



TOURISM FACILITY OPERATING AGREEMENT

FOR THE OPERATION

OF

(Name of facility)

WITHIN THE ISIMANGALISO WETLAND PARK

BETWEEN

THE ISIMANGALISO WETLAND PARK AUTHORITY

AND

(OPERATOR)

REGISTRATION NUMBER: (____/____/____)

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1. DEFINITIONS AND INTERPRETATION

1.1. In this and its Schedules, the following terms shall, unless inconsistent with the context in which they appear, have the following meanings and expressions derived from those terms shall bear corresponding meanings:

“Act”	The World Heritage Convention Act, 1999 (Act No. 49 of 1999) and the associated regulations;
“Affiliate”	any person or entity that directly or indirectly through any one or more intermediaries’ controls, is controlled by or is under common control with any person or entity, where “control” means the ability to direct or cause the direction of the business affairs and management policies or practices of a person or entity;
“Authority”	the iSimangaliso Wetland Park Authority established by the then Minister of Environmental Affairs and Tourism in terms of Government Notice 4477 dated 24 November 2000, or any successor in title;
“Bid Submission”	the bid submitted by the Operator in response to the Request for Proposals and which forms the basis for the granting of the Agreement;
“Consents”	all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, Agreements, certificates required to be issued by or made with any responsible authority in connection with the performance of the Project;

“Constitutional Documents”	the Operator's constitutional documentation set out in Schedule 5;
“CPI”	the annual average change in the consumer price index for the preceding 12 (twelve) calendar months as published by Statistics South Africa from time to time;
“EA ”	an environmental authorisation issued pursuant to an EIA;
“Effective Date” <i>[insert date]</i>
“EIA”	an environmental impact assessment as required by the Authority or the National Environmental Management Act, 1998 (Act 107 of 1998);
“Environmental Specifications”	the requirements, conditions, obligations and specifications detailed in Schedule 1;
“Expiry Date”	the term ending <i>[insert date]</i> or such other date as may be prescribed by the Authority pursuant to Clause 4.2;
“Good Industry Practice”	in relation to the manner in which the Project is Operated: <ul style="list-style-type: none"> (a) the standards, practices, methods and procedures conforming to applicable law, and (b) the degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
“IMP”	the integrated management plan and subsidiary plans for the Park as required and/or enabled in terms of the Act;

“Intellectual Property”	all registered or unregistered logos, trademarks, service marks, patents, design rights, Protected Names, utility models, applications for any of the foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws;
“Legislation or Laws”	all applicable statutes, statutory instruments, by-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of conduct or practice having the effect of the force of law in South Africa;
“Rental Fee”	the fee payable by the Operator to the Authority in respect of the Project, as detailed in Clause 16;
“Agreement”	this Agreement to operate the Project, as set out in this Agreement and its Schedules, as amended, extended, replaced and varied from time to time;
“Local-Community”	a black person or persons usually resident in the uMkhanyakude and KwaMbonambi municipal areas;
“NQF”	national qualification framework;
“Operate or Operation”	the undertaking of operations and maintenance of the Project and equipment in accordance with the specifications and standards detailed in Schedule 2;
“Park Rules”	the rules and directives, as revised from time to time by the Authority relating to operational, managerial, environmental and tourism matters in the Park;
“Park”	the iSimangaliso Wetland Park established by the then Minister of Environmental Affairs and Tourism in terms of Government Notice 4477 dated 24 November 2000, including any changes thereto, which for avoidance of

	doubt includes a marine and terrestrial component (the extent of which as may be amended by the Minister from time to time);
“Parties”	the Authority and the Operator;
“Project Site”	the traversing routes, Park facilities and Authority assets made available by the Authority to the Operator for the undertaking of the Project, as identified in Schedule 3;
“Project Term”	the period from the Effective Date to the Expiry Date or the Termination Date, whichever occurs first;
“Project” <i>[insert the name of the facility]</i>
“Protected Name(s)”	the name of the Authority, the Park, rivers, lakes, geographical features, or places in the Park, including the names under which the Operator undertakes the Project to the extent that these includes, rivers, lakes, geographical features, or place names in the Park, the Park name or the name of the Authority, whether capable of registration or not or any name used in association therewith;
“Remedy Period”	the period granted by the Authority to the Operator, during which the Operator must take action to make good the damage or rectify the notified default or problem;
“RFP”	the request for proposals issued by the Authority in in respect of tourism facilities in the Park;
“ROD”	the record of decision issued in terms of the regulations promulgated under the National Environmental Management Act, 1998, (Act No. 107 of 1998: Control of Vehicles in the Coastal Zone (GN Regulation 1399 of

21 December 2001). The ROD is in respect of all beaches and launch sites;

“Signature Date” the date on which this Agreement is signed by the Authority; and

“Termination Date” the date of early termination of this Agreement, if any.

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

1.2.1. references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;

1.2.2. references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Agreement, their respective sub-Operators, cessionaries and assignees;

1.2.3. references to a “person” shall include an individual, firm, company, corporation, juristic person, responsible authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;

1.2.4. 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;

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

1.2.6. 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;

1.2.7. references to “this Agreement” shall include this Agreement and its Schedules as amended, varied, novated or substituted in writing from time to time which are all an integral part of the Agreement;

1.2.8. when a number of days is 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, being any day other than a Saturday, Sunday or official public holiday.

1.3. Grant of Rights

1.3.1. Grant

The Authority issues an Agreement to the Operator to undertake the Project on the terms and conditions contained in this Agreement. The Operator confirms that it has expertise in all matters relating to the Operation of the Project.

