



# **TREEHOUSE CAMP FACILITY PPP AGREEMENT**

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

**FOR THE**

**DEVELOPMENT AND OPERATION OF THE TREEHOUSE CAMP  
FACILITY**

**IN THE**

**KRUGER NATIONAL PARK**

**NOVEMBER 2021**

**TABLE OF CONTENTS**

1.	INTRODUCTION .....	5
2.	DEFINITION AND INTERPRETATION .....	5
3.	APPOINTMENT AND PRECEDENT .....	26
4.	PROJECT TERM.....	26
5.	PPP RIGHTS.....	27
6.	OPERATION, MANAGEMENT AND MAINTENANCE .....	29
7.	LABOUR LAWS .....	36
8.	PRIVATE PARTY COVENANTS .....	36
9.	WARRANTIES.....	38
10.	PRIVATE PARTY INDEMNITIES.....	41
11.	LIMITATIONS ON LIABILITY .....	42
12.	PROJECT SITE .....	43
13.	SALE OF BUSINESS.....	46
14.	HANDOVER.....	47
15.	THE ENVIRONMENT .....	48
16.	SANPARKS' UNDERTAKINGS.....	49
17.	PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES .....	50
18.	BLACK ECONOMIC EMPOWERMENT.....	50
19.	FINANCIAL PROVISIONS AND PAYMENT .....	51
20.	PERFORMANCE BOND.....	54
21.	SURETY .....	55
22.	PROJECT INSURANCES .....	55

23.	REPORTING REQUIREMENTS .....	57
24.	INFORMATION AND AUDIT ACCESS .....	60
25.	SANPARKS STEP-IN .....	61
26.	FORCE MAJEURE.....	63
27.	PRIVATE PARTY DEFAULT .....	65
28.	SANPARKS DEFAULT .....	70
29.	CORRUPT GIFTS AND FRAUD .....	71
30.	EFFECTS OF TERMINATION.....	73
31.	DISPUTE RESOLUTION .....	76
32.	CHANGES IN CONTROL .....	79
33.	CESSION, TRANSFER AND SUBSTITUTED ENTITY .....	79
34.	INTELLECTUAL PROPERTY OF SANPARKS .....	81
35.	INTELLECTUAL PROPERTY OF THE PRIVATE PARTY.....	83
36.	AMENDMENTS .....	85
37.	ENTIRE AGREEMENT .....	85
38.	VARIATION, CANCELLATION AND WAIVER .....	86
39.	SEVERABILITY .....	87
40.	GOVERNING LAW AND JURISDICTION.....	87
41.	CONFIDENTIALITY .....	87
42.	NOTICES.....	89
43.	COUNTERPARTS .....	90
44.	SCHEDULE 1 - DESCRIPTION OF TREEHOUSE CAMP FACILITY .....	91
45.	SCHEDULE 2 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE FACILITY	95

46.	SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS .....	97
47.	SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION .....	104
48.	SCHEDULE 5 – BEE OBLIGATIONS .....	107
49.	SCHEDULE 6 – PPP FEE .....	123
50.	SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF TREEHOUSE CAMP FACILITY WITHIN THE PROTECTED AREAS.....	125
51.	SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION.....	137
52.	SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS .....	142
53.	SCHEDULE 10– INSURANCE.....	143
54.	SCHEDULE 11 – PERFORMANCE BOND .....	144
55.	SCHEDULE 12 – CAPITAL EXPENDITURE PLAN .....	151
56.	SCHEDULE 13 – EMPLOYEE HOUSING AND RENTALS .....	152
57.	SCHEDULE 14 – CONSUMER PROTECTION ACT .....	153
58.	SCHEDULE 15 – INTEGRATED PEST MANAGEMENT PLAN.....	158
60.	SCHEDULE 16 – SALE OF BUSINESS AGREEMENT .....	159
61.	SCHEDULE 17 – STOCK.....	169
62.	SCHEDULE 18A – BUSINESS ASSETS.....	170
63.	SCHEDULE 18B – EXCLUDED ASSETS .....	171
64.	SCHEDULE 19 - COMPLIANCE EVENTS .....	172
65.	SCHEDULE 20 – DEED OF SURETYSHIP .....	173

## 1. INTRODUCTION

- 1.1 SANParks is a juristic person established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as such in terms of section 54 of the Protected Areas Act.
- 1.2 In terms of the Protected Areas Act, SANParks is empowered to exercise control over the Protected Area and in accordance therewith, SANParks wishes to expand the income generation potential of the Protected Area by appointing a suitably experienced hotel and recreational facilities operator to develop the Treehouse Camp Facility and design, build, operate, manage and maintain the Treehouse Camp Facility for the benefit of the public (“**the Project**”).
- 1.3 Following a public tender process, SANParks has appointed the Private Party to undertake the Project.
- 1.4 Accordingly, SANParks and the Private Party wish to enter into this PPP Agreement to regulate the implementation of the Project on the terms and conditions set out below.

## 2. DEFINITION AND INTERPRETATION

- 2.1 In this PPP Agreement the following terms shall, unless inconsistent with the context in which they appear have the following meanings and expressions derived from those terms that shall bear corresponding meanings:
- 2.1.1 **“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 Treehouse Camp Facility or any building thereon by the owner thereof irrespective of the name by which they may be called;

2.1.2	<b>“Associated Agreement”</b>	- the Private Party’s contracts with subcontractors or sub-concessionaires related to the execution and/or fulfilment of the terms and conditions of this PPP Agreement;
2.1.3	<b>“BBBEE Act”</b>	- the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended from time to time;
2.1.4	<b>“BEE Obligations”</b>	- the Black Economic Empowerment obligations imposed on the Private Party as set out in Schedule 5;
2.1.5	<b>“Bid Submission”</b>	- the bid submitted by the Private Party and accepted by SANParks for the right to carry out the Project;
2.1.6	<b>“Black Economic Empowerment” or “BEE”</b>	- shall have the meaning ascribed to it in the BBBEE Act;
2.1.7	<b>“Black People”</b>	- shall have the meaning ascribed to it in the BBBEE Act;
2.1.8	<b>“Business”</b>	- the business of an accommodation establishment that shall be conducted as a going concern upon the Treehouse Camp Facility;
2.1.9	<b>“Business Assets”</b>	the assets of the Business as set out in Schedule 18A;
2.1.10	<b>“Business Day”</b>	- any day other than a Saturday, Sunday or national public holiday in

South Africa;

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| 2.1.11 | <b>“Capital Expenditure”</b>       | - any expenditure treated as capital expenditure under IFRS as used by the Private Party;                                                                                                                                                                                           |
| 2.1.12 | <b>“Capital Investment Assets”</b> | - the assets of a capital nature procured by the Private Party for the purpose of the conduct of the Business and includes the equipment, furnishings, fixtures and improvements relating thereto;                                                                                  |
| 2.1.13 | <b>“Change in Control”</b>         | - any change whatsoever in Control of the Private Party, whether effected directly or indirectly;                                                                                                                                                                                   |
| 2.1.14 | <b>“Companies Act”</b>             | - the Companies Act, No. 71 of 2008, as amended from time to time;                                                                                                                                                                                                                  |
| 2.1.15 | <b>“Confidential Information”</b>  | - any information or know-how in whatever form relating to the business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or finances of either of the Parties;                                                      |
| 2.1.16 | <b>“Consents”</b>                  | - all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the attainment of any of the Project Deliverables; |

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| 2.1.17 | <b>“Constitutional Documents”</b> | <ul style="list-style-type: none"><li>- the Private Party's memorandum of incorporation and certificate to commence business, as well as the Private Party's shareholders' agreement, equity subscription agreements and/or equity guarantees entered into and provided in respect of the Private Party and any documents or agreements in respect of any debentures issued by the Private Party, all of which are attached to this PPP Agreement as Schedule 9 and the terms of which shall be to the satisfaction of SANParks;</li></ul> |
| 2.1.18 | <b>“Consumer Protection Act”</b>  | <ul style="list-style-type: none"><li>- the Consumer Protection Act, No. 68 of 2008, as amended from time to time;</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2.1.19 | <b>“Control”</b>                  | <ul style="list-style-type: none"><li>- 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);</li></ul>                             |
| 2.1.20 | <b>“Corrupt Act”</b>              | <ul style="list-style-type: none"><li>- shall have the meaning ascribed to</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



it in Clause 29;

2.1.21 **“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;

2.1.22 **“Depreciated Value”**

- the value of assets calculated in accordance with depreciation presented for income tax purposes, taking into consideration the unexpired portion of the period specified in Clause 3.1, provided that the minimum rates of depreciation shall not be less than normal custom and practice;

2.1.23 **“Development Period”**

a period of up to 24 (twenty four) months reckoned from the Signature Date, during which the Private Party will develop the Treehouse Camp Facility in line with Private Party's brand in order to commence with full trading activities thereat; provided that in the event the development is

completed earlier than 24 (twenty four) months from the Signature Date, this period shall be adjusted accordingly to such earlier date as may stipulated by SANParks in writing. For avoidance of doubt the Development Period includes the period required to obtain any environmental approvals;

- 2.1.24      **“EIA” or “Environmental Impact Assessment”**      - the process of assessing the environmental effects of a development or an activity and its subsequent operation, carried out in accordance with the applicable Regulatory Provisions and guidelines;
- 2.1.25      **“Environment”**      - the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or collection of organisms, including all or any of the following : air (including the air within any building or the air within any other man-made or natural structure above or below ground), water (including inland waters, groundwater and water in drains and sewers) and land;
- 2.1.26      **“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;

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| 2.1.27 | <b>“Environmental Specifications”</b> | - the requirements, conditions, obligations and specifications detailed in Schedule 7;                                                                                     |
| 2.1.28 | <b>“Equity”</b>                       | - the entire issued share capital of the Private Party as at the relevant date;                                                                                            |
| 2.1.29 | <b>“Expiry Date”</b>                  | - the last day of the month in which the twenty-fifth (25 <sup>th</sup> ) anniversary of the Operation Commencement Date occurs;                                           |
| 2.1.30 | <b>“Financial Year”</b>               | - the period from _____ to _____ in any given year for purposes of financial reporting of the Private Party;                                                               |
| 2.1.31 | <b>“Financing Agreements”</b>         | - the agreements relating to the financing provided by the Lenders to the Private Party in their form as at the Operation Commencement Date, as amended from time to time; |

2.1.32	<b>“Force Majeure”</b>	- has the meaning ascribed to it in Clause 26;
2.1.33	<b>“Good Industry Practice”</b>	- the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement; seeking in good faith to comply with all its contractual obligations herein and all applicable Regulatory Provisions;
2.1.34	<b>“Gross Revenue”</b>	- shall have the meaning ascribed to it in Clause 19;
2.1.35	<b>“Handover Period”</b>	- means the period commencing from the Signature Date, through the Development Period, up to and including the Operation Commencement Date;
2.1.36	<b>“IFRS”</b>	- International Financial Reporting Standards, being a set of accounting standards and interpretations developed by an independent, not-for-profit organization called the International Accounting Standards

Board (IASB);

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| 2.1.37 | <b>“Intellectual Property Rights”</b> | <ul style="list-style-type: none"><li>- 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 <i>sui generis</i> 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;</li></ul> |
| 2.1.38 | <b>“KNP Tariffs”</b>                  | <ul style="list-style-type: none"><li>- 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 to the Private Party in the Protected Area, as may be reviewed by SANParks from time to time;</li></ul>                                                                                                                                                                                                                                                            |
| 2.1.39 | <b>“Laws”</b>                         | <ul style="list-style-type: none"><li>- the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                |

2.1.40	<b>“Legislation”</b>	- all applicable statutes, statutory instruments, by-laws, Regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having force of law in South Africa;
2.1.41	<b>“Lenders”</b>	- means any person providing financing to the Private Party for the execution of the Project by the Private Party, other than the shareholders of the Private Party;
2.1.42	<b>“Licensed Intellectual Property”</b>	- all Intellectual Property to be used in the provision of the Project Deliverables by the Private Party or a Subcontractor under licence from any third party, as replaced and/or upgraded from time to time;
2.1.43	<b>“Local”</b>	- the geographic area specified by SANParks in respect of the Project, being within a 100 km reach of the boundary of the Protected Area fence (but excluding boundaries to the neighbouring countries), or as otherwise specified by SANParks;
2.1.44	<b>“Losses”</b>	- losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature that have or may result in adverse financial consequences to the Project;

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| 2.1.45 | <b>“Minimum PPP Fee”</b>             | <ul style="list-style-type: none"><li>- that portion of the PPP Fee that is payable by the Private Party at all times after the Operation Commencement Date, regardless of the amount of the Gross Revenue, which is stipulated in Clause 19;</li></ul>                                                                                                                                                              |
| 2.1.46 | <b>“Minister”</b>                    | <ul style="list-style-type: none"><li>- Minister of Environmental Affairs in South Africa or any minister that assumes the responsibility for the Protected Area in the future;</li></ul>                                                                                                                                                                                                                            |
| 2.1.47 | <b>“Operation Commencement Date”</b> | <ul style="list-style-type: none"><li>- the first Business Day after the expiry of the Development Period, by which date the Private Party shall be required, alternatively be deemed, to have commenced the conduct of the Business, as the case may be, at the Treehouse Camp Facility in accordance with the terms and conditions of this PPP Agreement;</li></ul>                                                |
| 2.1.48 | <b>“Park Management Plan”</b>        | <ul style="list-style-type: none"><li>- the management plan developed by SANParks for the Protected Area in consultation with the local authorities, organs of state and other stakeholders and approved by the Minister as provided for in the Protected Areas Act, the objective of which is to ensure the protection, conservation and management of the Protected Area in a manner which is consistent</li></ul> |

		with the objectives of the Protected Areas Act and the purpose for which the Protected Area was declared a national park in terms of the Protected Areas Act;
2.1.49	<b>“Park Manager”</b>	- the most senior manager of the Protected Area, designated as such by SANParks from time to time;
2.1.50	<b>“Park Rules”</b>	- the Environmental rules in respect of the Protected Area, as may be revised and/or updated by SANParks from time to time;
2.1.51	<b>“Parties”</b>	- collectively, SANParks and the Private Party;
2.1.52	<b>“Party”</b>	- SANParks or the Private Party, as the case may be;
2.1.53	<b>“Performance Bond”</b>	- the guarantee to be issued by a financial institution in favour of SANParks on behalf of the Private Party, in respect of the Private Party's obligations to perform under this PPP Agreement substantially in the format specified in Schedule 11 hereto;
2.1.54	<b>“Person”</b>	- any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;



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| 2.1.55 | <b>“PFMA”</b>                  | - the Public Finance Management Act, No. 1 of 1999, as amended from time to time;                                                                                                                 |
| 2.1.56 | <b>“PPP”</b>                   | - public private partnership, as defined in the Treasury Regulations;                                                                                                                             |
| 2.1.57 | <b>“PPP Agreement”</b>         | - this public private partnership agreement between SANParks and the Private Party, including the Schedules and any annexures hereto as amended, extended, replaced and varied from time to time; |
| 2.1.58 | <b>“PPP Fee”</b>               | - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 19;                                                                                           |
| 2.1.59 | <b>“PPP Rights”</b>            | - the right to design, build, operate, maintain, and manage the Business as more specifically set out in Clause 5;                                                                                |
| 2.1.60 | <b>“Private Party”</b>         | - _____,<br>registration number _____,<br>a profit private company registered in accordance with the company laws of South Africa;                                                                |
| 2.1.61 | <b>“Private Party Default”</b> | - has the meaning ascribed to it in Clause 27;                                                                                                                                                    |

