Party of this, before performing the processing required by the applicable data protection laws, unless such applicable data protection laws prohibit the such Party from so notifying;

64.2.4.2 treat the Personal Information as strictly confidential in accordance with the provisions of this PPP Agreement;

64.2.4.3 not disclose or otherwise make available the Personal Information to any third party (including sub-contractors) other than authorised personnel or third parties who require access to such Personal Information strictly in order for the respective Parties to carry out their obligations under this PPP Agreement;

64.2.4.4 ensure that all the Parties personnel, all subcontractors, and any other persons having access to and/or processing the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth in this PPP Agreement;

64.2.4.5 where either Party receives an instruction to delete Personal Information by a Data Subject, each Party will, in turn, instruct the other Party to implement such request to any Personal Information of such Data Subject (or alternatively where the Data Subject contacts the Party directly and requests the Party to erase his/her/its Personal Information), the Party will attend to such request without any delay and ensure that such Personal Information has been deleted. If the Party is acting in the capacity of operator it should not respond to Data Subject requests directly and it should instead direct the request to the Party that is the Responsible Party in respect of that Data Subject's Personal Information;

64.2.4.6 take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by having regard to:

64.2.4.6.1 Any requirement set forth in Law to which either Party is subject; and/or

64.2.4.6.2 generally accepted information security practices and procedures which apply to both Parties business, including the state of technological

development and the cost of implementing any measures (which measures may include, where appropriate, pseudonymising and encrypting the Personal Information, ensuring confidentiality, availability and resilience of its systems and services, ensuring that availability of and access to the Personal Information can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

64.2.4.6.3 harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the Personal Information being protected;

64.2.4.6.4 complying with any requirements set forth in their respective policies;

64.2.4.6.5 taking steps to identify all reasonably foreseeable internal and external risks associated with Personal Information security and, at least once in every 12 (twelve) month period, take all reasonable and necessary steps to:

64.2.4.6.5.1 identify all reasonably foreseeable internal and external risks to Personal Information in their possession or under its control using generally accepted auditing methodologies;

64.2.4.6.5.2 implement and maintain appropriate safeguards against the risks identified;

64.2.4.6.5.3 regularly verify that the safeguards which each Party has in place have been effectively implemented; and

64.2.4.6.5.4 ensure that the safeguards are continually and proactively updated in response to new risks or deficiencies in previously implemented safeguards.

64.2.4.6.6 complying with the auditing requirements in respect of the Agreement as read with this Agreement, and applicable data protection laws, as applicable; and

64.2.4.6.7 agreeing to reasonable amendments to the Agreement and this Agreement from time to time, to the extent that data protection legislation or the law generally requires such amendments for the benefit of Data Subjects.

64.3 NOTIFICATION OF A SECURITY BREACH

70.3.1 Each Party will:

70.3.1.1 Notify the other Party's information officer immediately upon becoming aware of or having reasonable grounds to suspect any unauthorised or unlawful use, disclosure or processing of Personal Information and comply with the following:

64.3.1.1.1 at its own cost, take all necessary and reasonable steps (including any and all steps as may be prescribed by the relevant regulator) to mitigate the extent of the loss or compromise of Personal Information and, if applicable, to restore the integrity of the affected information systems as quickly as possible;

64.3.1.1.2 furnish the other Party with details of the Data Subjects affected by the compromise and the nature and extent of the compromise, including (if known to such Party, after having conducted an investigation into such compromise) details of the identity of the unauthorised person who may have accessed or acquired the Personal Information, consequences of the unauthorised or unlawful Processing and full details of mitigating steps taken;

64.3.1.1.3 provide the other Party with a report on its progress in resolving the compromise at reasonable intervals but at least once per Business Day following the initial notification to the other Party, until such time as the compromise is resolved;

64.3.1.1.4 in consultation with the other Party, and where required by law, notify the relevant law enforcement authorities. The notification requirement vests with the Responsible Party; and

64.3.1.1.5 provide each other with such assistance and information such Party may require in order to enable it to notify the relevant regulator and/or the affected Data Subjects;

64.3.1.1.6 assist and co-operate with each other in complying with any requests for access to Personal Information received by the other Party from Data Subjects and, at the request of the other Party, promptly provide such Party

with a copy of any Personal Information held by the Party in relation to a specified Data Subject, which copy must be in a structured, commonly used, machine-readable and interoperable format;

64.3.1.1.7 provide reasonable evidence of each other's compliance with its obligations under this PPP Agreement, on reasonable notice and request (no more than once per year unless (i) there is evidence of a breach by a Party of this PPP Agreement, (ii) a Party or its business has undergone significant changes including but not limited to a change in control and/or a change in processes or (iii) the relevant regulator requires such evidence on a more frequent basis);

64.3.1.1.8 at the request of a Party, promptly return or, (with respect to Personal Information stored electronically subject to reasonable technical limitations) destroy all Personal Information in the possession or control of a Party, including in accordance with any specific but reasonable retention, destruction and purging requirements as may be prescribed by the other Party, and furnish proof of compliance to the other Party.