1.3.2. Grant of Rights

The right to undertake the Project is granted on a non-exclusive basis.

1.3.3. Obligations

The Operator shall undertake the Project at its own cost and risk.

1.3.4. Sub-licencing

1.3.4.1. The Operator may not sub-Agreement or subcontract the Operation of the Project to a third party without the prior written consent of the Authority.

1.3.4.2. The Operator shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all its subcontractors or agents. The Operator shall be responsible for the management and supervision of any third parties appointed by it to perform any part of the Project. All references in this Agreement to any performance, payment, act, default, omission, breach or negligence of the Operator shall be

deemed to include any of the same by a subcontractor or agent of the Operator.

- 1.3.4.3. The Operator must enter into written agreements with all its sub- Operators or agents. The terms and conditions of any sub- Operators or agency shall be subordinate to this Agreement, and any cancellation, termination or expiry of this Agreement shall automatically terminate any sub-Agreement or agency.

1.3.5. Related Party Transactions

- 1.3.5.1. The Operator shall not enter into any Agreement, arrangement or agreement with any of its members or any Affiliate of any member in relation to the Project or this Agreement unless such transaction:
 - (a) is at arm's-length and on market-related terms; and
 - (b) has the prior written approval of the Authority.

2. DURATION

Unless otherwise provided for herein, this Agreement shall endure for the Project Term.

3. PROJECT SITE

- 3.1. The Operator shall have the right to use and traverse the Project Site, solely for the uses and purposes contemplated in this Agreement in respect of the Project.
- 3.2. The Operator shall be liable for any damage caused by it, its subcontractors, sub-Operators, agents, visitors, guests, employees or invitees.
- 3.3. The Operator shall keep the Project Site in an orderly state in accordance with Good Industry Practice.

4. OPERATION

- 4.1. The Project may not be furnished or equipped before the Operator has submitted and obtained written approval from the Authority for its concept proposal for the Project. The Authority may require the Operator to remove

any plant, equipment, or vehicles that are used by it in the Park if these are, in the sole and absolute discretion of the Authority, not in accordance with the Park's "sense of place", the brand guidelines and Park image, or which are not in good order and repair and fail generally to conform to the Authority's standards and Good Industry Practice, or for any other reason.

- 4.2. Within 60 (sixty) days of the Effective Date, the Operator shall deliver proof, to the satisfaction of the Authority, of the operating expenditure incurred furnishing and equipping the Project.
- 4.3. The Operator shall undertake the Operations in accordance with Good Industry Practice and in a manner and to the standard that is appropriate to the market described in its Bid Submission and adhere to the specifications and standards set out in the Schedules.
- 4.4. The Operator may not charge its guests for access to the Park or for the use of any of the Park's facilities.
- 4.5. The Operator shall be entitled to undertake the Project, subject to the Laws and Park Rules, from the Effective Date to the Expiry Date or Termination Date, whichever is the earlier.
- 4.6. The Operator is responsible for marketing the Project.
- 4.7. The Operator shall be liable for and shall pay on demand for any charges together with the value added tax thereon arising, where applicable, out of its use of electric current, cost of diesel, maintenance and other consumables consumed by any generator supplying electricity from time to time (if installed), water, gas, refuse removal, sewerage and effluent and other charges.
- 4.8. The Operator shall subscribe to any voluntary or other grading accreditation system or function adopted by the Authority, from time to time, and which is applicable to all similar Operators in the Park. The Operator shall ensure that all employees or subcontractors employed by it are appropriately qualified, licensed and authorised. All the Operator's tour guides shall be at least NQF Level 4 guides or equivalent.
- 4.9. The Operator must commence Operations within 60 (sixty) days from the Effective Date failing, which the Authority may terminate this Agreement at its sole discretion.
- 4.10. The Operator shall complete the compliance events set out in Schedule 1 Part B and submit these to the Authority for approval and/or confirmation of completion.
- 4.11. The Operator may not close all or any part of the Project Site or cease or limit its Operations without the prior written consent of the Authority. If the Operator closes the Project in part or whole for any length of time or ceases

or limits its operations without written approval, the Authority may terminate this Agreement in its sole discretion.

- 4.12. The Operator shall adhere to instructions issued by the Authority, from time to time, or by the Authority's delegated agent responsible for managing the Park in respect of its conduct in the Park.
- 4.13. The Operator shall subscribe to and comply with any relevant Authority code of conduct as amended from time to time.
- 4.14. The Operator shall not undertake or assist in the undertaking of commercial or promotional filming or photography in the Park, of any nature whatsoever, unless approved by the Authority in writing.
- 4.15. The Operator shall not undertake or assist in the undertaking of research or monitoring in the Park, of any nature whatsoever unless approved by the Authority in writing.
- 4.16. The Operator shall attend meetings with the Authority on reasonable notice and participate in awareness programmes and events in the Park.
- 4.17. The Operator shall ensure that its staff pass a Park orientation course and other educational/awareness programmes approved by the Authority from time to time and shall become acquainted with policies and operational guidelines issued by the Authority from time to time.
- 4.18. The Operator shall take all reasonable steps to ensure that it is informed about developments in the Park generally and specifically in relation to the Project.
- 4.19. The Operator agrees to participate in the Authority's training programmes on a basis to be agreed annually. The Operator shall in such participation be required to offer practical training for not more than two trainees each year nominated by the Authority and shall contribute to the subsistence and transport costs of such trainees.
- 4.20. Each year the Operator shall make available no less than 5 places, free of charge, to be used together, at different times, or as a single reservation, by the Authority's personnel or special guests as authorised by the Authority's Chief Executive Officer. The Authority shall endeavour to give reasonable notice in respect of each such request. In addition the Operator shall be required to offer discounted rates to Authority guests for special events or functions.