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| 2.1.62 | <b>“Private Party Parties”</b> | - the officers, directors, staff, employees, contractors, sub-contractors, agents, guests, visitors, invitees and patrons of the Private Party or, where the context requires, any one or more of them;                                                                          |
| 2.1.63 | <b>“Project”</b>               | - shall have the meaning assigned to that term in clause 1.2 above;                                                                                                                                                                                                              |
| 2.1.64 | <b>“Project Assets”</b>        | - all assets required to undertake the Project, including the Business Assets and the Capital Investment Assets, any books and records, any spare parts and tools, as well as the Intellectual Property pertaining to the Business, but excluding all cash and cash equivalents; |
| 2.1.65 | <b>“Project Deliverables”</b>  | - the timeous achievement of the Operation Commencement Date; successful implementation of the Project, including the achievement of the BEE Obligations;                                                                                                                        |
| 2.1.66 | <b>“Project Insurance”</b>     | - those insurances that the Private Party is required by Law and in terms of this PPP Agreement to purchase and maintain in terms of Clause 22, upon the minimum terms set out in Schedule 10;                                                                                   |
| 2.1.67 | <b>“Project Term”</b>          | - the period from the Signature Date to the Expiry Date or the Termination Date, whichever                                                                                                                                                                                       |

		occurs first, which is further described in Clause 3.1;
2.1.68	<b>“Project Year”</b>	- each period of twelve (12) consecutive months, commencing on the Operation Commencement Date and thereafter commencing on every anniversary of the Operation Commencement Date;
2.1.69	<b>“Protected Area”</b>	- Kruger National Park;
2.1.70	<b>“Protected Areas Act”</b>	- the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);
2.1.71	<b>“Rand” or “R”</b>	- the South African Rand, the lawful currency of South Africa;
2.1.72	<b>“Regulations”</b>	- regulations issued in terms of the Protected Areas Act;
2.1.73	<b>“Regulatory Provisions”</b>	- (a) the Environmental guidelines (“Environmental Specifications”) for operators operating within the Protected Area which is further described in Schedule 7, as same may be revised and updated by SANParks from time to time, and (b) collectively the Laws, and standards of the State and any Relevant Authority which in any way affects or applies to the conduct of the Project and/or this PPP Agreement from time to time

or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Park Rules and Park Management Plan;

2.1.74            **“Residual Value”**

- the depreciated value of the immovable structures (approved by SANParks) built by the Private Party from the date such structures were first accounted for in the Private Parties books until the Termination Date, as the case may be. Depreciation shall be calculated in accordance with depreciation presented for income tax purposes;

2.1.75            **“Responsible Authority”**

- the South African national and/or provincial and/or local governmental authority having jurisdiction over any or all of the Parties or any subject matter of this PPP Agreement. A Responsible Authority shall, for the avoidance of doubt, not include any provider of Utilities;

2.1.76            **“Restricted Enterprise”**

- a person restricted from contracting with SANParks and/or a Responsible Authority as a result of being listed either on -
  - (i) the Register for Tender Defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt

		Activities Act, 2004;
		(ii) the Disqualified Directors' Register (maintained by the Companies and Intellectual Property Commission) in terms of Section 69(13) of the Companies Act; and/or
		(iii) any other relevant listing required by Law;
2.1.77	<b>“Sale of Business”</b>	- the sale of the Business, which forms an integral part of this PPP Agreement, in terms of which, <i>inter alia</i> , the Private Party sells and SANParks purchases the Business;
2.1.78	<b>“Sale of Business Agreement”</b>	- the written agreement entered into by the Private Party and SANParks for the Sale of Business;
2.1.79	<b>“SANParks”</b>	- South African National Parks, a juristic person established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as such in terms of the provisions of section 54 of the Protected Areas Act;
2.1.80	<b>“SANParks Default”</b>	shall have the meaning ascribed to it Clause 28;
2.1.81	<b>“SANParks Employees”</b>	- persons employed or contracted to SANParks and whose employment is regulated in terms of the Public Services Act, 1994;

2.1.82	<b>“Schedules”</b>	- the schedules to this PPP Agreement, as amended, replaced and varied from time to time;
2.1.83	<b>“Shareholders”</b>	- the holders of the Equity from time to time;
2.1.84	<b>“Signature Date”</b>	- the date of signature of this PPP Agreement by the last signing Party;
2.1.85	<b>“South Africa”</b>	- the Republic of South Africa;
2.1.86	<b>“State”</b>	- the Government of South Africa, acting directly or through its lawfully designated representatives;
2.1.87	<b>“Subcontractors”</b>	- any subcontractor of the Private Party who has contracted directly with the Private Party in respect of any of the Project Deliverables;
2.1.88	<b>“Suretyship”</b>	the deed of suretyship which shall be executed by each of the Shareholders in favour of SANParks as more specifically set out in Schedule 20;
2.1.89	<b>“Termination Amount”</b>	- the amount payable by a Party on termination of this PPP Agreement in terms of this PPP Agreement;
2.1.90	<b>“Termination Date”</b>	- any date of termination of this PPP Agreement, in accordance with its terms;

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| 2.1.91 | <b>“Treasury Regulations”</b>                         | - the Treasury Regulations issued under the PFMA that apply to SANParks and/or this PPP Agreement;                                                                                                                                                                                                                                                |
| 2.1.92 | <b>“Transferrable Licenses Intellectual Property”</b> | - any Licensed Intellectual Property that the Private Party is entitled to transfer to SANParks;                                                                                                                                                                                                                                                  |
| 2.1.93 | <b>“Treehouse Camp Facility”</b>                      | - the accommodation facility located within the Protected Area as more fully described in Schedule 1, including the land, buildings and other facilities together with all supporting infrastructure, plant and equipment, and any new facilities constructed or developed by the Private Party upon the designated site during the Project Term; |
| 2.1.94 | <b>“ Utilities”</b>                                   | - facilities such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes relevant provider thereof;                                                                                                                                                                                                           |
| 2.1.95 | <b>“Utility Charges”</b>                              | - charges or fees in respect of consumption of the Utilities used at the Treehouse Camp Facility as provided by SANParks, the Relevant Authority or any other supplier;                                                                                                                                                                           |
| 2.1.96 | <b>“Variable PPP Fee”</b>                             | - that portion of the PPP Fee that is a percentage of the Gross                                                                                                                                                                                                                                                                                   |





- organisation, association or partnership, whether or not having separate legal personality;
- 2.2.6 references to any “Responsible Authority” or any public or professional organisation shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities;
- 2.2.7 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this PPP Agreement;
- 2.2.8 the Introduction and Schedules to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Introduction and Schedules;
- 2.2.9 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this PPP Agreement, and agree that no provision or word used in this PPP Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this PPP Agreement or any part of it;
- 2.2.10 words importing the singular number shall include the plural and *vice versa*, and words importing either gender or the neuter shall include both genders and the neuter;
- 2.2.11 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this PPP Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;
- 2.2.12 general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words; and
- 2.2.13 when a number of days are prescribed in this PPP Agreement, such number

shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day.

### **3. APPOINTMENT AND PRECEDENT**

3.1 SANParks hereby appoints the Private Party which accepts such appointment with effect from the Signature Date, to undertake and execute the Project in accordance with the terms and conditions set out in this PPP Agreement.

3.2 In the event of a dispute as to the nature, content and extent of the PPP Rights and the Business, the order of precedence in the interpretation of the rights and obligations of the Parties in terms hereof shall be as follows:

3.2.1 this PPP Agreement;

3.2.2 its Schedules;

3.2.3 the RFP; and

3.2.4 the Bid Submission of the Private Party to the extent accepted by SANParks.

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

3.4 The Private Party shall perform its obligations in terms of this PPP Agreement, unconditionally and without further attaching its own conditions thereto or making performance of its obligations subject to any terms or conditions contrary or in addition to the terms of the PPP Agreement.

### **4. PROJECT TERM**

The Project shall commence on the Signature Date, and shall endure for the Project Term.

## **5. PPP RIGHTS**

### **5.1 Exclusive Grant of PPP Rights at the Treehouse Camp Facility**

5.1.1 Subject to the terms of this PPP Agreement, SANParks hereby grants the PPP Rights to the Private Party, on an exclusive basis, for the Project Term.

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

5.1.2.1 establish any other accommodation facility at the Project Site for the Treehouse Camp Facility;

5.1.2.2 grant the PPP Rights or any other rights referred to in this Clause 5 to any third parties.

5.1.3 The Parties acknowledge that access to the Project Site is open to the public, accordingly the Private Party shall be obliged to grant access thereto to the public everyday during the operational hours of the Protected Area.

### **5.2 Treehouse Camp Facility Rights**

5.2.1 The grant of the PPP Rights to the Private Party shall entitle the Private Party to:

5.2.1.1 the exclusive right to operate and maintain self-catering accommodation facilities at the Treehouse Camp Facility to be built by the Private Party;

5.2.1.2 the exclusive right to operate and maintain a hide and associated infrastructure at a location prescribed by SANParks near to the Treehouse Camp Facility, to be built by the Private Party to replace the Kanniedood Hide. The Private Party may use such hide as an overnight facility;

5.2.1.3 the right to operate other services which complement the Treehouse

- Camp Facility accommodation services (as approved by SANParks) on an exclusive basis;
- 5.2.1.4 generate, charge and collect revenues from the exercise of the PPP Rights;
- 5.2.1.5 use the Treehouse Camp Facility in accordance with the terms of this PPP Agreement;
- 5.2.1.6 access by the Private Party and its employees to the Protected Area, subject to the normal Protected Area's operating rules and hours as set by SANParks from time to time;
- 5.2.1.7 provide sight-seeing drives in open, 4X4 vehicles on existing tourist roads accompanied by a qualified guide as part of its service offering to its patrons, provided that such drives shall be conducted with vehicles complying with the standards and requirements as may be determined by SANParks from time to time and subject to any limitations specified by SANParks;
- 5.2.1.8 provide walks with suitably qualified guides in areas designated by SANParks, provided the Private Party obtains approval from SANParks for the trail/s to be walked. Walks must adhere to standards and requirements as may be determined by SANParks from time to time and subject to any limitations specified by SANParks;
- 5.2.1.9 introduce the new services and thematic activities in accordance with the Private Party's Bid Submission, subject to SANParks' approval; and
- 5.2.1.10 undertake the infrastructural development as per the Capital Investment proposed in the Private Party's Bid Submission as detailed in Schedule 12.
- 5.2.2 All of the Private Party's rights in terms of this Clause 5 shall be exercised in accordance with the terms of this PPP Agreement and subject to the

Regulatory Provisions, Environmental Laws, Environmental Specifications and all other Laws.

- 5.2.3 Notwithstanding any provision of this Clause 5, SANParks shall have unfettered access to the Treehouse Camp Facility in the event of an emergency.

### 5.3 **Service Delivery**

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

- 5.3.1 in accordance with Good Industry Practice;
- 5.3.2 in line with the Bid Submission;
- 5.3.3 conducted in a professional, courteous and friendly manner; and
- 5.3.4 in accordance and compliance with the Laws, including, to the extent applicable, the provisions of Consumer Protection Act, and Schedule 14.

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

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

- 6.1.1 The Private Party shall be obliged during the Project Term to undertake the operation, management and maintenance of the Treehouse Camp Facility and of all of the alterations and developments undertaken thereto by the Private Party in accordance with Good Industry Practice during the hours specified by SANParks from time to time.
- 6.1.2 The Private Party shall compile a status report in relation to the operation, management and maintenance of the Treehouse Camp Facility which shall be made available to SANParks promptly upon the finalisation thereof, but in any event not later than 5 (five) Business Days after every six (6) months of the Project Term.
- 6.1.3 The Private Party shall comply with the Environmental Specifications set

forth in Schedule 7.

6.1.4 The Private Party shall:

6.1.4.1 operate an accommodation establishment with a maximum of twenty (20) beds;

6.1.4.2 operate a hide. If the hide is used as an overnight site, a maximum of six (6) beds is permitted;

6.1.4.3 operate the Treehouse Camp Facility properly and strictly in accordance with the provisions of the agreed operating manuals and the undertakings made by the Private Party in its Bid Submission specifically acknowledging and taking the unique characteristics of the Protected Area into account;

6.1.4.4 use its best endeavors to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Treehouse Camp 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 Treehouse Camp Facility;

6.1.4.5 at all times maintain the equipment used in the Treehouse Camp Facility in a clean, orderly and sanitary condition;

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

6.1.4.7 build an independent secured sewerage system with capacity to cater for the full development;

- 6.1.4.8 in the case of any products or foodstuffs being stored, disposed, served or prepared at the Project Site by the Private Party, 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;
- 6.1.4.9 in the case of any products or foodstuffs being stored, disposed, served or prepared at the Project Site by the Private Party, at its cost, conduct hygiene audits at the Treehouse Camp Facility at least twice a year ("**Hygiene Audit**") and shall furnish SANParks with the outcomes of the Hygiene Audit within five (5) Business Days of its completion. In the event the Private Party fails to conduct a Hygiene Audit as contemplated in this Clause, then SANParks shall have the right to conduct or commission such an audit and the costs thereof shall be borne by the Private Party;
- 6.1.4.10 in the case of any products or foodstuffs being stored, disposed, served or prepared at the Project Site by the Private Party, at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index;
- 6.1.4.11 in the case of any products or foodstuffs being stored, disposed, served or prepared at the Project Site by the Private Party, ensure that:
- 6.1.4.11.1 it implements measures to prevent pathogens to be detected on food samples;
- 6.1.4.11.2 the Treehouse Camp Facility acquires and maintains a certificate of acceptability;
- 6.1.4.11.3 a cleaning programme in respect of the Treehouse Camp Facility is implemented, including a cleaning schedule and cleaning checklist;
- 6.1.4.11.4 the staff at the Treehouse Camp Facility is trained in hygiene practices;

- 6.1.4.11.5 hand washing facilities and proper cleaning chemicals are available;
- 6.1.4.11.6 food areas are zoned as per food type; and
- 6.1.4.11.7 the pest control measures such as screening, closure of windows and doors are implemented.
- 6.1.5 The Private Party shall ensure that the following packaging is not used on the outside seating area of the Treehouse Camp Facility:
  - 6.1.5.1 condiments sachets and any packaging that may pollute the environment;
  - 6.1.5.2 paper serviettes; and
  - 6.1.5.3 butter tubs/pads.
- 6.1.6 The Private Party undertakes to operate the Treehouse Camp Facility in line with any relevant SANParks Manual. The Parties acknowledge that the aforementioned manuals' objective is to assist in the daily operations of the Treehouse Camp 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.
- 6.1.7 SANParks may, in its sole and absolute discretion, conduct regular quality audits at the Treehouse Camp Facility to ensure that the quality of the foodstuffs and products prepared and sold by the Private Party 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.
- 6.1.8 The Private Party shall comply with and subscribe to the minimum standards of responsible tourism as provided for in the *Responsible Tourism – SANS 1162*.



- 6.1.9 The Private Party shall ensure that all access to the Treehouse Camp Facility complies with the universal accessibility standards stipulated by the Tourism Grading Council of South Africa from time to time.

**6.2 Assessment Rates and Utilities**

- 6.2.1 The Private Party shall be liable to reimburse SANParks for all the Assessment Rates, if any, that SANParks may pay to the Responsible Authority in respect of the Treehouse Camp Facility.

- 6.2.2 The Parties record that the Private Party shall, where practicable, bear the primary responsibility to procure the provision of the Utilities to the Treehouse Camp Facility. In the event any such Utilities are provided to the Treehouse Camp Facility through SANParks, SANParks shall charge, and the Private Party shall pay, all the Utility Charges in respect thereof.

- 6.2.3 Without limiting the generality of Clause 6.2.2 above, the Private Party shall, at its cost:

- 6.2.3.1 procure the maintenance of sufficient telecommunication services within the Treehouse Camp Facility;

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

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

- 6.2.4 Should the Utilities within the Treehouse Camp Facility or part thereof be provided by SANParks, then SANParks shall -

- 6.2.4.1 procure that sub-meters in respect of any Utilities are installed in order to monitor consumption or usage thereof by the Private Party. It will be the Private Party's responsibility to ensure within the first month of

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

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

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

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

6.2.7 If the Private Party fails to pay any Utility Charges in accordance with this Clause 6.2, SANParks may, in its sole and absolute discretion and without derogating from any of its other rights in law, terminate the provision of the Utilities in relation thereto.