64.3.1.1.9 when a Party is legally required to retain the Personal Information in order to comply with applicable laws, the Personal Information will be retained in accordance with strict security measures and will not be used for any other purpose; and

64.3.1.1.10 not process the Personal Information otherwise than in accordance with this Agreement.

64.4 **PERMITTED PROCESSING OF PERSONAL INFORMATION**

64.4.1 Each Party will only process the Personal Information of Data Subjects:

64.4.1.1 For a specific, lawful purpose and limited time period strictly in accordance with a Party's express reasonable written instructions and will not carry out any related or further Processing activities for any other reason whatsoever without the express written consent of the other Party, save that a Party may carry out reasonable further Processing strictly in order to comply with an obligation which is imposed on it by law and in such circumstances, the further Processing will be

in accordance with the provisions of this PPP Agreement and relevant legislation relating to the Processing of Personal Information; and

64.4.1.2 A Party is not permitted to disclose to any Data Subject that it is Processing, has Processed or intends to Process the Personal Information of such Data Subject unless:

64.4.1.2.1 it has obtained the prior written consent of the other Party; or

64.4.1.2.2 a Party is required to comply with relevant legislation.

64.5 DISCLOSURE REQUIRED BY LAW, REGULATION OR COURT ORDER

64.5.1 In the event that a Party is required to disclose or Process any Personal Information required by law, regulation or court order, or if the Processing of such Personal Information is required to enable a public body to properly perform a public law duty to carry out actions for the conclusion or performance of a contract to which the Data Subject is a party, or is necessary for pursuing the legitimate interests of either Party, or complies with an obligation imposed by law on each other, a third-party to whom the information is supplied, or a Data Subject, such Party:

64.5.1.1 will advise the other Party thereof prior to disclosure, if possible. If prior disclosure is not possible, such Party will advise the other Party promptly after such disclosure;

64.5.1.2 will take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;

64.5.1.3 will afford the Party a reasonable opportunity, if possible and permitted, to intervene in the proceedings; and

64.5.1.4 will comply with all reasonable requests as to the manner and terms of any such disclosure, if possible and permitted.

64.6 SEPARATION OF PERSONAL INFORMATION

64.6.1 Unless otherwise specifically recorded in this PPP Agreement or any annexure hereto, a Party or any third-party under its control may not combine or merge the Personal Information of a Data Subject with information of another party.

64.7 TRANSFER OF PERSONAL INFORMATION

64.7.1 Neither Party will transfer Personal Information outside of the country into which this PPP Agreement applies unless:

64.7.1.1 the other Party provides its prior written consent to the transfer; and

64.7.1.2 the recipient is subject to a law, code of conduct or contract which provides comparable protection for the Personal Information as the protections contained in this PPP Agreement and, the applicable data protection laws including similar provisions relating to the further transfer of the Personal Information: provided that at all times such transfer is undertaken in compliance with the applicable data protection laws; and;

64.7.1.3 Prior authorisation from the regulatory authority has been obtained in circumstances where required by applicable data protection laws.

64.8 TRANSMISSION OF DATA

64.8.1 Each Party will ensure that all Personal Information communicated, including, without limitation, any digital communication or any Personal Information stored in digital form will be secured against being accessed or read by unauthorized parties, using appropriate security safeguards, having due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of relevant legislation.

64.8.2 The Parties will fully comply with all applicable statutory obligations contained in the applicable data protection laws with which the Parties warrant that they are and will remain fully conversant with, when processing Personal Information obtained by the Responsible Party and such Personal Information is entered into a record.

64.8.3 Neither Party will subcontract any of its processing operations performed under this PPP Agreement without the prior written consent of the other Party. Where a Party subcontracts its obligations under this PPP Agreement, with the consent of the other Party, it shall do so only by way of a written agreement with the sub-contractor which imposes the same obligations on such sub-contractor as are imposed on the respective Party under this Agreement. Where such sub-contractor fails to fulfil its data protection obligations under such written agreement, such Party shall remain fully liable to the other Party for the performance of such obligations under such

agreement.

- 64.8.4 To the extent that the Parties processes Personal Information relating to each other, the Parties hereby consent and shall procure the consent of its employees and consultants to the processing of such Personal Information (including Special Personal Information), to comply with its legal obligations, to comply with the provisions of the PPP Agreement and as may be necessary for pursuing its legitimate business interests. Each Party further understands and agrees that the other Party may transfer such Personal Information to third parties who process Personal Information on its behalf, including companies within its group of companies.