5. RIGHTS AND LIMITATIONS

- 5.1. The Authority shall not be liable to the Operator for the volume of demand, or any fluctuation or loss of demand, for the Project or for loss of income

resulting from the Operation by the Operator of the Project in the Park, or as a result of the operational activities of the Authority, its staff, servants or agents, howsoever arising.

- 5.2. No warranties, representations or undertakings are given as to the accuracy or completeness of any information provided by the Authority.
- 5.3. Notwithstanding anything else contained in this Agreement, the Operator shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority or any other responsible authority and/or their respective officers, employees, agents and/or representatives on grounds that any information, however and from whomever it is obtained, is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

6. WARRANTIES AND UNDERTAKINGS

- 6.1. The Operator shall be responsible for:
 - 6.1.1. obtaining all Consents which may be required in connection with the performance of the Project;
 - 6.1.2. maintaining in full force and effect all Consents; and
 - 6.1.3. implementing all Consents in accordance with their respective terms within the period of their validity.
- 6.2. The Operator shall be responsible for the safety and security of its employees, guests, contractors and invitees. The Operator shall use all reasonable endeavours to exercise appropriate control in respect of access to the Project Site to ensure that only employees, guests, contractors or invitees of the Operator are permitted access to the Project Site in addition to other legitimate users of the Park.

7. INSURANCE

- 7.1. The Operator shall take out, with a reputable insurance company:
 - 7.1.1. insurance against the risk of fire, lightning, explosion, storm, flood, earthquake, riots (including political riot), strikes and malicious damage, public liability, business interruption and for any risks selected by the Authority which are readily insurable in the South African insurance market; and

- 7.1.2. casualty insurance, including business interruption insurance, third- party liability insurance and employer's liability insurance.
- 7.2. The Operator will maintain the insurance in Clause 7.1 in accordance with Good Industry Practice and shall undertake an annual risk assessment to ensure adequate cover according to Good Industry Practice and to ensure sufficient and adequate financial cover in terms of such insurance.
- 7.3. The interest of the Authority shall be noted on the policies set forth in Clauses 7.1.1 and 7.1.2. The Operator shall provide certified copies of the certificates of all such insurance on demand by the Authority.
- 7.4. The Operator shall review the extent and adequacy of the coverage provided by the insurance in Clause 7.1 at least annually.
- 7.5. If the Operator is unable to obtain insurance in the sums or on the terms required by Clauses 8.1.1, 7.1.2 and 7.2, at a reasonable commercial rate, it shall immediately notify the Authority of any material areas of change in the terms or level of the insurance cover which notification shall not in any way absolve the Operator of any of its liabilities and obligations under this Agreement. The Operator shall restore the terms and level of cover as soon as it becomes available.

8. INDEMNITY

- 8.1. The Operator hereby indemnifies and holds the Authority harmless against all liability, loss, damages, costs and claims in relation to the Operation of the Project in respect of:
 - 8.1.1. death or injury to any Person; or
 - 8.1.2. loss of or damage to any property; or
 - 8.1.3. breach of a statutory duty arising under applicable law or of any provisions of this Agreement, by the Operator; or
 - 8.1.4. any economic loss,
 - 8.1.5. howsoever caused, irrespective of whether in the Park or accessing or egressing the Park, including, without limitation, any legal fees or costs arising from or in connection with the performance or non-performance of this Agreement; save to the extent caused by the gross negligence or wilful misconduct of the Authority.
- 8.2. The indemnity in Clause 8.1 shall survive the termination of this Agreement.
- 8.3. The Operator shall throughout the Project have regard for the safety of all persons at the Project Site (whether lawfully or not) and shall keep the Project Site in an orderly state as appropriate in accordance with Good Industry Practice to avoid harm or injury to such persons.

9. OPERATOR ACKNOWLEDGEMENT

- 9.1. The Operator acknowledges that the fauna and flora in the Park, including the presence of dangerous animals and mammals, as well as the intrinsic features and environment of the Park constitute a potential danger to people and property.
- 9.2. The Operator shall take steps to draw the attention of all guests, visitors, invitees, employees, contractors, patrons and the like to the dangers in the Park and will obtain from such persons an indemnity and waiver in a form which will not result in the Authority being exposed to any claim whatsoever. The requirements of this clause shall not affect, in any way, the indemnity provided under Clause 8.

10. BEE OBLIGATIONS

- 10.1. The Operator shall comply with the BEE Obligations set out in Schedule 3 all of which are deemed to be a material part of this Agreement.