6.2.8 For the avoidance of doubt, the Parties specifically record that the provision of any Utilities by SANParks to the Private Party shall not be construed as an incident of possession or occupation of the Treehouse Camp Facility by the Private Party. Accordingly: in the event that SANParks terminates the provision of any such Utilities on account of non-payment of the relevant Utility Charges as contemplated in this Clause 6.2, the Private Party shall not be entitled to claim or rely on the principle of spoliation (*mandament van spolie*) as a defence.

### 6.3 Consumer Protection Act Requirements

6.3.1 SANParks shall require the Private Party to comply with the provisions of

the Consumer Protection Act that affect the Business.

- 6.3.2 In the event of the Private Party failing to comply with the provisions of the Consumer Protection Act applicable to it and fails to remedy such non-compliance before the expiry of the period referred to in a notice by SANParks, SANParks may terminate this PPP Agreement in accordance with Clause 27 by written notice to the Private Party.

#### 6.4 **Unauthorised Payments**

The Private Party shall not:

- 6.4.1 offer or give or agree to give any person in SANParks' employment, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the execution of this PPP Agreement or any other contract or agreement or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract or agreement for SANParks; or
- 6.4.2 enter into this PPP Agreement or any other contract or agreement with SANParks in connection with which commission has been paid or agreed to be paid by any person, either personally or on such person's behalf, or to their knowledge, unless before that agreement is made, particulars of such commission and of the terms and conditions of any such agreement have been disclosed in writing to SANParks.

#### 6.5 **Third Party Contracts**

The Private Party may use a third party or third parties through sub-contracting to carry out all or part of its operation, and management obligations under this PPP Agreement only if approved by SANParks in writing and if SANParks is comfortable that the third party possesses the same experience, qualities and other attributes as the Private Party. The terms of any such sub-contract as aforementioned shall in all material respects reflect the relevant provisions of this PPP Agreement and be subject to the prior written notification and delivery of a copy of the relevant contract to SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations

hereunder.

## **7. LABOUR LAWS**

- 7.1 The Private Party agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in relation to the Business and shall use its best endeavours to ensure similar compliance by its contractors, sub-contractors at all levels, assignees and agents.
- 7.2 The Private Party undertakes to promptly notify SANParks upon its employees embarking on and/or participating in any form of strike or industrial action as a result of any dispute between the Private Party and its employees for any reason whatsoever.
- 7.3 The Private Party shall enter into a separate Housing Rental Agreement with SANParks in respect of the housing of its staff, if applicable.

## **8. PRIVATE PARTY COVENANTS**

- 8.1 Subject to the provisions of this PPP Agreement, the Private Party shall conduct and manage the Project:
- 8.1.1 at its own cost and risk;
  - 8.1.2 in compliance with all applicable Laws, Regulatory Provisions and the Consents;
  - 8.1.3 in compliance with all applicable health and safety standards; and
  - 8.1.4 in accordance with Good Industry Practice.
- 8.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties visiting or working at the Treehouse Camp Facility, adhere to, abide by and comply with:
- 8.2.1 all Regulatory Provisions, the Environmental Specifications in respect of the Protected Area and specifically in respect of the Treehouse Camp Facility

- and the EIA;
- 8.2.2 the terms of this PPP Agreement; and
- 8.2.3 any valid and enforceable directives or rules issued by the Park Manager from time to time. In cases where the Private Party believes that the Park Manager has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Project, the Private Party shall have the right to appeal against such rule or directive with SANParks and/or any other person determined by SANParks, 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 Private Party shall abide by the said directive or rule.
- 8.3 The Private Party shall be responsible for:
  - 8.3.1 obtaining and keeping current all the Consents which may be required for the performance of its obligations under this PPP Agreement;
  - 8.3.2 implementing each consent within the period of its validity in accordance with its terms;
  - 8.3.3 undertaking, according to the terms of this PPP Agreement, all of its obligations within the time periods specified; and
  - 8.3.4 maintaining and keeping the Treehouse Camp Facility clean including the area of responsibility described in Schedule 1 hereto.
- 8.4 Without prejudice to Clauses 8.3.1 and 8.3.2, the Private Party shall obtain all necessary permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the relevant Regulatory Provisions governing all facets of the conduct of the Project during the Project Term.

- 8.5 The Private Party shall bear all risks and costs with respect to material damage to the Treehouse Camp Facility or the environment caused by the operation of the Treehouse Camp Facility during the Project Term arising from any act whatsoever, including an omission by the Private Party.
- 8.6 The Private Party shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Private Party Parties.
- 8.7 Unless otherwise agreed in writing by SANParks, the Private Party and other parties to the Associated Agreements shall have no interest in nor receive remuneration in connection with the Treehouse Camp Facility except as provided for in the PPP Agreement or the Associated Agreements.

## **9. WARRANTIES**

### **9.1 Private Party Warranties**

The Private Party warrants that:

- 9.1.1 it has taken all necessary actions to authorise its execution of this PPP Agreement;
- 9.1.2 the execution and performance of all of its obligations in terms of this PPP Agreement does not and will not contravene any provision of the Constitutional Documents of the Private Party as at the Signature Date and the Operation Commencement Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Private Party as at the Signature Date and at the Operation Commencement Date;
- 9.1.3 for the Project Term, no encumbrances shall be granted or created in respect of the Project Assets (other than the Licensed Intellectual Property not owned by the Private Party), including that it has not registered or granted any security interests over the Project Assets which could in any manner (whether in contract or in Law) defeat or override SANParks' interest in the Project Assets;

- 9.1.4 all Consents required by the Private Party to meet the Project Deliverables shall be in full force and effect as at the Signature Date and as at the Operation Commencement Date, save for any Consents which are not required under applicable Law to be obtained by the Signature Date or the Operation Commencement Date (as the case may be), provided that the Private Party warrants that it knows of no reason (having used its best 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;
- 9.1.5 as at the Operation Commencement Date all authorisations, approvals and licenses required in order to permit the Private Party or the Subcontractors to make use of the Licensed Intellectual Property and the Transferable Licensed Intellectual Property for purposes of performing the Project Deliverables have been validly granted and will remain effective for the remainder of the Project Term, unless the Licensed Intellectual Property and the Transferable Licensed Intellectual Property is required for a shorter period in which event the Private Party or the Subcontractors shall ensure that it has been validly granted and will remain effective for such shorter period of time;
- 9.1.6 no litigation, arbitration, investigation or administrative proceeding relating to the Private Party or any of its shareholders is in progress as at the Signature Date and as at the Operation Commencement Date or, to the best of the knowledge of the Private Party as at the Signature Date and as at the Operation Commencement Date having made all reasonable enquiries, threatened against it, which is likely to have a material adverse effect on the ability of the Private Party to meet the Project Deliverables;
- 9.1.7 as at the Signature Date and as at the Operation Commencement Date, the Private Party is not subject to any obligation, the non-compliance of which is likely to have a material adverse effect on its ability to meet the Project Deliverables;
- 9.1.8 as at the Signature Date and as at the Operation Commencement Date, no proceedings or any other steps have been taken or, to the best of the knowledge of the Private Party having made all reasonable enquiries,

threatened for the winding-up or liquidation or business rescue proceedings (whether voluntary or involuntary, provisional or final), or deregistration of the Private Party or any of its shareholders, or for the appointment of a liquidator, business rescue practitioner or similar officer over it or over any of its assets;

9.1.9 all information disclosed by or on behalf of the Private Party to SANParks at any time up to the Signature Date and from the Signature Date up to the Operation Commencement Date, and, in particular, during the bid process preceding the award of this PPP Agreement to the Private Party, is true, complete and accurate in all material respects and the Private Party is not aware of any material facts or circumstances not disclosed to SANParks which would, if disclosed, be likely to have an adverse effect on SANParks' decision (acting reasonably) to award this PPP Agreement to the Private Party;

9.1.10 it is not a Restricted Enterprise;

9.1.11 in being awarded its appointment under this PPP Agreement, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a Corrupt Act;

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

9.1.12.1 the Private Party has an authorised and issued share capital as set out in the Constitutional Documents and all shares in the issued share capital of the Private Party are fully paid up; and

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

## 9.2 **SANParks Warranties**

SANParks warrants that –

9.2.1 it has taken all necessary actions to authorise the execution of this PPP



Agreement;

- 9.2.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to any of its assets related to this PPP Agreement;
- 9.2.3 it has lawfully secured the Consents required by it in terms of Law to conclude this PPP Agreement; and
- 9.2.4 no restrictive conditions of title exist over the Protected Area that would in any manner prevent or obstruct the Private Party from performing the Project Deliverables.

## **10. PRIVATE PARTY INDEMNITIES**

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

10.1.1 any:

10.1.1.1 loss of or damage to property relating to the Project;

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

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

10.1.1.4 other claim, action, charge, cost, demand or expense by a third party,  
  
(including, without limitation, any legal fees or reasonable costs) arising in connection with the performance or non-performance of any of the Project Deliverables save to the extent caused by the gross negligence or wilful misconduct of SANParks or any SANParks Employee (acting within the course and scope of its employment with SANParks) or by a breach by SANParks of an express provision of this PPP Agreement.

- 10.2 In the event of SANParks incurring a third party claim ("third party claim") for which the Private Party has indemnified it then SANParks shall notify the Private Party thereof within a period of 10 (ten) Business Days of SANParks becoming aware of such claim.
- 10.3 SANParks will provide the Private Party with all reasonable co-operation and assistance in relation to the third party claim.
- 10.4 Subject to the terms of any Project Insurances, the Private Party shall be entitled to dispute any such third party claim, at its own cost and risk, and where necessary in the name of SANParks (with the prior written approval of SANParks), subject to the Private Party -
- 10.4.1 exercising due care in defending a third party claim so as not to bring the name of SANParks into disrepute;
- 10.4.2 keeping SANParks fully informed of the conduct of such third party claim; and
- 10.4.3 obtaining the written approval of SANParks (which shall not be unreasonably withheld or delayed) prior to settling any third party claim.

## **11. LIMITATIONS ON LIABILITY**

- 11.1 Neither Party shall be entitled to recover (whether pursuant to an indemnity or otherwise) any loss to the extent that it has already been or is entitled to be compensated for that loss whether by way of Project Insurance payments or otherwise.
- 11.2 In particular, each Party shall be under an obligation to mitigate the consequences of any conduct in respect of which it is entitled to compensation under this PPP Agreement (whether by way of indemnity or otherwise).
- 11.3 Neither Party shall be liable to the other for any damages or any indemnity to the extent that the damages or the amount claimed under the indemnity is for or arises out of loss of profit, loss of use, loss of production, loss of business or loss

of business opportunity or is a claim for consequential loss suffered or allegedly suffered by any person.

## **12. PROJECT SITE**

### **12.1 Treehouse Camp Facility**

12.1.1 The Private Party acknowledges that the Government holds all right, title and interest in the Treehouse Camp Facility.

12.1.2 The location and physical boundaries of the Treehouse Camp Facility shall be the areas defined in Schedule 1.

### **12.2 Access Following Commencement**

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

12.2.2 With effect from the Expiry Date or the Termination Date, as the case may be, the Private Party's interest in the Treehouse Camp Facility shall automatically terminate and the Private Party shall be given access to the Treehouse Camp Facility only for purposes of giving effect to the provisions of Clause 30 (*Effects of Termination*).

### **12.3 Project Site Conditions**

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

for interpreting all such data.

12.3.2 Notwithstanding the provisions of Clause 12.3, the Private Party shall be deemed at the Signature Date to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the execution of the Project Deliverables. To the same extent, the Private Party shall be deemed as at the Signature Date to have inspected and examined the Treehouse Camp Facility, its surroundings, the above data and other available information. To this end, the climatic, hydrological, hydrogeological, ecological, Environmental, geotechnical, geological, palaeontological and archaeological conditions of the Treehouse Camp Facility ("**Project Site Conditions**") shall be the sole responsibility of the Private Party. Accordingly, without limiting any other obligations of the Private Party that are included in the Project Deliverables, the Private Party shall be deemed as at the Signature Date to have –

12.3.2.1 carried out an investigation of all Project Site Conditions and of any extraneous material in the Treehouse Camp Facility including its surface, sub-soil, ground water and flood line;

12.3.2.2 for the purpose of such investigation in Clause 12.3.2, inspected and examined the Treehouse Camp Facility and surroundings thereof;

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

12.3.2.4 satisfied itself as to the adequacy of –

12.3.2.4.1 its right of passage over, access to and through the Treehouse Camp Facility; and

- 12.3.2.4.2 any accommodation it may require for the purposes of fulfilling any of its obligations included in the Project Deliverables, such as any additional land or buildings located outside the Treehouse Camp Facility;
- 12.3.2.5 satisfied itself as to the possibility of interference by persons (including pedestrian and vehicle traffic) with rights-of-way across, access to or use of the Treehouse Camp Facility with particular regard to the owners and users of any land adjacent to the Treehouse Camp Facility and the Protected Area; and
- 12.3.2.6 satisfied itself as to the precautions, times and methods of working necessary to prevent or minimise nuisance or interference being caused to any third parties or the Environment.
- 12.4 To avoid doubt, the Private Party accepts full responsibility for all matters in Clause 12.3.2 and the Private Party shall, in respect of the Treehouse Camp Facility -
- 12.4.1 from the Signature Date, not be entitled to make any claim against SANParks whether in contract, delict or otherwise on any ground relating to the matters in Clause 12.3.2; and
- 12.4.2 from the Operation Commencement Date be responsible for and shall indemnify SANParks against -
- 12.4.2.1 all direct losses sustained by SANParks in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials (being any natural or artificial substance, whether in solid, gaseous or liquid form) capable of causing harm to any human or any other living organism supported by the Environment or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable Environment Law at the Treehouse Camp Facility; and

- 12.4.2.2 any losses incurred by SANParks and/or a third party for any failure to implement, non-compliance or transgression whatsoever, whether intentional or negligent, and whether committed by the Private Party or any of its Subcontractors or contractors of the terms and conditions contained in the Environmental Specifications, it being recorded that the Private Party shall assume liability for such losses notwithstanding that it acts as agent on behalf of SANParks (as holder of the Environmental Specifications) in implementing the terms and conditions of the Environmental Specifications.

**12.5 Suitability and Condition of the Treehouse Camp Facility**

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

**13. SALE OF BUSINESS**

- 13.1 The Private Party shall enter into a Sale of Business Agreement with SANParks on the terms and conditions as set out in the Sale of Business Agreement annexed hereto as Schedule 16.

- 13.2 For the avoidance of doubt, the Sale of Business as contemplated in the aforementioned Clause 13.1 shall be subject to this PPP Agreement.

**13.3 Buy-Back Option**

- 13.3.1 SANParks shall, subject to the provisions of Clause 28.3 and Clause 29.2 at the termination of this PPP Agreement for whatever reason, be entitled but not obliged to purchase the Business from the Private Party.
- 13.3.2 The terms of the purchase of the Business as contemplated in 13.3.1 shall be in accordance with the Sale of Business Agreement.

#### 13.4 **Insolvency Act Publication**

- 13.4.1 The Parties agree that notice of the Sale of Business will not be published as contemplated in section 34 of the Insolvency Act, 1936 (Act No. 24 of 1936) (as amended) (the “**Insolvency Act**”).
- 13.4.2 SANParks indemnifies the Private Party against any loss or damage which the Private Party may suffer as a result of notice of the Sale of Business not being published in terms of the Insolvency Act.
- 13.4.3 The Private Party warrants to SANParks that on Operation Commencement Date it will be registered as a “vendor” in terms of the VAT Act. The Private Party intends to carry on the Business continuously and regularly from the Operation Commencement Date and acknowledges that it reasonably expects this activity to result in taxable supplies in excess of R20 000 (twenty thousand Rand) over a period of 12 (twelve) months from the Operation Commencement Date.