11. DOCUMENTS AND INTELLECTUAL PROPERTY

- 11.1. The Operator shall provide to the Authority all information, documents, records and the like in the possession of, or available to, the Operator as may reasonably be requested by the Authority for the purpose of complying with any of its statutory reporting obligations.
- 11.2. All Intellectual Property rights whatsoever, whether capable of registration or not, regarding the Park and Authority's name, trademarks, logos, image and all other intellectual property matters relating to the Park and the Authority, including its name, trademarks, logos and/or image shall remain the sole property of the Authority.
- 11.3. The Authority may require the Operator to use its Intellectual Property. This Intellectual Property must be used by the Operator in accordance with the Authority's brand manual or other written directive. Failure to comply with this requirement shall be deemed to constitute a material breach.
- 11.4. The Operator shall use such of the Authority's Intellectual Property as the Authority shall determine, but the Operator shall first submit the concept or a sample of the proposed use to the Authority for approval, which shall be in its discretion. The Authority shall use reasonable endeavours to advise the Operator of its approval or disapproval of the concept or sample within 30 (thirty) Business Days of its receipt of the concept or sample.
- 11.5. If the Authority approves the concept or sample:

- 11.5.1. the Operator shall not depart therefrom in any respect without the Authority's further prior written approval; and
- 11.5.2. subject to existing rights and obligations, the Authority shall grant a non-exclusive revocable right and Agreement to the Operator to use the Authority's Intellectual Property for a period not to exceed the Project Term, provided that the Operator shall, in making such use, conform strictly with the requirements of the Authority in respect of such use, as set out in this Agreement and in such written guidelines in respect of such use as the Authority may issue from time to time.
- 11.6. If at any time the Authority revokes its approval for the specified use of any Intellectual Property, the Operator shall immediately discontinue all use of such Intellectual Property and shall remove from public sale or distribution any previously approved product in respect of which the Authority 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 11.7.
- 11.7. The Authority will be entitled but not obliged to revoke its approval immediately upon 3 (three) Business Days' written notice to the Operator if the Operator or any of its officers, directors or employees fails to conform strictly with the requirements of the Authority in respect of such use, as set out in Clause 11.6 or commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency or, in the Authority's reasonable opinion, materially prejudices the reputation and public goodwill of the Authority.
- 11.8. In circumstances where the Operator or any sub-contractor or successor in title, uses any of the Protected Names, either on its own or in combination or association with any other name, it shall do so only in terms of this Agreement and with the prior approval of the Authority. 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.
- 11.9. Within 30 (thirty) Business Days after the termination for whatever reason or the expiry of this Agreement and where the Operator has operated a company utilising any of the Protected Names with the permission of the Authority, the Operator shall either:
- 11.9.1. de-register the company bearing any of the Protected Names; or

- 11.9.2. change the name to a name not substantially similar to any of the Protected Names.
- 11.10. The naming of the Operator's business operation shall be undertaken in consultation with the Authority and subject to the Authority's approval. Where the name chosen by the Operator and approved by the Authority is not a Protected Name, then the rights of the Authority contemplated in Clause 11 shall not be applicable and the intellectual property shall be the sole property of the Operator.
- 11.11. The Operator will be required to display its information in any Authority offices at the request of the Authority.
- 11.12. The Operator shall be required to reflect such Protected Names as determined by the Authority in all publicity and marketing material, which the Authority reserves the right to approve.

12. REPORTING REQUIREMENTS

- 12.1. From the Effective Date the Operator shall provide the Authority with quarterly written reports in a form to be specified by the Authority unless otherwise agreed in writing. The reports must be submitted 20 (twenty) days after each quarter as follows:
 - 12.1.1. for the period April to June - 15 July;
 - 12.1.2. for the period July to September - 15 October;
 - 12.1.3. for the period October to December - 15 January;
 - 12.1.4. for the period January to March - 15 April; and
 - 12.1.5. if that day is not a Business Day, then on the preceding Business Day.
- 12.2. The Operator shall report all incidents, in writing, within 24 hours to the Authority.

13. COMPLIANCE MONITORING

- 13.1. The Authority and/or its representatives may take such measures as necessary to monitor the Operator's compliance with this Agreement.
- 13.2. The Authority may conduct random inspections by using, inter alia, mystery guests, in which case, the Operator shall reimburse the Authority for any admission fee, fare or other charge paid by the mystery guests to the Operator.

14. **PARK AND PARK USERS**

- 14.1. The Operator shall fulfil its obligations, duties and responsibilities under this Agreement so as not to interfere with the use of the Park and its facilities by other users of the Park, other than as permitted by this Agreement; and where such interference cannot reasonably be avoided, the Operator shall ensure that appropriate traffic and other appropriate management measures are implemented to minimise the effect of any such disruption on users of the Park. These measures shall comply at all times with the IMP, Park Rules and other measures/plans issued by the Authority from time to time.
- 14.2. The Operator shall also take all reasonable steps to ensure that its officers, employees, contractors, sub-Operators, sub-contractors at all levels, sub-agents, assignees, employees, guests, invitees and patrons adhere to, abide by and comply with Legislation, Environmental Specifications generally and specifically in respect of the Project Site and the Project, any EIA and any valid and enforceable directives or rules issued by the Authority, the Authority or any of its senior personnel or the nominated conservation agent of the Authority from time to time.
- 14.3. The Operator shall liaise with the Authority's nominee with respect to day to day operational issues regarding the Project Site. The name of the nominee shall be provided in writing by the Authority. In cases where the Operator believes that the nominee has issued a directive or rule that is not covered by the Regulations, Park policy or IMP or that is not valid, or that impacts materially on the commercial soundness of the Project, the Operator shall have the right of appeal to the chief executive officer of the Authority or his delegatee. The chief executive officer of the Authority or his delegatee will verify, within 45 (forty-five) days of receipt of a written notice and grounds of appeal, whether the directive or rule in question was valid. Pending the

results of such an appeal, the Operator shall abide by the said directive or rule.

15. REMOVAL OF PERSONNEL

15.1. The Operator shall provide a list of staff to the Authority showing the names, identity numbers, positions and qualifications of the staff. The Operator shall notify the Authority of any changes in writing forthwith.

If at any time the Operator does not, in the opinion of the Authority, have appropriately qualified staff, the Operator, on written notice from the Authority, shall be required to cease Operations.