#### 14. **HANDOVER**

- 14.1 It is a fundamental requirement by SANParks that the transfer of the Treehouse Camp Facility is undertaken on the basis that:
- 14.1.1 there is no or minimal disruption in the provision of goods and services to visitors to the Protected Area and includes use of vehicles for products on offer to visitors to the Protected Area;
- 14.1.2 any structural alterations do not cause the Treehouse Camp Facility to be closed unless alternatives are provided (unless it was closed in any event);
- 14.1.3 the handover shall be undertaken in such a manner to cause the least disruption and/or intrusion to SANParks and employees and then only in a manner which is mutually acceptable to both SANParks and the Private Party;
- 14.1.4 the business of the Treehouse Camp Facility will be conducted in the usual manner throughout the Handover Period; and

- 14.1.5 SANParks shall not be liable for any claims or actions which arise during the Handover Period irrespective of the cause or nature of same.
- 14.2 During the Handover Period:
- 14.2.1 the Private Party and SANParks shall co-operate and work together to achieve an effective transfer of control and management of the Treehouse Camp Facility to the Private Party on the Operation Commencement Date;
- 14.2.2 the Private Party shall be entitled to nominate one or more representatives to be stationed at the Treehouse Camp Facility, to work with SANParks management to effect a smooth handover. The Private Party's representatives shall however have no authority in relation to SANParks operations or employees during the Handover Period.
- 14.3 On the Operation Commencement Date, the Private Party shall assume full responsibility under this PPP Agreement for the operations, and expenses thereof, relating to the Treehouse Camp Facility, and be entitled to the fruits hereof.

## **15. THE ENVIRONMENT**

- 15.1 To the extent that the Private Party needs to construct infrastructure, buildings or any other structures to support the carrying out of the Project which, pursuant to the relevant Regulatory Provisions, requires an EIA, the Private Party shall not commence such construction until SANParks is satisfied that the said EIA has been undertaken in compliance with the relevant Regulatory Provisions and to the satisfaction of the Responsible Authority.
- 15.2 During the Project Term, the Private Party shall conduct, manage and carry out the Project at all times in an Environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park and shall adhere to the Regulatory Provisions and the Environmental Specifications.



- 15.3 The Private Party shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Treehouse Camp Facility and the Protected Area.
- 15.4 The Private Party shall take all reasonable steps in the conducting of the Project to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Private Party Parties and the general public.
- 15.5 The Private Party shall comply with its statutory duties in terms of the Environmental Laws and at all times take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring and in so far as such harm to the Environment is authorised by SANParks, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the Environment.

#### **16. SANPARKS' UNDERTAKINGS**

- 16.1 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.
- 16.2 SANParks shall continue, in the ordinary course of business, to market and promote the Treehouse Camp Facility and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that the Treehouse Camp 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.
- 16.3 SANParks will co-operate with and assist the Private Party in any manner as may reasonably be necessary to ensure the continued viability of the Treehouse Camp Facility and will not engage in acts or omissions which may materially affect the rights or interests of the Private Party in respect of the Treehouse Camp Facility.
- 16.4 Without limiting the generality of Clause 16.3, SANParks reserves the right to, where a dispute that might have a negative effect on SANParks' guests arises

as per Clause 31, take reasonable actions to prevent inconvenience to SANParks' guests.

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

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

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

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

## **17. PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES**

The Private Party shall ensure that it does not make any unauthorised contact with any SANParks Employees other than as contemplated in this PPP Agreement. For the avoidance of doubt, the Private Party is prohibited from making any offers of employment to any SANParks Employees who were directly engaged in the procurement of the Project for a period of 24 (twenty four) months from the Signature Date.

## **18. BLACK ECONOMIC EMPOWERMENT**

18.1 The Private Party shall ensure compliance with all Regulatory Provisions relating to Black Economic Empowerment and undertakes to implement the BEE Obligations set out in Schedule 5.

18.2 If the Private Party fails to implement its BEE Obligations in accordance with this PPP Agreement, SANParks may give the Private Party notice thereof and, if any such failure is not remedied within 14 (fourteen) Business Days (or such longer period as SANParks may, in its sole discretion, specify), SANParks shall be entitled to terminate this PPP Agreement in accordance with its terms.

## 19. FINANCIAL PROVISIONS AND PAYMENT

### 19.1 Gross Revenue

19.1.1 For the purposes of this PPP Agreement “**Gross Revenue**” shall mean:

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

19.1.1.1.1 bad debts (or provisions therefore);

19.1.1.1.2 commissions or similar consideration paid or payable;

19.1.1.1.3 cash, credit-card or similar discounts or commissions; and

19.1.1.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a related party;

19.1.1.2 **and Gross Revenue shall include:**

19.1.1.2.1 commissions received or receivable; and

19.1.1.2.2 rentals and other fees received or receivable;

19.1.1.3 **but shall exclude:**

19.1.1.3.1 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 ;

- 19.1.1.3.2 interest received or receivable;
- 19.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
- 19.1.1.3.4 transfers from reserves; and
- 19.1.1.3.5 bad debts recovered.

## 19.2 **PPP Fees**

- 19.2.1 The Private Party shall pay the PPP Fee to SANParks each and every month from the Operation Commencement Date.
- 19.2.2 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of:
  - 19.2.2.1 the Minimum PPP Fee; or
  - 19.2.2.2 the Variable PPP Fee.
- 19.2.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated using the formula set out in Schedule 6.
- 19.2.4 The monthly Minimum PPP Fee and the Variable PPP Fee are set out in detail in Schedule 6 attached hereto. Irrespective of which of these elements determines the final amount payable in any given month, the PPP Fee payment will be the higher of the Minimum PPP Fee or the Variable PPP Fee for the Treehouse Camp Facility and shall be payable by the Private Party to SANParks within 7 (seven) Business Days following the end of each month, free of deduction or set-off, to SANParks.
- 19.2.5 For purposes of reconciling the PPP Fees payable by the Private Party in any given Financial Year, the Private Party shall, within 120 (one hundred and twenty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, whereafter SANParks shall verify and

reconcile the PPP Fees due against the PPP Fees actually paid in the relevant Financial Year.

19.2.6 In the event that subsequent to the enquiry contemplated in clause 19.2.5 above, the PPP Fees paid by the Private Party are less than the PPP Fees due to SANParks in the relevant Financial Year (the “**Outstanding Fees**”), the Private Party shall pay the Outstanding Fees to SANParks upon demand.

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

19.2.8 The Private Party shall, notwithstanding any other provision of this PPP Agreement, not be obliged to pay rental for the period from the Signature Date up to the Operation Commencement Date, where after PPP Fees will be payable as provided for herein.

### 19.3 **Taxes**

19.3.1 The Private Party will be responsible for all taxes of general application and without limiting the generality of the a foregoing, any duties, PPP Fees or taxes assessed by any Relevant Authority in respect of the Treehouse Camp Facility, or in respect of the Project or any other activities conducted within the Park or activities undertaken by SANParks relating to the regulation of this PPP Agreement. These taxes will exclude any capital gains tax, income tax; VAT or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

19.3.2 Notwithstanding that all consideration payable by the Private Party hereunder shall be deemed to be exclusive of VAT and any other rates, taxes, duties, charges or imposts which may be or become payable thereon, the Private Party shall be obliged, at all times, to pay VAT as required by the VAT Act.

19.3.3 All payments to be made to SANParks by the Private Party in terms of this PPP Agreement shall be free of set-off or any other deductions whatsoever and shall be paid by way of electronic funds transfer into the bank account

specified by SANParks in its invoices or in otherwise in writing from time to time.

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

## **20. PERFORMANCE BOND**

- 20.1 The Private Party 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 11.
- 20.2 The Private Party shall maintain a valid Performance Bond (in accordance with the provisions hereof) from the Signature Date until 90 (ninety) Business Days after the expiry or earlier termination of this PPP Agreement.
- 20.3 Within 90 (ninety) Business Days of the expiry or earlier termination of this PPP Agreement, SANParks shall release all or so much of the Performance Bond as shall remain undrawn after such expiry or termination.
- 20.4 The amount to be guaranteed by the Performance Bond for the first twelve month period as from the Signature Date shall be the sum of R 400 000.00 (four hundred thousand rand).
- 20.5 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the amount indicated in Clause 20.4 as adjusted to reflect changes in the CPI since Bid Submission.
- 20.6 The Performance Bond shall secure the Private Party's performance under this PPP Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Private Party of this PPP Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Private Party of any Regulatory Provision(s), Laws, Legislation or

Environmental Specifications and payment obligations hereunder. The Performance Bond may also be called upon for any delay in the payment of sums due to SANParks in respect of PPP Fee payments.

20.7 Prior to enforcing the Performance Bond, SANParks shall give notice to the Private Party, informing the Private Party of the breach giving rise to the right of enforcement of the Performance Bond. If such breach is not remedied within the remedy period, SANParks may enforce the Performance Bond.

20.8 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.

## 21. SURETY

As additional security for its obligations under this PPP Agreement, the Private Party shall procure that each of the Shareholders shall, on or before the Signature Date, execute the Suretyship in terms of which each of the Shareholders shall bind itself as surety for the Private Party and co-principal debtor *in solidum* with the Private Party to SANParks for the due and punctual performance by the Private Party of its obligations under this PPP Agreement.

## 22. PROJECT INSURANCES

22.1 The Private Party shall insure all insurable properties within the Treehouse Camp Facility including the Project Assets, with a reputable insurance company by no later than the Operation Commencement Date, and such insurance shall:

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

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

22.1.3 cover environmental damage; and

22.1.4 include:

- 22.1.4.1 property and casualty insurance;
- 22.1.4.2 public liability and third party insurance;
- 22.1.4.3 employer's liability insurance;
- 22.1.4.4 business interruption insurance; and
- 22.1.4.5 all risks cover and loss of the PPP Fee for at least six (6) months consequent upon the damage to or destruction of the Project Assets as a result of any of the aforesaid events.
- 22.2 The insurances required in terms of Clause 22.1. above must be approved by SANParks prior to the Operation Commencement Date and shall at all times be of nature and value stipulated by SANParks' insurance company from time to time.
- 22.3 All premiums, subsequent renewal premiums, all additional premiums and all stamp duties in respect of the relevant insurance policies, shall be paid by the Private Party.
- 22.4 Should the Private Party be in breach of the provisions of Clause 22.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30) days within which to comply with Clause 22.1, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in Clause 22.1 to the extent that SANParks deems necessary. In this event, the Private Party shall be obliged to refund to SANParks all premiums disbursed by SANParks on behalf of the Private Party within a period of fourteen (14) days of receiving written notice from SANParks to do so.
- 22.5 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 22 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.



- 22.6 The Private Party undertakes to provide SANParks with certified copies of the certificates of insurance and certified copies of the insurance policies within seven (7) days of the Operation Commencement Date to be attached to this PPP Agreement as Schedule 10. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.
- 22.7 SANParks shall insure all the buildings or physical structures of the Treehouse Camp Facility with a reputable insurance firm.

## **23. REPORTING REQUIREMENTS**

### **23.1 General**

- 23.1.1 The Private Party shall be required to compile and deliver to SANParks a comprehensive quarterly and annual reports in the form prescribed by SANParks from time to time for purposes of reporting on the implementation and performance of the Project Deliverables.
- 23.1.2 In addition to the Private Party's reporting obligations stipulated in Clause 23.1.1, the Private Party shall, within 10 (ten) Business Days of the event occurring, report in writing to SANParks details of the following events -
- 23.1.2.1 any encumbrance, lien or attachment imposed on any of the Private Party's property and any seizure thereof which encumbrance, lien, attachment or seizure materially affects, impedes or obstructs (whether directly or indirectly) the ability of the Private Party to perform the Project Deliverables;
- 23.1.2.2 any transaction in respect of the Equity of the Private Party of which the Private Party is aware; or
- 23.1.2.3 any receipt by the Private Party of a notice of default under any Financing Agreement from the Lenders, the circumstances thereof and possible results as viewed by the Private Party.
- 23.1.3 The Private Party shall, within 10 (ten) Business Days of the receipt of a

written request from SANParks, provide SANParks with –

- 23.1.3.1 any information SANParks may reasonably request pertaining to the PPP Agreement or that SANParks is entitled to under any Law; and
- 23.1.3.2 a written report on any aspect of the Private Party's performance of the Project Deliverables or on its compliance with any other obligation under this PPP Agreement.

## 23.2 **Appointment of Private Party Auditors**

- 23.2.1 The Private Party will be obliged to appoint a medium- to large-tier auditor (as defined by the Independent Regulatory Board for Auditors) as the Private Parties' auditors for the Project. Failure to do so may result in termination of this PPP Agreement.
- 23.2.2 In furtherance of its reporting obligations as a company in terms of all applicable Laws, the Private Party shall at all times comply with the record keeping and reporting requirements of the Companies Act if failure to do so would be a breach of the Companies Act and shall ensure that by the Signature Date it has, at its own expense, procured the services of a reputable firm of auditors and that, by the Operation Commencement Date, the Private Party shall implement a suitable accounting and cost control system consistent with IFRS so as to properly prepare and record all financial information relating to the Private Party's activities in respect of the Project. Copies of such accounts and reports shall be provided to SANParks on written request, and SANParks shall have the right to have access to and the right to remove such accounts and reports if acting within its rights and if so required in terms of applicable Laws.
- 23.2.3 The Private Party shall similarly cause the Subcontractors to make all information, books of accounts, records and other data relating to the Project available to SANParks on reasonable notice if so required in terms of applicable Laws and if reasonably required for this PPP Agreement.
- 23.2.4 SANParks may, on reasonable suspicion of fraud or fraudulent

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

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

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

### 23.3 **Bi-Annual Management Reports**

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

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

23.3.2 an income statement; and

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

### 23.4 **Annual Reports**

23.4.1 The Private Party shall furnish to SANParks as soon as practicable but in

any event not later than 120 (one hundred and twenty) Business Days after the end of each Financial Year which occurs after the Operation Commencement Date -

- 23.4.1.1 3 (three) hardcopies and 1 (one) electronic copy of the Private Party's complete financial statements for such Financial Year as signed by a duly authorised officer of the Private Party, all in accordance with the requirements of accounting best practice (which must be consistent with the books of accounts and prepared in accordance with IFRS consistently applied), together with an audit report thereon;
- 23.4.1.2 a copy of any audit findings report sent by the Private Party's auditors to the Private Party or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts; and
- 23.4.1.3 a reconciliation of the profit and loss account and the budget for that Financial Year, and an analysis thereof.

## **24. INFORMATION AND AUDIT ACCESS**

- 24.1 The Private Party shall provide to SANParks all information, documents, records and the like (including all contracts concluded by it for the purposes of or ancillary to the implementation of this Project) in the possession of or available to the Private Party as may reasonably be requested by SANParks for the purpose of complying with any of its statutory reporting obligations including its obligations under the Promotion of Access to Information Act, 2000, the Promotion of Administrative Justice Act, 2000, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, the PFMA and the Public Audit Act, 2004.
- 24.2 Without limiting the generality of the foregoing, the Private Party shall:
  - 24.2.1 provide and shall procure that its Subcontractors shall provide all such information as SANParks may reasonably require from time to time to enable SANParks to provide reports and returns as required by any Responsible Authority, including reports and returns regarding the physical

condition of any building occupied by SANParks for purposes of the Project, health and safety, national security, and Environmental safety; and

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

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

## **25. SANPARKS STEP-IN**

25.1 If SANParks reasonably believes that it needs to take any action in connection with the Project Deliverables because a serious and urgent risk arises to the health or safety of persons or property, or to the Environment, or to national security and/or to discharge a statutory duty, then SANParks shall in its sole discretion be entitled to take action in accordance with the following provisions, provided that SANParks must cease to exercise its rights in terms of this Clause when the reason for the exercise of the rights no longer applies.

25.2 If pursuant to Clause 25.1 SANParks wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Private Party in writing of -

25.2.1 the action it wishes to take;

25.2.2 its reasons for taking such action;

- 25.2.3 the date when it wishes to commence such action;
- 25.2.4 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
- 25.2.5 to the extent practicable, the effect of such action on the Private Party and its obligations to perform the Project Deliverables during the Step-in Period.
- 25.3 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 Private Party shall give all reasonable assistance to SANParks in the conduct of such Necessary Action.
- 25.4 If the Private Party is not in breach of any of its obligations under this PPP Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and such action prevents the Private Party from providing any part of the Project Deliverables:
- 25.4.1 the Private Party shall be relieved from such obligations; and
- 25.4.2 in respect of the time period over which such Necessary Action is conducted and provided that the Private Party provides SANParks with such reasonable assistance as SANParks may need in the conduct of such Necessary Action (such assistance, however, to be at the expense of SANParks to the extent of any incremental costs).
- 25.5 If the Necessary Action is taken as a result of a breach by the Private Party of any of its obligations under this PPP Agreement, then for so long as and to the extent that such Necessary Action is taken and prevents the Private Party from performing any of its obligations, the Private Party shall be relieved from such obligation.
- 25.6 The relief of the Private Party's obligations as contemplated in Clause 25.5 above shall apply only if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Private Party Default, then SANParks must serve a notice in

terms of Clause 25 (*SANParks' Options*) requiring the Private Party to remedy the Private Party Default or to put forward a Remedial Programme.

- 25.7 Where the provisions of Clause 25.5 apply, the Private Party shall be liable to SANParks for an amount equal to SANParks' reasonable costs of taking any Necessary Action as contemplated in Clause 25.5.

## 26. **FORCE MAJEURE**

### 26.1 **Definition and Procedure**

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

26.1.1.1 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

26.1.1.2 nuclear contamination unless the Private Party and/or any Sub-contractor is the source or cause of the contamination; or

26.1.1.3 chemical or biological contamination of the Treehouse Camp Facility from any of the events referred to in Clauses 26.1.1.1 and 26.1.1.2 above,

that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.

- 26.1.2 Subject to Clause 26.1.3, the Party claiming relief shall be relieved from liability under this PPP Agreement to the extent that it is not able to perform all or a material part of its obligations under this PPP Agreement as a result

of an event of Force Majeure.

- 26.1.3 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 26.1.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this PPP Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavors to remedy its failure to perform; and
- 26.1.3.2 it shall not be relieved from liability under this PPP Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this PPP Agreement due to its failure to comply with its obligations under Clause 22.
- 26.1.4 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.
- 26.1.5 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 26.1.3.1, 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.
- 26.1.6 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.
- 26.1.7 If, following the issue of any notice referred to in Clause 26.1.4, 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.

26.1.8 Neither SANParks nor the Private Party shall have any right to payment or otherwise in relation to the occurrence of an event of Force Majeure.

26.1.9 The Parties shall endeavor to agree any modifications to this PPP Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. This PPP Agreement shall terminate in terms of Clause 26.2 if no such agreement is reached.

## 26.2 Termination for Force Majeure

If, in the circumstances referred to in Clause 26.1.9, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that Clause, within one hundred and eighty (180) days of the date on which the Party affected serves notice on the other Party in accordance with that Clause, either Party may at any time afterwards terminate this PPP Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any material obligation under this PPP Agreement.

## 27. PRIVATE PARTY DEFAULT

### 27.1 Definition

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

27.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, No. 24 of 1936 or the Companies Act) being entered into by or in relation to the Private Party;

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

- applicable, whether provisional or final, and whether voluntary or compulsory);
- 27.1.3 the Private Party ceasing to carry on business;
- 27.1.4 a resolution being passed or an order being made for the business rescue proceedings, winding-up, liquidation or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- 27.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, which is not specifically mentioned in this Clause 27.1. For the avoidance of doubt for the purposes of this PPP Agreement a failure to comply with any of the obligations imposed on the Private Party as set out in the Schedules to this PPP Agreement shall be deemed to be a breach of a material obligation;
- 27.1.6 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement including but not limited to the requirements contained in Clauses 46.11, 6.2 and Schedule 6 (which sums are not bona fide in dispute) and such failure continues for 10 (ten) Business Days from receipt by the Private Party of a notice of non-payment from SANParks;
- 27.1.7 The Private Party or any of its directors or officers is found guilty of a criminal offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 500,000 (five hundred thousand Rand) or imprisonment for a period exceeding six (6) months unless such finding is the subject of an appeal that is being diligently pursued by the Private Party or relevant director of officer;
- 27.1.8 the Private Party or any of its directors or officers falsifies any report, document or information that is provided by the Private Party to SANParks;
- 27.1.9 breach of any provision of this PPP Agreement has occurred at least 3 (three) times in any Financial Year and the Private Party having failed to remedy such breach within the time stipulated therefor in terms of a breach notice issued to it by SANParks in terms of this PPP Agreement;

- 27.1.10 the Private Party breaches any of the provisions relating to its financial obligations in terms of this PPP Agreement;
- 27.1.11 the Private Party fails to obtain and maintain any Project Insurances as required in terms of this PPP Agreement; or
- 27.1.12 the Private Party fails to commence trading at the Treehouse Camp Facility on the Operation Commencement Date.

## 27.2 SANParks' Options

- 27.2.1 On the occurrence of a Private Party Default, or within a reasonable time after SANParks becomes aware of the same, SANParks may:
  - 27.2.1.1 in the case of the Private Party Default referred to in Clauses 27.1.1, 27.1.2, 27.1.3, 27.1.4, 27.1.6, 27.1.7, 27.1.8, 27.1.9 and 27.1.11 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;
  - 27.2.1.2 in the case of any other Private Party Default referred to in Clauses 27.1.5, 27.1.10 and 27.1.12, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within ten (10) Business Days of such notice of default; or
  - 27.2.1.3 request that the Private Party put forward, within 10 (ten) Business Days of a notice of default, a reasonable programme for remedying the Private Party Default or to remedy the underlying cause of such Private Party Default ("**Remedial Programme**"). The Remedial Programme shall specify in reasonable detail the manner in and the latest date by which, such Private Party Default is proposed to be remedied. The Private Party shall only have the option of putting forward a Remedial Programme if it first notifies SANParks within 5 (five) Business Days of such notice of Private Party Default that it proposes to do so.
- 27.2.2 If the Private Party Default is notified to the Private Party in a notice of default

in terms of Clause 27.2.1.2 and the Private Party Default is not remedied before the expiry of the period referred to in the notice, then SANParks may terminate this PPP Agreement with immediate effect by written notice to the Private Party and the Lenders.

### **27.3 Remedy Provisions**

27.3.1 Where the Private Party puts forward a Remedial Programme in accordance with Clause 27.2.1.3, SANParks shall have 20 (twenty) Business Days from receipt of the same within which to notify the Private Party that it does not accept the Remedial Programme, failing which SANParks shall be deemed to have accepted the Remedial Programme. SANParks shall act reasonably in rejecting the Remedial Programme and shall give reasons for its decision. Where SANParks notifies the Private Party that it does not accept the Remedial Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedial Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedial Programme (as the same may have been amended by agreement) will remedy the Private Party Default in a reasonable manner and within a reasonable time period.

27.3.2 If -

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

27.3.2.2 where the Private Party puts forward a Remedial Programme which has been accepted by SANParks, the Private Party fails to achieve any material element of the Remedial Programme or to complete the Remedial Programme by the specified end date for the Remedial Programme; or

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

27.3.3 then SANParks may terminate this PPP Agreement in its entirety by written notice to the Private Party with immediate effect; provided that for the purposes of Clause 27 if the Private Party's execution of the Remedial Programme is adversely affected by the occurrence of an event of Force Majeure, subject to the Private Party complying with the mitigation and other requirements in this PPP Agreement concerning Force Majeure, the time for execution of the Remedial Programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the Force Majeure event which is agreed by the Parties.

**27.4 SANParks' Costs**

27.4.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 27 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

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

**27.5 Termination Amount on Private Party Default**

27.5.1 On termination of this PPP Agreement as a result of a Private Party Default, without derogating from any other rights which SANParks may have in law, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Capital Investments Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

27.5.2 Subject to Clause 27.5.1, the following amounts shall be deducted from the amount payable in terms of Clause 27.5.1:

- 27.5.2.1 the cost and expense incurred or to be incurred in the reinstatement of the Treehouse Camp Facility as at date of termination, fair wear and tear accepted;
- 27.5.2.2 an amount equal to any liquidated claims recoverable at law;
- 27.5.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying material damage to the Treehouse Camp Facility and the Environment caused by the Private Party and/or any Person for whom it is legally responsible in terms of this PPP Agreement; and
- 27.5.2.4 any unpaid Assessment Rates and/or Utility Charges payable by the Private Party as at the date of termination.

## 28. SANPARKS DEFAULT

### 28.1 Definition

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

- 28.1.1 an expropriation of a material part of the Treehouse Camp Facility and/or Project Assets of the Private Party by SANParks or other Responsible Authority; or
- 28.1.2 a breach by SANParks of the material obligations under this PPP Agreement which substantially frustrates or renders it impossible for the Private Party to perform its obligations under this PPP Agreement for a continuous period of at least three (3) months.

### 28.2 Termination for SANParks Default

- 28.2.1 On the occurrence of a SANParks Default, or within ten (10) days after the Private Party becomes aware of same, the Private Party may serve notice on SANParks of the occurrence (and specifying details) of such SANParks

Default. If the relevant matter or circumstance has not been remedied or rectified within thirty (30) Business Days of such notice, the Private Party may serve a further notice on SANParks terminating this PPP Agreement with immediate effect.

- 28.2.2 The Private Party shall not exercise or purport to exercise any rights to terminate this PPP Agreement (or accept any repudiation of this PPP Agreement) except as expressly provided for herein.

### 28.3 Termination Amount for SANParks Default

- 28.3.1 On termination of this PPP Agreement as a result of SANParks Default, without derogating from any other rights which the Private Party may have in law, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Capital Investment Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

- 28.3.2 Subject to Clause 28.3.1 SANParks shall also pay to the Private Party the Residual Value of any staff houses that were built by the Private Party after the Operation Commencement Date.

## 29. CORRUPT GIFTS AND FRAUD

### 29.1 Definition and Warranty

The Private Party warrants that in entering into this PPP Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this PPP Agreement immediately in terms of Clause 27.1.5.

**"Corrupt Act"** means:

- 29.1.1 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:
- 29.1.2 for doing or not doing (or for having done or not having done) any act in

relation to the obtaining or performance of this PPP Agreement or any other contract with SANParks or any other organ of state; or

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

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

29.1.5 committing any offence:

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

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

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

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

## 29.2 **Termination Amount for Corrupt Gifts and Fraud**

29.2.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 29 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).



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

### **30. EFFECTS OF TERMINATION**

#### **30.1 Termination**

Notwithstanding any provision of this PPP Agreement, on service of a notice of termination, this PPP Agreement shall only terminate in accordance with the provisions of this Clause 30 (*Effects of Termination*).

#### **30.2 Transfers to SANParks on Termination**

On termination of this PPP Agreement for any reason in accordance with its terms after the Operation Commencement Date the Private Party shall:

- 30.2.1 procure that any Transferable Licensed Intellectual Property procured either by the Private Party or a Subcontractor and required for the continued performance of the Project Deliverables after the Termination Date shall be provided to SANParks and SANParks shall be granted a perpetual non-exclusive, royalty-free licence to use such Transferable Licensed Intellectual Property, irrespective of whether or not such Transferable Licensed Intellectual Property is owned by the Private Party or a Subcontractor, or not;
- 30.2.2 deliver to SANParks (as far as not already delivered to SANParks) one complete set of:
- 30.2.2.1 maintenance, operation and training manuals for the Treehouse Camp Facility and where they do not exist, the Private Party has an obligation in terms of this PPP Agreement to acquire or prepare them; and
- 30.2.2.2 the historical operating data and plans of the Treehouse Camp Facility,

its furniture, fittings and equipment in a format acceptable to SANParks;

- 30.2.3 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 Private Party under this PPP Agreement and included in the Project Assets are assigned, or otherwise transferred, to SANParks;
- 30.2.4 ensure that provision is made in all relevant contracts of any description whatsoever to which the Private Party or any Subcontractor is a party to ensure that SANParks will be in a position to exercise its rights, and the Private Party will be in a position to comply with its obligations in accordance herewith;
- 30.2.5 remove from the Treehouse Camp Facility all property not required by SANParks and if it has not done so within 10 (ten) Business Days after any notice from SANParks requiring it to do so, SANParks may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred for the credit of the Private Party;
- 30.2.6 deliver to SANParks:
  - 30.2.6.1 any keys, remote access apparatus and computer access cards to the Treehouse Camp Facility;
  - 30.2.6.2 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 Treehouse Camp Facility, including without limitation, the Transferable Licensed Intellectual Property;
  - 30.2.6.3 complete asset registers and data registers pertaining to the Project; and
  - 30.2.6.4 vacate the Treehouse Camp Facility and shall leave same in a safe,

clean and orderly condition.

### 30.3 Transitional Arrangements

30.3.1 For a period of 12 (twelve) months both before and after the Expiry Date or in the case of any earlier termination after the Operation Commencement Date for the period from the service of notice of termination to 12 (twelve) months after the Termination Date, the Private Party shall have the following obligations -

30.3.1.1 the Private Party shall co-operate fully with SANParks and/or any successor providing services to SANParks in the nature of any of the Project Deliverables or any part of thereof in order to achieve a smooth transfer and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of SANParks Employees and members of the public;

30.3.1.2 if SANParks wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or similar to, the Project Deliverables or any of them) following the expiry or earlier termination of this PPP Agreement, the Private Party shall co-operate with SANParks fully in such tender process including (without limitation) by:

30.3.1.2.1 providing any information which SANParks may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Private Party (and, for the purposes of this Clause 30.3.1.2.1, “commercially sensitive” shall mean information which would if disclosed to a competitor of the Private Party or Subcontractor give that competitor a competitive advantage over the Private Party or Subcontractor and thereby prejudice the business of the Private Party or Subcontractor); and

30.3.1.2.2 assisting SANParks by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the Treehouse Camp Facility subject to the

Private Party's safety rules and regulations.

#### 30.4 Continuing Obligations

Save as otherwise expressly provided in this PPP Agreement -

30.4.1 termination of this PPP Agreement shall be without prejudice to any accrued rights and obligations under this PPP Agreement as at the date of termination; and

30.4.2 termination of this PPP Agreement shall not affect the continuing rights and obligations of the Private Party and SANParks under this Clause 30 or under any other provision of this PPP Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

#### 30.5 Termination by reason of Expiry

30.5.1 For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary in this PPP Agreement -

30.5.1.1 if this PPP Agreement terminates on the Expiry Date; or

30.5.1.2 if this PPP Agreement terminates as a result of a SANParks Default, a Private Party Default, an event of Force Majeure or a Corrupt Act,

other than the Private Party's right to receive the Termination Amount where Clause 30.5.1.2 applies, SANParks shall not be liable for payment of any compensation to the Private Party or any Subcontractor or any third party by virtue of any transfer or other effect of termination provided for in this Clause 30 (*Effects of Termination*).

### 31. DISPUTE RESOLUTION

#### 31.1 Referable Disputes

The provisions of this Clause 31 shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this PPP Agreement between the Parties.

### 31.2 Internal Referral

31.2.1 If a dispute arises in relation to any aspect of this PPP Agreement, the Parties shall through mutual consultation, without involving any third parties, use their reasonable endeavours to resolve the dispute.

31.2.2 In the event that the dispute remains unresolved for a period of 10 (ten) Business Days after either Party has requested such consultation in writing, either Party shall be entitled to refer the matter to arbitration.

### 31.3 Arbitration

31.3.1 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**").

31.3.2 The arbitration shall be:

31.3.2.1 held and will be completed as soon as possible;

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

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

31.3.2.4 in Gauteng;

31.3.2.5 conducted in the English language; and

31.3.2.6 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.