15.2. The Authority may require the Operator to take disciplinary action or remove any employee or other personnel of the Operator or any subcontractor, visitor, guest or invitee from the Project Site and the Park and the Operator shall do so (provided such removal is permitted under applicable law) if in the reasonable opinion of the Authority such employee or personnel or subcontractor, visitor, guest, invitee engages in any conduct which might reasonably result in a breach of any provision of this Agreement or threaten public health, safety or security or cause any environmental hazard or harm, or which in the reasonable opinion of the Authority impacts negatively on the reputation of the Park and the Authority. The Operator shall replace such employee or personnel with suitable appropriately qualified and experienced replacements as soon as reasonably possible.

16. RENTAL FEE

16.1. The Operator shall pay to the Authority the Agreement Fee, which will be the amount of R_____ [Authority to insert Agreement Fee] per month for the Project Term. The Agreement Fee shall be increased annually by either annual CPI or by 8% per annum whichever is high from the Effective Date.

16.2. The Agreement Fee shall be paid monthly in advance on the first business day of each month. The first payment must be made prior to the commencement of the Project. The Authority may at its sole discretion require the Operator to make payment by debit order within 5 (five) Business Days of written notice.

- 16.3. The Authority shall issue appropriate invoices on a monthly basis but payment of the Agreement Fee as required in terms of Clause 16.2 above must be made as required irrespective of when the invoice is issued or received by the Operator.
- 16.4. If any amount remains unpaid for more than thirty (30) days, the Authority may by written notice instruct the Operator to suspend and cease Operations and the Operator shall immediately upon receipt of such notice suspend and cease Operating and may only recommence Operating after all overdue amounts have been paid to the Authority in full.
- 16.5. If any amount is not paid after 30 (Thirty) days iSimangaliso will charge Interest in terms of its debt recovery policy
- 16.6. If any amount is not paid after 30 (Thirty) days iSimangaliso will charge Interest of 10% per annum on the outstanding balance pro rata.
- 16.7. The Authority shall be entitled to raise a levy against all Licensees, in the appropriate circumstances and on reasonable notice such levy shall be in addition to the Rental Fee which shall not be reduced by the amount of any such levy.
- 16.8. This Agreement constitutes an acknowledgement of indebtedness by the Operator and the Operator agrees that it waives and abandons any defence of prescription against the Authority should the Authority be required to institute proceedings against it for the recovery of any amount or interest due to it and acknowledged herein to be due, owing and payable as set out herein.

17. **PERFORMANCE BOND/REFUNDABLE DEPOSIT**

- 17.1. Before the commencement of the Project, the Operator shall provide to the Authority a performance bond (Refundable Deposit) which shall be retained by the Authority until 3 (three) months after the Expiry Date.
- 17.2. The Performance Bond/Refundable Deposit shall be for an amount equal to 2 (two) months' Agreement rental fee and shall escalate annually by 8% per annum.
- 17.3. The Performance Bond shall secure the Operator's performance under this Agreement and may be called on by the Authority to the extent of any costs,

losses, damages or expenses suffered or incurred by the Authority as a result of breach by the Operator of the terms of this Agreement, including, but not limited to, compensation to the Authority for any actions taken by the Authority as a result of breach by the Operator of any Environmental Specifications and payment obligations hereunder. The Refundable Deposit may also be called upon to compensate for any delay in the payment of sums due to the Authority in respect of Agreement fee payments or penalties for failing to meet empowerment or environmental obligations. The Operator shall ensure that the Refundable Deposit is, notwithstanding drawdown, maintained for the full amount required throughout the duration of this Agreement.

- 17.4. Prior to enforcing the Performance Bond, the Authority shall give written notice to the Operator, informing the Operator of the penalty payable or breach giving rise to the right of enforcement of the Refundable Deposit. If such breach is not remedied within the Remedy Period notified by the Authority, the Authority may thereupon enforce the Refundable Deposit.
- 17.5. The Performance Bond may only be enforced to the extent of any penalties specified herein, 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. If the Performance Bond it is called on the Operator must, within 10 (ten) Business Days, reinstate the full amount of the Refundable Deposit.
- 17.6. The Performance Bond shall be returned to the Operator within 30 (thirty) Business Days after the end of the Project Term.

18. **PENALTIES OR SUSPENSION**

- 18.1. The Authority shall be entitled to levy penalties for environmental infractions, poor conduct that may be deemed to be damaging to the reputation of the Authority and the Park, in the sole discretion of the Authority, failure to conform to acceptable Operating standards and other breaches. The penalty shall be determined by the Authority and shall be commensurate with the nature of the offence. From time to time the Authority may publish schedules of penalties.
- 18.2. In addition to a penalty or as an alternative thereto, the Authority may by written notice instruct the Operator to suspend and cease Operations and

the Operator shall immediately upon receipt of such notice suspend and cease Operating and may only recommence Operating after further notice by the Authority that the transgression by the Operator has been remedied or such reasonable period has elapsed commensurate with the nature of the offence.