- 31.3.3 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:
- 31.3.3.1 a legal or deemed legal matter, be a practising attorney or advocate of at least 15 (fifteen) years' standing;
- 31.3.3.2 an accounting matter, be a practising chartered accountant of at least 15 (fifteen) years standing; or
- 31.3.3.3 any other matter, be any independent person in the relevant field of not less than 10 (ten) years standing.
- 31.3.4 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.
- 31.3.5 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.
- 31.3.6 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.
- 31.3.7 Notwithstanding the provisions of this Clause 31.3.7, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted by way of notice of motion by any of the Parties against any of the other Parties

thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this PPP Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

#### **31.4 Performance to Continue**

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

### **32. CHANGES IN CONTROL**

For the duration of the Project Term, the Private Party shall procure that there is no Change in Control in the Private Party (or in any company of which the Private Party is a subsidiary) without the prior written approval of SANParks, which approval shall not be unreasonably withheld, provided that no Change in Control may breach the provisions of Schedule 5 in any way.

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

#### **33.1 Transfer by the Private Party**

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

33.1.1 this PPP Agreement or any Associated Agreement; or

33.1.2 any of its rights, interests or obligations thereunder,

save, in each case, to the extent required for the financing of the operation of the Treehouse Camp Facility as envisaged in the Financing Agreements, and in terms of the provisions of Clause 33.2.

33.2 Subject to the provisions of Clause 33.1, the Private Party may cede, delegate, assign, encumber or transfer the operation of the whole or a part of the Treehouse Camp Facility , provided that:

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

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

33.2.3 the third party to whom the Private Party cedes, delegates, assigns or transfers its rights and/or obligations, as the case may be (“**Assignee**”), shall be bound by all the same terms and conditions as set out in this PPP Agreement as if originally a party hereto.

33.3 **Substitute Entity**

33.3.1 Upon the occurrence of an event in Clause 27 entitling SANParks to terminate this PPP Agreement, and upon the expiry of the remedy period (in the event a remedy period is provided), or, where no remedy period is provided, upon the occurrence of such event, SANParks shall have the right, subject to the PFMA, to appoint a substitute entity, that the substitute entity nominated by SANParks-

33.3.1.1 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

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

33.3.2 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 33.3 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).



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

**33.4 Disposal of Shares**

- 33.4.1 SANParks will, notwithstanding the provisions of Clause 33, approve any sale of shares or other beneficial interest in the Private Party and permit that the Shareholders or beneficiaries sell any such shares or beneficial interest where such change does not bring about a Change in Control and provided that:

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

- 33.4.1.2 the sale of such shares or beneficial interest does not alter the financial, BEE and technical capability of the Private Party to perform and assume the obligations of the Private Party in terms hereof; and

- 33.4.1.3 SANParks cannot reasonably object to the sale for any reason.

**34. INTELLECTUAL PROPERTY OF SANPARKS**

- 34.1 All intellectual property rights whatsoever, whether capable of registration or not, regarding SANParks' name, trademarks, logos, image and all other intellectual property matters relating to SANParks, including its name, trademarks, logos and/or image shall remain the sole property of SANParks.

- 34.2 Subject to Clauses 34.1 and Clause 34.3, SANParks shall, on prior written application by the Private Party and only to the extent necessary for the Private Party to perform the Project Deliverables, grant a non-exclusive revocable right and licence to the Private Party to use SANParks' trademarks and logos for a period not to exceed the remainder of the Project Term.

- 34.3 In order to establish and maintain standards of quality and propriety acceptable to SANParks, in the event that the Private Party desires to use SANParks' trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to SANParks for approval, which shall be in its sole and absolute discretion. SANParks shall use reasonable endeavours to advise the Private Party of its approval or disapproval of the concept or sample within 20 (twenty) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Private Party shall not depart therefrom in any respect without SANParks' further prior written approval.
- 34.4 If at any time SANParks revokes its approval for the specified use of any trademark or logo, the Private Party shall forthwith discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which SANParks has revoked its approval. The costs incurred by the Private Party as a result of such revocation shall be borne by the Private Party if the grounds for the revocation include any ground described in Clause 34.5.
- 34.5 SANParks may revoke its approval immediately upon 10 (ten) Business Days written notice to the Private Party if the Private Party, any Subcontractor or any of its or its Subcontractors' officers, directors or employees commits any crime or otherwise engages in conduct which violates any law, or engages in any conduct that offends against public morals and decency and, in SANParks' reasonable opinion, materially prejudices the reputation and public goodwill of SANParks.
- 34.6 The Private Party acknowledges that the name(s) of SANParks (the "**Protected Names**") are associated with and peculiar to SANParks and are the Intellectual Property of SANParks. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in SANParks.
- 34.7 In circumstances where the Private Party utilises any of the Protected Names, either on its own or in combination or association with any other name, it does so only in terms of this PPP Agreement and with the prior approval of SANParks. On termination or expiry of this PPP Agreement, the Private Party shall not be entitled to operate or conduct any business using any of the Protected Names either on its own or in combination or association with any other name.

- 34.8 Within 60 (sixty) Business Days after the Expiry Date or the Compensation Date and where the Private Party has operated a company utilising any of the Protected Names with the permission of SANParks, the Private Party shall either:
- 34.8.1 de-register the company bearing any of the Protected Names; or
- 34.8.2 change the name to a name not substantially similar to any of the Protected Names.
- 34.9 The naming of the Private Party's business operation shall be undertaken in consultation with SANParks and subject to SANParks' approval. In circumstances where the name chosen by the Private Party and approved by SANParks is not part of SANParks' intellectual property, then the rights of SANParks contemplated in this Clause 34 shall not be applicable and the intellectual property shall be the sole property of the Private Party.
- 34.10 SANParks may at its discretion allow its own name, logo and or other branding on the stationery of the Private Party, at cost to the Private Party. The Private Party may not use SANParks name, logo or other branding without written consent from SANParks for any reason whatsoever.
- 34.11 SANParks reserves the right to disallow the Private Party to apply its own name, logos or other branding to the Treehouse Camp 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 Private Party shall not conceal, obstruct, compete with the name or logo of SANParks, or be contrary to the professional image of SANParks at any time or in any manner. Any such branding of the Private Party shall be at cost to the Private Party.

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

- 35.1 The Private Party shall, in respect of all Intellectual Property that is owned by it and any of the Subcontractors, on termination of this PPP Agreement in accordance with its terms after the Operation Commencement Date, grant to SANParks a non-exclusive, royalty free licence to use such Intellectual Property

for the Project or any operational and maintenance services to be provided in the future by or for SANParks in relation to the Treehouse Camp 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 Private Party.

35.2 In the event that any Intellectual Property is not owned by the Private Party but was specifically developed for the Project, whether or not it is Licensed Intellectual Property, the Private Party shall ensure that it is at all times after the Operation Commencement Date entitled to –

35.2.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the Permitted Purposes. Those licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or

35.2.2 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.

35.3 In the event that any Licensed Intellectual Property is not owned by the Private Party but is specifically required in order to operate any of the Transferable Licensed Intellectual Property for the Permitted Purposes, the Private Party shall, upon termination of this PPP Agreement in accordance with its terms after the Operation Commencement Date, procure that a license for such Licensed Intellectual Property is issued in the name of SANParks for a period equal to the difference between the Termination Date and the Expiry Date had this Agreement not terminated early, provided that the Private Party shall not be required to procure same where this PPP Agreement terminates on the Expiry Date.

35.4 In the event that the Private Party uses any Intellectual Property owned by any third party in the Project, other than Intellectual Property which is the subject of Clause 35.1, the Private Party shall prior to using any such Intellectual Property

ensure the consent of the relevant owner in order to ensure that the Private Party is at all times after the Operation Commencement Date entitled to –

- 35.4.1 grant to SANParks a non-exclusive licence, on terms no less favourable than those applicable to the Private Party, to use that Intellectual Property for the Permitted Purposes, which licences shall be capable of being further transferred by SANParks to third parties at no cost, for the Permitted Purposes; or
- 35.4.2 assign all of the Private Party's rights in and to such Intellectual Property to SANParks, on the basis that those rights shall be capable of being further assigned by SANParks to third parties at no cost, for the Permitted Purposes.
- 35.5 If the owner of Intellectual Property contemplated in Clause 35.3 withholds or denies such consent, the Private Party shall not use any such Intellectual Property for the Project without the prior written approval of SANParks.
- 35.6 The Private Party indemnifies SANParks against any liability or costs which SANParks suffers or incurs as a result of the infringement of any third party rights arising from the use by SANParks, any Responsible Authority, or any third party who is licensed to use any Intellectual Property for the Permitted Purposes, or to whom any rights in respect of the Intellectual Property are assigned for the Permitted Purposes, in accordance with the provisions of that licence or assignment, save to the extent that such liability or cost was occasioned by any intentional act or omission by an indemnified party in question, or by its gross negligence.

## **36. AMENDMENTS**

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

## **37. ENTIRE AGREEMENT**

- 37.1 Except where expressly provided otherwise in this PPP Agreement, this PPP Agreement constitutes the entire agreement between the Parties in connection

with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this PPP Agreement.

37.2 Each of the Parties acknowledges that:

37.2.1 it does not enter into this PPP Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this PPP Agreement or not) except those expressly contained in or referred to in this PPP Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this PPP Agreement; and

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

37.2.3 In the event of any conflict between this PPP Agreement and any document, contract or agreement in respect of the Project, the provisions of this PPP Agreement will prevail.

## 38. VARIATION, CANCELLATION AND WAIVER

38.1 No provision of this PPP Agreement (including, without limitation, the provisions of this Clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this PPP Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

38.2 Any relaxation or delay (together “**Relaxation**”) by either Party in exercising, or any failure by either Party to exercise, any right under this PPP Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any

Relaxation constitute a waiver of any other right (whether against that Party or any other person).

38.3 The waiver of any right under this PPP Agreement shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorised representative(s) of the waiving Party.

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

#### 39. **SEVERABILITY**

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

#### 40. **GOVERNING LAW AND JURISDICTION**

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

40.2 Each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with the Project and this PPP Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

#### 41. **CONFIDENTIALITY**

41.1 For purposes of this Clause, "**Confidential Information**" means all information or data disclosed under and/or pursuant to this PPP Agreement, whether communicated orally or in writing by either Party to the other or by the representatives of one Party to the representatives of the other and shall include commercially sensitive information contained in any internal document of a Party

regarding the nature of its business, operations, processes, intentions, product information, know-how, trade secrets, software, market opportunities, customer and business affairs, but shall exclude information which is prohibited from release for national security reasons.

41.2 Each Party shall keep all Confidential Information of the other Party confidential while this PPP Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason. Each party also use reasonable endeavours to prevent its employees, agents and Subcontractors from making any disclosure to any person of any Confidential Information of the other Party while this PPP Agreement remains in force and for a period of 10 (ten) years after it terminates for any reason.

41.3 The provisions of Clause 41.2 shall not apply to -

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

41.3.2 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 41 (*Confidentiality*);

41.3.3 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;

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

41.3.5 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;

41.3.6 any disclosure by SANParks of information relating to the design, construction, operation and maintenance of the Project; or



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

41.4 The disclosures permitted under Clauses 31.3.5, 31.3.6 or 31.3.7 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 41 (*Confidentiality*) from the intended recipients.

## 42. NOTICES

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

42.2 The addresses for Notices are as follows:

### **SANParks:**

Marked for the attention of the CEO:

c/o Legal Services

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5000

Facsimile: (012) 343-0155

E-mail: fahlaza.monaledi@sanparks.org

### **Private Party:**

Marked for the attention of the Directors: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

42.3.1 on the same day, if delivered by hand;

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

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

#### 43. COUNTERPARTS

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

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 PRIVATE PARTY**

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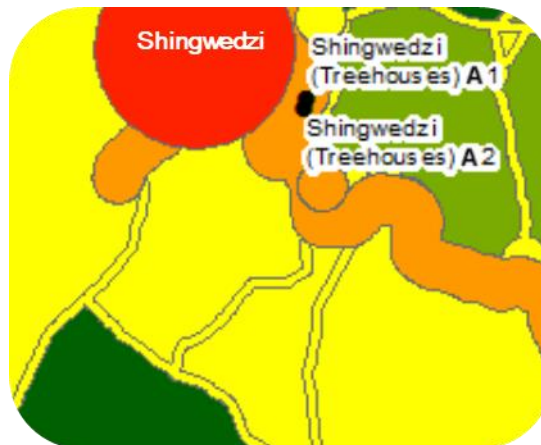
who warrants his authority hereto

#### 44. SCHEDULE 1 - DESCRIPTION OF TREEHOUSE CAMP FACILITY

##### 44.1 Location

One site has been identified for the Treehouse Camp in the Shingwedzi area. As demonstrated below, the site lies between point A1 (-23.127139, 31.453358) & A2 (-23.125388, 31.454227) on the map, situated just off the S50, adjacent to Kanniedood Hide in the Low Intensity Leisure zone.

The use of this site is subject to the Operator moving the Kanniedood Hide to further down the river where there are natural pools, which will provide for a much more scenic site for the hide. The current footprint of the hide will then be used as a site for the Treehouse Camp.



**Figure 1. Fine scale zonation of the site for the Treehouse Camp Facility in the Shingwedzi area**



**Figure 2. Shingwedzi Treehouse Camp site:  
Google Earth images of the location of the site**



**Figure 3. Proposed site for relocation of the Kanniedood Hide**

#### 44.2 Facility

The PPP opportunity is for the development, management, operation and maintenance of a Treehouse Camp. The facility will be permitted a maximum of 10 treehouses, generously spaced to allow for privacy. The maximum carrying capacity in terms of guest beds is 20 guest beds; it is at the discretion of the Private Party as to whether family units are incorporated, i.e. two 4-bed units and six 2-bed units. To allow for a more exclusive experience, the Private Party can choose to provide a reduced number of treehouses. The design of the facility will be in line with the Private Party's bid submission.

In addition, the Private Party is to construct, manage and maintain a hide to replace the Kanniedood Hide. The design of the hide and operation of the hide must take the following into consideration:

- The hide must serve as a “get-out” point for guests to enhance their tourism experience when visiting the park. Any additional activities proposed for the hide are subject to approval by SANParks. The design must take into consideration the unique character of the northern region of the Protected Area.
- SANParks will allow for the hide to be used as an overnight hide for a maximum of six guests.
- The hide must be open to the public; however, SANParks would allow for part of the hide to be segregated for specialised use.
- Ablution facilities to be provided. Consideration must be given to minimising environmental impact and implementing green technologies.
- The hide must adhere to the guidelines of the Conservation Development Framework for bush stops and overnight sites.
- Both in the construction and operation of the hide, opportunities for local community involvement must be identified and implemented.

#### **44.3 Roads and tracks**

The Private Party to build and maintain the access road to the Treehouse Camp Facility, in line with SANParks’ Road Classification.

Management roads used as access to the Treehouse Camp Facility must be upgraded and maintained in line with SANParks’ Road Classification.

The Private Party will be permitted to upgrade parts of the main tourist road (S50) adjacent to the Project Site to minimise dust and the impact thereof on the Treehouse Camp Facility. Any upgrades and subsequent maintenance will be at cost to the Private Party.

Authorisations and permits in terms of environmental management legislation, may be required prior to any construction and maintenance activities of access roads and pathways. The costs will be at cost to the Operator.

To enable exclusive use of the Project Site, SANParks will allow for the Operator to close off the following loops, as demonstrated below. In return, the Operator is expected to develop the hide as a get-out point for the public. As per the image, during the environmental authorisation process, consideration must be given to whether part of the loop can be diverted or closed:



**Figure 4. Proposed closure of loops for Shingwedzi Treehouse Camp site**

#### 44.4 Activities

The Private Party will be allowed to conduct short guided bush walks and game drives.