18.3. In addition to the transgressions set out in Clause 20 the failure to comply with any of the following shall be considered transgressions warranting suspension and cessation of Operations if the Operator:

18.3.1. or any of its members, directors, partners, or shareholders has an unappealable judgment granted against it;

18.3.2. is in arrears in respect of any amounts owing to the Authority;

18.3.3. has contravened any Park Rule, directive, existing contractual agreement, or environmental law in the last three years;

18.3.4. has received any verbal warnings subsequently confirmed in writing or written warnings in respect of its conduct in the Park or any banning or eviction notices that have been upheld for a period of more than one month, or conviction for a wildlife or environmental crime;

18.3.5. has been convicted of any offence under the Companies Act without the option of a fine, or of fraud or corruption or any dishonesty-related criminal offence or Corrupt Act;

18.3.6. has, in the opinion of the Authority, attempted to exercise any Corrupt Act deed or influence during and in respect of the Agreement; or

18.3.7. operates its business or any other business of the Operator is operated illegally.

19. **SUBSTITUTE ENTITY**

19.1. Upon the occurrence of an event entitling the Authority 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, the Authority shall have the right at its sole

discretion to license a substitute entity to conduct the Operations on its behalf.

- 19.2. Immediately following the licensing of a substitute entity, the Operator shall make available its Operating equipment and assets for a period not exceeding 90 (ninety) days. The Operating equipment shall be used at the cost and risk of the substitute entity.

20. **BREACH**

- 20.1. If the Operator commits a material breach of any obligation under this Agreement, and fails to remedy that breach within 28 (twenty eight) days, or within the Remedy Period as determined by the Authority in the circumstances, after written notice by the Authority calling upon the Operator to remedy the breach and specifying particulars of the breach and, (if applicable) the location thereof, then the Authority party shall be entitled, at its election:

- 20.1.1. to claim specific performance and/or damages from the Operator; or
- 20.1.2. to cancel this Agreement by written notice to the Operator and to claim damages from the Operator, without prejudice to any monetary claims outstanding at the date of cancellation.
- 20.2. Notwithstanding any other provision of this Agreement the Authority shall be entitled in the event of a breach to suspend the operation of this Agreement, without relieving the Operator of its continued obligation to pay the Agreement Fee as provided for in Clause 16, during such suspension which shall not be for a continuous period of longer than 14 (fourteen) days or the Remedy Period whichever is the longer.

21. **TERMINATION**

- 21.1. The Authority shall have the right to terminate this Agreement upon the occurrence of any of the following events:
- 21.1.1. the commencement of any court action for the dissolution and/or liquidation of the Operator (except for the purposes of amalgamation or reconstruction

- on terms approved in advance by the Authority in writing) which is not dismissed within 60 (sixty) days of its commencement; or
- 21.1.2. the Operator receives a court order to be placed into judicial management or to commence liquidation procedures or passes a resolution for its winding up; or
- 21.1.3. the Operator committing 2 (two) material breaches of any of its obligations under this Agreement within a period of 3 (three) calendar months; or
- 21.1.4. there is change in control in the Operator without the prior written approval of the Authority on the understanding that in the case of the Operator , it ceases to be beneficially owned as to at least 51% (fifty one percent) by Black persons (as the term "Black" is defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003)), and the requisite number of shareholders fail to approve in writing, which shall be deemed to be unreasonable, any reasonable proposed remedy of the situation which arises as a result of the event in question within 60 (sixty) days of the event in question having occurred, and the sole criteria for determining whether or not approval has been reasonably or unreasonably withheld will be based upon the identity of any beneficial shareholder of the Operator and its empowerment credentials; or
- 21.1.5. there is any material representation in the Operator's Bid Submission is proved to be false or misleading in any material respect. A fraudulent misrepresentation is deemed to be material; or
- 21.1.6. the Operator fails to commence Operations within 2 months from the Effective Date; or
- 21.1.7. the Operator fails to deliver the proof of capital expenditure as required in Clause 4.2; or
- 21.1.8. all or substantially all of the capital contributions of the shareholders undertaken in the Operator's Bid Submission are not made; or
- 21.1.9. a change in the Laws, ROD, or EA renders it impossible or unlawful to undertake the Operation of the Project; or
- 21.1.10. the Operator commits a material breach in respect of the performance of any of its other material obligations hereunder and fails to rectify same within the Remedy Period.

- 21.2. The Authority shall, prior to exercising its rights to terminate this Agreement under this Clause 21, send a written notice to the Operator notifying it of the event giving rise to such right and requesting the Operator to remedy the event giving rise to such right of termination within the Remedy Period; provided, however, that no Remedy Period shall be required if the Authority wishes to exercise the Authority's right to terminate this Agreement because a court order placing the Operator in liquidation is made or the Operator passes a resolution for its winding up.
- 21.3. If such events are not remedied by the Operator by the expiry of the said period or the relevant event does not require such a period, and the Authority has not exercised its rights to appoint a Substituted Entity pursuant to Clause 19, the Authority shall have the right to terminate this Agreement forthwith by notice in writing to the Operator.
- 21.4. The Authority shall be entitled to claim reimbursement from the Operator for all damages recoverable at law which are suffered by the Authority as a result of such termination from the Operator and, where appropriate to call on any relevant Refundable Deposit.
- 21.5. In circumstances where it is impossible for the Operator to perform its obligations under this Agreement for a continuous period of 3 (three) months, the Operator may terminate this Agreement by written notice to the Authority having immediate effect.
- 21.6. On termination of this Agreement by written notice, and save as provided for herein, all rights and obligations of the Authority and the Operator under this Agreement shall cease and be of no further force and effect and the Operator shall remove all its assets from the Project Site and shall restore the Project Site to the condition it was in before the Operator was granted access to it, fair wear and tear accepted.