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

**45.1 Private Party Responsibility**

- 45.1.1 The Private Party shall be solely responsible for the maintenance and insurance of the Treehouse Camp Facility – buildings and assets;
- 45.1.2 The Private Party shall be responsible for the maintenance and refurbishment of all finishes and fittings of the interior of the Treehouse Camp Facility including electrical light fittings, sanitary ware, ironmongery, tiling, plastering, and painting. SANParks will not be responsible for any maintenance at the Treehouse Camp Facility.
- 45.1.3 The Private Party will be responsible for electricity provision to the site, which will include maintenance thereof. Electricity used should be off grid. The installation of a low decibel back-up generator is allowed, subject to SANParks' requirements. Maintenance will be the Private Party's responsibility.
- 45.1.4 The Private Party shall ensure that the electrical supply and installations comply with the required statutory standards (registered electrician to issue a certificate of competence). However, prior to Commencement Date SANParks shall provide the Private Party with certificate of competence from the registered electrician confirming that the Treehouse Camp Facility's electrical supply and installations comply with the required statutory standards.
- 45.1.5 The Private Party shall be responsible for all equipment related to the Treehouse Camp Facility and the maintenance thereof.
- 45.1.6 The Private Party shall maintain all walkways, stairs, handrails, retaining structures, fencing and drainage structures to ensure that it is in good working order and safe for public use.
- 45.1.7 The Private Party needs to ensure that there are sufficient firefighting equipment.

45.1.8 The Private Party shall be required to develop and adhere to a five year (5) year maintenance schedule which must be aligned to SANParks' maintenance schedule.

45.1.9 In essence, the Private Party will be responsible for the maintenance of the entire Treehouse Camp Facility development inclusive of but not limited to buildings, fittings, gardens, sewerage works, electricity provision, water provision as well as the access road.

45.2 **SANParks Responsibility**

45.2.1 SANParks will only be responsible for conservation management of the area but will exclude the any gardens (which should only be indigenous plants with landscaping approved by SANParks).

45.2.2 SANParks reserves the right to check that the maintenance of this tourism infrastructure and rehabilitation of the Project Sites is to its current standards.



**46. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS**

**46.1 Promotion and conduct of business**

- 46.1.1 In the conduct of the Business the Private Party shall actively promote the Treehouse Camp Facility and use its best endeavors to further the mutual business interests of SANParks and the Private Party and, without limiting the generality of the foregoing, shall provide and promote the goods and/or services required of the Business as specified herein.

**46.2 Standards of Treehouse Camp Facility**

- 46.2.1 In the conduct of the Business the Private Party shall at all times maintain the Treehouse Camp Facility and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers.

**46.3 Branding**

- 46.3.1 Private Party's brand design and colour schemes must take cognisance of the Protected Area's ambience.

**46.4 Service Provision**

- 46.4.1 In the conduct of the Business the Private Party shall keep the Treehouse Camp Facility open for business in accordance with the reasonable requests of the Protected Area and the requirements of any relevant statute, bye-law or regulation relating to the Business.

**46.5 Product Offering**

- 46.5.1 The Design Plan submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.
- 46.5.2 The Private Party is obliged to offer self-catering accommodation at the Treehouse Camp Facility.

46.5.3 The Private Party will be obliged to adapt their operations on request by SANParks to reflect any changes that may have been identified through research, or that is otherwise offensive or undesirable. For the purposes of this Clause 46.5.3 as well as any other additional Clauses in this PPP Agreement that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Managing Executive: Tourism Development and Marketing.

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

46.5.5 The Private Party is obliged to provide universal access at the Treehouse Camp Facility.

#### 46.6 **Uniforms**

46.6.1 The Private Party is obliged to provide all staff with suitable and customised apparel in line with the theme proposed for the Treehouse Camp Facility.

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

46.6.3 Notwithstanding the generality of the foregoing Clause 46.6.2, any member of staff serving guests in the Treehouse Camp Facility will not be permitted to wear open shoes or sandals.

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

#### 46.7 **Loyalty Card Programme**

SANParks has an active loyalty program called the Wild Card. SANParks would like to encourage all commercial operators in National Parks to engage with the SANParks loyalty team and conclude sustainable benefits to customers.

**46.8 Customer Survey Programme**

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

**46.9 Customer Feedback System**

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

**46.10 Treehouse Camp Facility Staff and Staff Transport**

46.10.1 In the conduct of the Business the Private Party shall be solely responsible for all staffing requirements at the Treehouse Camp Facility. The Private Party is responsible for the transport of their employees between from the workplace to the living quarters, particularly after-hours transport where living quarters are logistically distanced from the Treehouse Camp Facility. Where staff resides outside the park, SANParks will issue early entry and late exit permits to allow for after hour staff transport. The Private Party is responsible for the transport of their staff to the required medical facilities. In the event that SANParks' transport can be utilised, the related cost of transport will be for the Private Party's account.

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

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

**46.11 Staff Housing**

- 46.11.1 A model where all non-essential staff resides outside the park remains desirable. Essential staff to use staff accommodation on a shared basis when on duty.
- 46.11.2 The Private Party will be obliged to conclude separate Housing Rental Agreements with SANParks for any employees that reside in SANParks' housing. The housing availability and rentals are detailed in Schedule 13; however, the rental rates are subject to revision from time to time. The Private Party will be directly accountable to settle all housing rentals with SANParks within 30 (thirty) days following the end of each calendar month. SANParks will not be accountable for the recovery thereof from individual employees of the Private Party.
- 46.11.3 The Private Party will be obliged to provide SANParks with a housing deposit equal to 2 (two) months housing rentals.
- 46.11.4 In the event that SANParks is unable to provide the necessary building/s for staff housing or accommodation as envisaged by Clause 46.11 or such a building is in such a state that it needs repairs and/or renovations and SANParks is not able to undertake such repairs or renovations immediately, then the Private Party has a right to build or repair and/or renovate such a building/s subject to Private Party negotiating and agreeing on terms with SANParks for building, or renovating, and/or repairing such building/s.
- 46.11.5 On contract termination SANParks will pay the Private Party the Residual Value for staff accommodation that was built by the Private Party.

**46.12 Advertising**

In the conduct of the Business the Private Party shall comply with all the reasonable advertising requirements as may be specified by SANParks from time to time.

**46.13 Maintain stocks**

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

**46.14 Supplier Accounts**

In the conduct of the Business the Private Party shall pay properly as and when due all supplier accounts received by the Private Party pertaining to the Business in accordance with accepted business procedures.

**46.15 Meetings**

To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party attends concession meetings that will be arranged from time to time.

**46.16 Procedure Manuals**

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

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

**46.17 Quality Audit**

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

**46.18 Games**

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

**46.19 Electrical Certificate of Compliance**

46.19.1 SANParks shall supply the Private Party with an electrical certificate of compliance (CoC) for the Treehouse Camp Facility during handover of the site to the Private Party.

46.19.2 The Private Party shall supply SANParks with an electrical certificate of compliance (CoC) for the Treehouse Camp Facility before handing the site back after Contract Termination.

**46.20 Problem Animal Management**

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

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

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

46.20.1.2 To remove or secure potential food sources, where possible, to prevent attracting unwanted attention which might corrupt animals and birds and cause them to become problematic.

46.20.1.3 To prevent animals from gaining access to these food sources, and

46.20.1.4 To educate and sensitise staff, contractors, guests and visitors on the issues related to problem animals.

- 46.20.2 No food or food waste may be left unattended from the beginning of the hand over phase and during the operational phase.
- 46.20.3 All solid and wet waste must be stored in bins in scavenger-proof storage areas, and cleared regularly.
- 46.20.4 The scent of food left lying around also attracts animals. For this reason the bins that are used for storing waste must seal as tightly as possible in order to reduce odours. When the bins are emptied, they must be washed and disinfected thoroughly.

**46.21 Conservation and Community Fund Levy**

- 46.21.1 The Private Party guests shall be required to pay the Conservation Fees as required from SANParks' guests, which differentiates between local and foreign visitors and will be payable for every day spent in the Protected Area.
- 46.21.2 The Private Party guests shall be required to pay the Community Fund Levy as required from SANParks' guests.

**46.22 Drives**

- 46.22.1 The Private Party shall develop an After Hours Travel Procedure (AHTP) to be approved by the Regional Manager, which will take night drive and other activities in consideration. If permitted, night drive travel times should be in line with that of SANParks. Any travel outside the agreed AHTP will apply to the normal procedure of Late Permits. This includes late arrivals of guests.
- 46.22.2 Game drives operated outside of official gate times are subject to approval by SANParks. Activities will need to be coordinated with SANParks and its partners, to ensure there is no conflict between activities. This may entail specific routes or areas being designated for use by the Private Party.

**47. SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION**

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



**47.1 Private Party Business, Operational and Design Plan**

47.2      **Private Party Risk Matrix**

#### 48. SCHEDULE 5 – BEE OBLIGATIONS

In this Schedule,

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

48.1.1 If the SPV qualifies as a Large Enterprise (SPV total annual revenue of R45 million or above), as defined by the *Amended Tourism B-BBEE Sector Code*, the Large Enterprise Scorecard applies. The minimum threshold for the Large Enterprise scorecard is based on the SPV's total annual revenue, as determined by SANParks, which is as follows:

- SPV total annual revenue  $\geq$  R150 million: 100 points
- SPV total annual revenue  $\geq$  R100 million but  $<$  R150 million: 95 points
- SPV total annual revenue  $\geq$  R45 million but  $<$  R100 million: 90 points

Or;

48.1.2 If the SPV qualifies as a Qualifying Small Enterprise ("QSE") (SPV total annual revenue of less than R45 million or above R5 million), as defined by the *Amended Tourism B-BBEE Sector Code*, the QSE Scorecard applies. The minimum threshold for the QSE scorecard is 80 points, as determined by SANParks.

Or;

48.1.3 If the SPV qualifies as an Exempted Micro Enterprise ("EME") (SPV total annual revenue of R5 million or below), as defined by the *Amended Tourism B-BBEE Sector Code*, the B-BBEE scorecard does not apply. On an annual basis, the SPV must confirm that the total annual revenue of the SPV was

R5 million or below, as well as confirm the percentage black ownership in the SPV.

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

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

- 48.2.1 Community trust - A not-for-profit trust created in terms of applicable law by volunteer members for channelling the proceeds of various activities and investments for the common good of persons ordinarily resident within a specific town, village or settlement. In line with the *Amended Tourism B-BBEE Sector Code*, a Community trust should adhere to requirements stipulated for Broad-Based Ownership Schemes and Trusts.

- 48.2.2 Local - A geographic area specified by SANParks, generally defined as being within a 100 km reach of the boundary of the Protected Area fence (but excluding boundaries to the neighbouring countries), or as otherwise specified by SANParks / the relevant Park-specific Department.

Through the relevant Department, SANParks will assist in determining the relevant Local Communities for the Private Party to engage with in fulfilling the obligations of the B-BBEE Proposal. Various factors could inform this, such as identifying Local Communities located nearest to the PPP project, or identifying Local Communities most in need of economic development.

Subsequent to the identification of a suitable Local Community Trust Partner, the SPV will be required to provide the Trust Deed, or any other applicable constitutional documents related to the Local Community Trust, to SANParks for review and approval to ensure that benefits are flowing to beneficiaries of the Local Communities. These documents will need to specify the beneficiaries and the intended benefits from the Trust. SANParks may guide which Local Communities should be involved in the PPP project, but will not be allowed to prescribe which individuals or entities should be listed as beneficiaries.

The Local Community Trust partner is to advise and guide the type of local economic development activities on which the funds of the Local Community Trust must be used, to ensure that Local Communities receive meaningful benefits from the PPP project.

48.3 All measurements of scores are calculated consistently with those used in the *Amended Tourism B-BBEE Sector Code, 2015* with the following additions / amendments, where applicable:

48.3.1 Ownership:

48.3.1.1 For the purposes of Measurement for Voting Rights and Economic Interest, *Local Community Trust* is an additional category of Participants in the SPV, where beneficiaries of the Trust are Black People from Local Communities.

48.3.2 Management Control:

48.3.2.1 For the purposes of Management Control Indicators for Board Participation, Local People refers to the Voting Rights in the hands Black People from Local Communities.

48.3.2.2 For the purposes of all other Management Control Indicators, Local People refers to Black Employees from Local Communities for the relevant indicators.

48.3.2.3 For the purposes of Local People and for Measurements of the “All Employees” Indicator only, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the Commission for Employment Equity (CEE) report are not applicable to the calculation of scores.

48.3.2.4 For clarity on the above, the following criteria for Large Enterprises are subject to the Measurements as per the Amended Tourism Sector Code, 2015, and targets must be split according to the economically

active population / demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report:

- 48.3.2.4.1 Black Employees in Senior Management as a percentage of all Senior Management;
- 48.3.2.4.2 Black Female Employees in Senior Management as a percentage of all Senior Management;
- 48.3.2.4.3 Black Employees in Middle Management as a percentage at all Middle Management;
- 48.3.2.4.4 Black Female Employees in Middle Management as a percentage of all Middle Management;
- 48.3.2.4.5 Black Employees in Junior Management as a percentage of all Junior Management; and
- 48.3.2.4.6 Black Female Employees in Junior Management as a percentage of all Junior Management.
- 48.3.2.5 As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report are not applicable to the calculation of scores under the QSE Scorecard.
- 48.3.3 Skills Development
  - 48.3.3.1 As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of the Employment Equity Act and the CEE report are not applicable to the calculation of scores under the QSE Scorecard.

48.3.4 Enterprise and Supplier Development

48.3.4.1 For the purposes of Preferential Procurement, Supplier Development and Enterprise Development Indicators, *Local* refers to Black Owned Entities that have their main business address listed as from a relevant Local Community, or as otherwise specified by SANParks.

48.3.5 Socio-economic Development

48.3.5.1 For the purposes of the Socio-economic Development Indicator, *Local* refers to qualifying contributions taking place in a relevant Local Community and benefiting Black People from that Local Community, or as otherwise specified by SANParks.