22. CORRUPT GIFTS AND FRAUD

The Operator warrants that it has not committed any Corrupt Act. Any breach of this warranty shall entitle the Authority, notwithstanding any other provision of this Agreement to terminate this Agreement immediately on written notice. "Corrupt Act" means:

- 22.1. offering, giving or agreeing to give to the Authority or any other organ of state or to any person employed by the Authority or engaged in the Park on behalf of the Authority or employed by any other organ of state any gift or consideration of any kind as an inducement or reward:
 - 22.1.1. 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 the Authority or any other organ of state; or
 - 22.1.2. Accepting this Agreement or any other contract with the Authority 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 the Authority;
- 22.2. committing any offence:
 - 22.2.1. under any law from time to time dealing with bribery, corruption or extortion;
 - 22.2.2. under any law creating offences in respect of fraudulent acts; or
 - 22.2.3. at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority or any other public body; or
 - 22.2.4. defrauding or attempting to defraud or conspiring to defraud the Authority or any other public body.
- 22.3. On termination of this Agreement due to a breach of this Clause 22, the Authority shall not pay the Operator any amount.

23. **CONFIDENTIALITY**

- 23.1. Each Party shall, subject to law, keep all confidential information of the other Party confidential while this Agreement remains in force and for a period of 5 (five) years after it terminates for any reason. Furthermore, the Operator shall not disclose any aspect of this Agreement or make any public announcements to the media in connection herewith without the Authority's prior written approval.
- 23.2. The Operator warrants and undertakes that it shall not under any circumstances issue any public statement or press release to any third party including but not limited to the printed or electronic media, radio or television stations, magazines or newspapers without the prior written consent of the Authority excluding material for the purposes of marketing and advertising of the Operation.

24. **MISCELLANEOUS MATTERS**

24.1. Notices and Legal Service

All notices by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below:

24.1.1. if to the Authority, at:

Physical Address:

The Dredger Harbour

St. Lucia Estuary, 3936

KWAZULU-NATAL

For the attention: The Chief Executive Officer

Postal address:

Private Bag X05

St Lucia 3936

Facsimile number: (035) 590-1601

if to the Operator, at:

Physical Address:

[Redacted Physical Address]

Postal address:

[Redacted Postal Address]

Email Address: [Redacted Email Address]

marked for the attention of [Redacted Name]

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

24.2. Any notice given by any Party to the other Party which:

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

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

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

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

24.3. The Parties choose their respective physical addresses in Clause 24.1 as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the domicilium citandi et executandi of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new domicilium citandi et executandi.

24.4. Statement of Indebtedness

In the event of dispute a statement signed by the Chief Executive Officer; Executive Manager Tourism and Business Development or Chief Financial Officer of the Authority reflecting:

- 24.4.1. any monies owing by the Operator to the Authority under this Agreement;
- 24.4.2. any obligations owing by the Operator to the Authority under this Agreement;
and
- 24.4.3. the due date for payment of such monies or for performance of such obligations shall be prima facie proof thereof.

24.5. Cession and Delegation

24.5.1. Save as expressly permitted hereunder, the Operator shall not, without the prior written approval of the Authority sub-Agreement, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to which it is a party to any other person or use this Agreement as guarantee or security for any credit or financial facility of any kind to which the Operator is a party. The Authority may withhold consent.

24.5.2. Should the Operator permit and register the sale or disposal of any transfer of any rights, interests and/or obligations held by any Shareholder in the Operator, or any portion or part interest thereof, it shall pay the Authority a transactional levy equal to 5% of the gross proceeds of such sale, disposition or transfer, whichever is the greater.

24.6. Language

All notices or communications under or in connection with this Agreement shall be in English.

24.7. Governing Law

This Agreement shall be governed by the laws of the Republic of South Africa.

SIGNED AT

ON

2026

for and on behalf of
**THE ISIMANGALISO WETLAND
PARK AUTHORITY**

SIGNED AT _____ ON _____ 2026

for and on behalf of **OPERATOR**

SCHEDULE 1 - ENVIRONMENTAL SPECIFICATIONS - PARK RULES

These Park Rules shall apply to the Operator, its guests, invitees and contractors. The Operator shall be responsible for maintaining current information regarding Park Rules. The Operator shall ensure that its guests, invitees and contractors shall not:

1. VEHICLES, VESSELS AND MACHINERY

- 1.1 Drive elsewhere than on an authorized road or track;
- 1.2 Operate a vessel on inland waters or at sea other than from an authorized jetty or launch site, and other than in area set aside and zoned for use by vessels;
- 1.3 Exceed the indicated speed limit on land or water;
- 1.4 Drive a vehicle or park in a manner that is a nuisance or a disturbance or an inconvenience to any other person;
- 1.5 Operate a vessel or moor or anchor in a manner that is a nuisance or a disturbance or an inconvenience to any other person;
- 1.6 Drive a vehicle, or operate any vessel or machinery without the appropriate statutory legal requirement such as a drivers license or operators certificate;
- 1.7 Use or operate any vehicle, vessel or machinery that does not meet the statutory legal safety and licensing or registration requirements;
- 1.8 Start or run any outboard motor on dry land unless in a designated area;
- 1.9 Operate any vehicle, vessel or machinery whilst under the influence of drugs or alcohol;
- 1.10. Drive a vehicle in the Park one hour before official sunset or before official sunrise except in a designated area or without permission;
- 1.11 Allow any passenger to ride on the back of an open vehicle unless in a designated area or if the vehicle is a tour vehicle approved for use in the Park;
- 1.12 Use a motorcycle, quad bike or any all terrain vehicle in the Park except in a designated area;
- 1.13 Use a bicycle in the Park except in a designated area.

2. DISTURBANCE OR NUISANCE

- 2.1 Play music / radio / TV in or out of accommodation or from a vehicle or vessel, which disturbs other visitors;

- 2.2 Use a cell phone or any other communications device at any public place, hide, view site, or on any guided or unguided walk so as to cause a nuisance or disturbance to other visitors or any wildlife;
- 2.3 After 21h30 and before 06h30 cause any noise which is likely to disturb any other person;
- 2.4 Disturb, hinder or harass any manager, researcher, contractor, consultant, operator, Park Authority employee or the Operator who is employed in the application of his or her authorized duties;
- 2.5 Engage in any act which in the opinion of an authorized officer, is causing a nuisance, disturbance or danger to other visitors;

3. **FIRES**

- 3.1 Discard any burning object, or light a fire except in a designated area;
- 3.2 Fail to extinguish any fire lit in a designated area, once it has been used for its intended purpose

4. **WILDLIFE**

- 4.1 Injure, disturb or feed any form of wildlife.

5. **LITTER AND FISH CLEANING**

- 5.1 Discard any article or refuse otherwise than by placing it in a receptacle or place intended therefore;
- 5.2 Clean or gut fish unless in a designated fish cleaning area;
- 5.3 Discard any fish or fish offal unless in a designated fish cleaning area.

6. **DAMAGE TO PROPERTY**

- 6.1 Place any name, letter, figure, symbol, mark or picture on any object;
- 6.2 Damage, deface or alter any building, sign, public amenity, machinery, water or electrical reticulation, vehicle, vessel, gate, fence, litter bin, bench, braai facility, shade structure or any other Park property.

7. **WEAPONS**

- 7.1 Fail to declare any firearm, bow, crossbow, catapult, blowgun, air gun or other mechanism or object capable of being used for hunting or injuring any wildlife, upon entry to the Park.

8. **OVERNIGHTING**

Stay overnight in any rest camp or other designated overnight area without a valid booking.

9. **PERMIT REQUIREMENTS**

- 9.1 Unless in possession of a specific permit issued or endorsed by the Park Authority:
- 9.2 Engage in any other commercial activities other than the ones approved
- 9.3 Uproot, pick, cut or damage any plant, or be in possession of any plant or plant material, including seaweed;
- 9.4 Disturb or collect any marine or terrestrial biological material, whether alive or dead;
- 9.5 Collect any firewood or driftwood;
- 9.6 Disturb or collect any fossils, shells, rocks, sand or any other substrate;
- 9.7 Be in possession of any explosives, including fireworks, or any unsealed or loaded firearm;
- 9.8 Introduce into the Park any pets or livestock, whether domestic or otherwise;
- 9.9 Travel in the Park during times other than those laid down by the regulations;
- 9.10 Stay overnight in any place other than a rest camp or designated overnight stop;
- 9.11 Advertise any goods or services inside the Park;
- 9.12 Offer any goods or services for sale or hire;
- 9.13 Conduct any business within the Park;
- 9.14 Film, make sound recordings, or take still photographs for financial gain;
- 9.15 Collect any money from the public, including for any charitable organization Give public entertainment for reward;
- 9.16 Conduct any research or experiment;
- 9.17 Conduct or arrange any organized event, whether for gain or not;

- 9.18 Land any aircraft, including helicopters and micro-lights, in any area except those that may be demarcated for public use ;
- 9.19 Alight from a vehicle or vessel in areas other than those designated;
- 9.20 Operate any internal combustion driven generator or compressor.

10. **GENERAL**

- 10.1 Fail to obey any regulatory sign, whether permanent or temporary;
- 10.2 Fail to obey any lawful instruction given by any authorized officer, including an authorized Park Authority officer and Ezemvelo KZN Wildlife manager;
- 10.3 Contravene any other Act or Regulation, International, National or Provincial which applies in the Park;
- 10.4 Due to the presence of sharks, crocodiles and hippopotamus, no person may wade or swim in any river mouth, lake, estuary or river;
- 10.5 Interfere with property belonging to or utilized by local residents e.g. fish traps, crops, livestock, buildings, graves and palm wine stems, nor shall they interfere with local resident activities.

SCHEDULE 2 - SERVICE STANDARDS

Operations:

- 1 The Project shall be available to Park visitors seven days a week irrespective of public holidays.
- 2 Meals, if offered, must be of a standard commensurate with the tariffs charged by the Operator for the activity.
- 3 The Operator is required to implement a booking system. The Authority may specify certain requirements in respect of the ticketing system.

Staff:

- 4 The Operator shall ensure that:
 - 4.1 at all times, it has an appropriately qualified person to answer telephone calls or a fully-functioning message-recording device in operation;
 - 4.2 its staff are proficient in English;
 - 4.3 its staff are at all times while on duty neatly and cleanly attired in Authority-approved uniforms that reflect the Park brand;
 - 4.4 its staff have all passed the *About iSimangaliso* course accredited by the Authority;

Safety:

- 5 The Operator shall ensure that appropriate safety standards and procedures are in place and followed by its staff at all times.
- 6 At least one of the Operator's staff accompany shall be properly trained and with a current recognized qualification in first aid.
- 7 A fully-equipped first-aid kit shall be on hand at the facility.
- 8 A safety and emergency plan shall be submitted by the Operator for the Authority's approval prior to the commencement of Operations.

Equipment, & Vehicles:

- 9 The Operator shall ensure that all equipment and vehicles are clean and in good working order whenever in service.

SCHEDULE 3 - CONSTITUTIONAL DOCUMENTS

The constitutional documents are:

- 1.
- 2.