## 48.4 Large Enterprise Scorecard

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
Ownership	27	Voting Rights	Exercisable Voting Rights in the entity in the hands of Black People	3	30%		
			Exercisable Voting Rights in the entity in the hands of Black Women	2	15%		
			Exercisable Voting Rights in the entity in the hands of a Local Community Trust ( <i>mandatory</i> )	1	10%		
		Economic Interest	Economic Interest in the entity to which Black People are entitled	4	30%		
			Economic Interest in the entity to which Black Women are entitled	2	15%		
			Economic Interest in the entity to which a Local Community Trust is entitled to ( <i>mandatory</i> )	7	10%		
		Realisation Points	Net Value	8	As per Codes		
		Score out of 27					
Management Control	19 (+2 Bonus)	Board Participation	Exercisable Voting Rights of Black Board Members as a percentage of all Board Members	1	50%		
			Exercisable Voting Rights of Black Female Board Members as a percentage of all Board Members	0.5	30%		
			Exercisable Voting Rights of Local People who are Board Members as a percentage of all Board Members	0.5	20%		
			Black Executive Directors as a percentage of all Executive Directors	1	50%		
			Black Female Executive Directors as a percentage of all Executive Directors	0.5	30%		
		Other Executive Management	Black Executive Management as a percentage of all Other Executive Management	1	60%		
			Black Female Executive Management as a percentage of all Other Executive Management	0.5	30%		



Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
		Senior Management	Black Employees in Senior Management as a percentage of all Senior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	2	60%		
			Black Female Employees in Senior Management as a percentage of all Senior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	1	30%		
		Middle Management	Black Employees in Middle Management as a percentage of all Middle Management <i>Targets for Black People must be split according to the Economically Active Population</i>	1	75%		
			Black Female Employees in Middle Management as a percentage of all Middle Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	38%		
			Local People in Senior / Middle Management as a percentage of all Senior and Middle Management	2	25%		
		Junior Management	Black Employees in Junior Management as a percentage of all Junior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	80%		
			Black Female Employees in Junior Management as a percentage of all Junior Management <i>Targets for Black People must be split according to the Economically Active Population</i>	0.5	40%		
			Local People in Junior Management as a percentage of all Junior Management	0.5	45%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
		Employees with disabilities	Black Employees with Disabilities as a percentage of all Employees	2	2%		
		All Employees	Black Employees as a percentage of all Employees (excluding Board and Executive Management)	1	75%		
			Black Female Employees as a percentage of all Employees (excluding Board and Executive Management)	1	40%		
			Local People as a percentage of all Employees (excluding Board and Executive Management)	2	60%		
			Bonus Points	Number of Black Employees with Disabilities over and above the 2% target for Black Employees with Disabilities, as a percentage of all Employees	2	1% (over and above 2% target above)	
		Score out of 19 (+2 bonus)					
	Skills Development	20 (+5 Bonus)	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black People as a percentage of the Leivable Amount	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People in any of the following three tourism sub-sectors as a percentage of Leivable Amount: - Accommodation; - Hospitality and related services; - Travel and related services. <i>Targets for Black People must be split according to the Economically Active Population</i>	5	6%	
Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People with Disabilities in any of the above three tourism sub-sectors as a percentage of Leivable Amount				3	0.3%		
Learnerships, Apprenticeships, and Internships			Number of Black Employees participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as	8	3.5%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			a percentage of total Employees <i>Targets for Black People must be split according to the Economically Active Population</i>				
			Number of Black Unemployed Learners participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of number of total Employees <i>Targets for Black People must be split according to the Economically Active Population</i>	4	3%		
		Bonus Points	Number of Black People absorbed by the measured and/ or industry entity at the end of the Learnerships/ internship or Apprenticeship programme	5	100%		
		Score out of 20 (+5 bonus)					
Enterprise and Supplier Development	40 (+ 2 Bonus)	Preferential Procurement	B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	80%		
			B-BBEE Procurement Spend from all <b>local</b> Empowering Suppliers that are Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	3	15%		
			B-BBEE Procurement Spend from all <b>local</b> Exempted Micro Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%		
			B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement	9	40%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			Recognition Levels as a percentage of Total Measured Procurement Spend				
			B-BBEE Procurement Spend from Empowering Suppliers that are 30% Black Women Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	12%		
		Supplier Development	Annual value of all qualifying Supplier Development contributions to <b>local</b> entities made by the measured entity as a percentage of the target	10	3% of NPAT		
		Enterprise Development	Annual value of all qualifying Enterprise Development contributions and Sector Specific Contributions to <b>local</b> entities made by the measured entity as a percentage of the target	5	0.5% of NPAT		
		Bonus Points	Bonus point for graduation of one or more qualifying Enterprise Development beneficiaries to graduate to the Supplier Development level	1	Yes		
			Bonus point for creating one or more jobs directly as a result of qualifying Supplier Development and Enterprise Development contributions by the measured entity	1	Yes		
		Score out of 40 (+2 bonus)					
Socio-economic Development	5 (+3 Bonus)	Socio-economic Development	Annual value of all <b>local</b> Qualifying Socio-Economic Development contributions by the measured entity as a percentage of the target	2.5	0.5% of NPAT		
			CSI contribution to SANParks ( <i>mandatory</i> )	2.5	0.5% of NPAT		
		Bonus Points	Status as TOMSA levy collector	3	Yes		
		Score out of 5 (+3 bonus)					
Total Points	111 (+12 Bonus)			111 (+12 Bonus)	Score out of 111		
Minimum Threshold						90 / 95 / 100*	

\*Dependent on anticipated total annual revenue of SPV

## 48.5 Qualifying Small Enterprise Scorecard

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
Ownership	26	Voting Rights	Exercisable Voting Rights in the entity in the hands of Black People	3	30%		
			Exercisable Voting Rights in the entity in the hands of Black Women	2	15%		
			Exercisable Voting Rights in the entity in the hands of a Local Community Trust	2	10%		
		Economic Interest	Economic Interest in the entity to which Black People are entitled	5	30%		
			Economic Interest in the entity to which Black Women are entitled	3	15%		
			Economic Interest in the entity to which a Local Community Trust is entitled	3	10%		
		Realisation Points	Net Value	8	As per Codes		
		Score out of 26					
Management Control	15 (+2 Bonus)	Executive Management	Black representation at Executive Management	2	60%		
			Black Female representation at Executive Management	1	30%		
			Local People representation at Executive Management	1	20%		
		Senior, Middle and Junior Management	Black representation at Senior, Middle and Junior Management	4	60%		
			Black Female representation at Senior, Middle and Junior Management	2	30%		
			Local People representation at Senior, Middle and Junior Management	2	25%		
		All Employees	Black Employees as a percentage of all Employees (excluding Executive Management)	1	75%		
			Black Female Employees as a percentage of all Employees (excluding Executive Management)	1	40%		
			Local People as a percentage of all Employees (excluding	1	60%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			Executive Management)				
		Bonus Points	Number of Black Employees with Disabilities as a percentage of all Employees	2	1%		
		Score out of 15 (+2 bonus)					
Skills Development	25 (+5 Bonus)	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black People as a percentage of the Leivable Amount	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black People in any of the following three tourism sub-sectors as a percentage of Leivable Amount: - Accommodation; - Hospitality and related services; - Travel and related services.	10	3%		
			Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for Black Females in any of the above three tourism sub-sectors as a percentage of Leivable Amount.	9	1.5%		
		Learnerships, Apprenticeships, and Internships	Number of Black People participating in Learnerships, Apprenticeships and Internships specified in the Learning Matrix paid for by the measured entity as a percentage of total Employees	6	2.5%		
		Bonus Points	Number of Black People absorbed by the measured and/ or industry entity at the end of the Learnerships/ internship or Apprenticeship programme	5	100%		
		Score out of 25 (+5 bonus)					
Enterprise and Supplier Development	30	Preferential Procurement	B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	8	60%		

Element	Element Weighting	Indicator	Measurement Category & Criteria	Weighting Points	Compliance Targets	Bid Offered	Score
			B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	30%		
			B-BBEE Procurement Spend from all <b>local</b> Empowering Suppliers that are Exempted Micro Enterprises or Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	15%		
		Supplier Development	Annual value of all qualifying Supplier Development contributions to <b>local</b> entities made by the measured entity as a percentage of the target	7	2% of NPAT		
		Enterprise Development	Annual value of all qualifying Enterprise Development contributions to <b>local</b> entities made by the measured entity as a percentage of the target	5	1% of NPAT		
		Score out of 30					
Socio-economic Development	5 (+3 Bonus)	Socio-economic Development	Annual value of all <b>local</b> Qualifying Socio-Economic Development contributions by the measured entity as a percentage of the target	2.5	0.5% of NPAT		
			Mandatory CSI contribution to SANParks	2.5	0.5% of NPAT		
		Bonus Points	Status as TOMSA levy collector	3	Yes		
		Score out of 5					
Total Points	101 (+10 Bonus)			101 (+10 Bonus)	Score out of 101		
Minimum Threshold						80	

48.5.1 Milestones and Targets Going Forward

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

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

48.5.2 External B-BBEE Verification

48.5.2.1 Following signature of the PPP Agreement:

48.5.2.1.1 For SPVs qualifying as Large Enterprises and QSEs (as per SANParks' B-BBEE requirements), the Private Party shall appoint a reputable external verification agency to determine the SPV/s B-BBEE status, as per the B-BBEE Proposal. A copy of such an independent verification certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Financial Year of the SPV. The B-BBEE Verification Certificate will categorise the SPV/s according to their contribution to B-BBEE, as per the requirements of the B-BBEE Proposal.

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

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



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

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

**48.7 Private Party's BEE Proposal**

**49. SCHEDULE 6 – PPP FEE**

**49.1 Variable PPP Fee**

49.1.1 The Variable PPP Fee shall be expressed as a flat percentage of Gross Revenue generated by the Treehouse Camp Facility included under the PPP Agreement.

49.1.2 The Variable PPP Fee shall be as follows:

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

**49.2 Minimum PPP Fee**

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

MINIMUM PPP FEE	
Per Month (Excl VAT)	Per Annum (Excl VAT)
R 33 333.33	R 400 000.00

**49.3 Private Party PPP Fee Offer**

**50. SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF TREEHOUSE CAMP FACILITY WITHIN THE PROTECTED AREAS**

**50.1 Introduction**

50.1.1 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.

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

**50.2 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.<sup>1</sup>

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.

### 50.3 **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 on such developments.

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

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

The Environmental Guidelines set out and referred to in this document must be

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

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

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

#### **50.4      Precautionary Principle**

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

#### **50.5      Legislative Requirements**

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

#### **50.6      Regulatory Provisions**

- 50.6.1            The Private Party must adhere to the Regulatory Provisions and the Environmental Specifications, as amended from time to time.
- 50.6.2            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.

**50.7 SANParks Requirements**

- 50.7.1 The Private Party must comply at all times with SANParks Environmental Guidelines as they may change from time to time.
- 50.7.2 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.

**50.8 Environmental Responsibility**

- 50.8.1 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.
- 50.8.2 The Private Party must conduct, manage and carry out the Project at all times in environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park.
- 50.8.3 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.

**50.9 Environmental Impact**

- 50.9.1 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.
- 50.9.2 The Private Party must subscribe to the South African Seafood Initiative (SASSI) and only sell/include fish on the menu with green status or SASSI certified.



**50.10 Code of Conduct**

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

**50.11 Water Management and Guidelines**

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

**50.12 Energy use**

- 50.12.1 The Private Party must:
  - 50.12.1.1 To measure energy use and continuously aim to implement measures to reduce energy usage until optimal levels are reached;
  - 50.12.1.2 Monitor the use of energy;

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

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

#### 50.13 Chemical Substances

50.13.1 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);

50.13.2 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);

50.13.3 The Private Party must ensure safe storage and disposal of chemicals and their containers;

50.13.4 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;

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

#### 50.14 Waste Management

50.14.1 Liquid Wastes

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

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

50.14.1.3 The Private Party must design management techniques to be both

economically viable and environmentally sustainable;

- 50.14.1.4 The Private Party must implement waste procedures that optimise the principles of waste reduction and waste recycling and ensures that the end product do not pollute the environment;
- 50.14.1.5 The Private Party must install a grease trap for:
  - 50.14.1.5.1 Pot and rinse sinks attached to dish washers;
  - 50.14.1.5.2 Fixtures or drains through which significant amount of fats, oils or grease may be introduced;
  - 50.14.1.5.3 Soup kettles or similar devices;
  - 50.14.1.5.4 All sinks that are used to clean any dishes, pots, pans or cooking utensils.
- 50.14.1.6 The Private Party must implement processes and procedures which stipulate the following:
  - 50.14.1.6.1 Kitchen staff should inspect grease traps and interceptors at least monthly and maintain a log sheet of each trap inspection detailing condition of the trap and any maintenance activity;
  - 50.14.1.6.2 That grease traps are cleaned daily; and
  - 50.14.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorised facility.
- 50.14.2 Solid Wastes
  - 50.14.2.1 The Private Party must manage all waste that are generated in such a way that direct and indirect impacts are kept to a minimum.
  - 50.14.2.2 The Private Party must achieve Solid Waste Management Best

Practices, which implies the following:

- 50.14.2.2.1            Manage solid waste from source to disposal;
- 50.14.2.2.2            Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;
- 50.14.3            The Private Party must include the following policies in the waste management:
  - 50.14.3.1            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;
  - 50.14.3.2            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.
- 50.14.4            The Private Party will follow the following guidelines to minimise the effect of the solid waste on the ecosystem:
  - 50.14.4.1            Minimise solid waste production at all sources, by striving for the minimisation of all waste.
  - 50.14.4.2            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.
  - 50.14.4.3            All waste must be removed to the respective approved 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.

- 50.14.4.4 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.
- 50.14.4.5 Waste storage areas must remain visually hidden from visitors to the park.
- 50.14.4.6 Packaging and containers given to visitors to the park must be environmentally friendly, bio-degradable and recyclable.
- 50.14.4.7 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.
- 50.14.4.8 The Private Party must continuously strive towards eliminating plastic water bottles and single-use plastics in their operations.
- 50.14.4.9 In terms of packaging the Private Party must not use the following in outside seating and eating areas as this pollutes the park:
- 50.14.4.9.1 Sachets (for sugar, tomato sauce, salt and pepper, etc.);
- 50.14.4.9.2 Paper serviettes;
- 50.14.4.9.3 Butter tubs/pads;
- 50.14.4.9.4 Plastic straws; and
- 50.14.4.9.5 Plastic cutlery.
- 50.14.4.10 The Private Party must ensure that the all areas are kept free of litter by:
- 50.14.4.10.1 Promoting an ethic amongst guests and staff alike.

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

**50.15    Pest Control**

- 50.15.1            The Private Party must comply with the SANParks Integrated Pest Management Plan.
- 50.15.2            Where and if required the Private Party must control bats as outlined in the KNP Bat Management Guidelines.
- 50.15.3            The Private Party must make use of accredited Pest Control Operators and preferred pest control chemicals as prescribed by SANParks.

**50.16    Visual Impacts**

- 50.16.1            The Private Party must obtain approval, where appropriate, for building materials to be used (where applicable) for all structures;
- 50.16.2            The Private Party must minimise the visual impacts of the development, including lighting;
- 50.16.3            The visual impacts of lightning arrestors and radio masts (where applicable) must be minimised;
- 50.16.4            Brand signage and colours must be adapted to complement the environment; and
- 50.16.5            The Private Party must implement mitigation measures in order to reduce the visual impact in the park.

**50.17    Monitoring**

- 50.17.1            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

- 50.17.2 The Private Party agrees that SANParks will monitor, evaluate and score the operations (based on the line items in the checklist) and that a score of less than 85% for three (3) consecutive audits would imply material breach of the PPP Agreement.
- 50.17.3 SANParks has the right to undertake necessary conservation management activities in all of the Project Sites.
- 50.17.4 The Private Party must participate in any relevant SANParks-Private Parties forums and comply with any standards thereby agreed or established.

**50.18 Private Party Environmental Proposal**



## **51. SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION**

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

The following outlines the major areas of qualification:

### **51.1.1 Financial Capacity**

51.1.1.1 Given that the project may entail risk to both the successful Bidder and SANParks, it is important that interested parties demonstrate financial strength. In this regard the net asset value of the interested party must be at least R1 million.

51.1.1.2 As the successful Bidder must be a Special Purpose Vehicle (SPV), it must demonstrate financial strength with reference to the asset value of its shareholders in proportion to their shareholding. The interested party must also demonstrate, to SANParks' satisfaction, that its shareholders are solvent. Audited or independently reviewed financial statements, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided if demanded by SANParks in order to illustrate any assertion made by an interested party in this regard.

51.1.1.3 Outline ability to source suitable funding to perform under the PPP Agreement.

### **51.1.2 Financial Requirements**

51.1.2.1 The Submitting Company shall submit audited or independently reviewed financial statements corresponding to the last two (2) years;

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

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

**51.1.3 Tourism Experience**

- 51.1.3.1 The project is likely to require 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 PPP 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 SPV that will undertake this PPP opportunity. The interested party must be able to meet this tourism track-record requirement in the following ways:

- 51.1.3.1.1 Operated an eco-tourism facility, of at least 10 beds, for at least 3 (three) years.

- 51.1.3.1.2 The definition of “operated” will include ownership, leasing or concession arrangements, and management contracts. It will not include employment in a hotel or game lodge, at however senior a level.

**51.1.4 Tourism Track Record**

- 51.1.4.1 The qualifying tourism Operator(s) or individuals, shareholders or partners, of each Submitting Company, who are being used to meet the criteria regarding tourism experience must provide a general description of the Tourism facilities and services they have operated, including, (i) the number of years in active existence; (ii) the nature of the product sold; and (iii) the total number of beds such facilities or

services comprised.

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

51.1.5 **B-BBEE Qualification Criteria**

51.1.5.1 **B-BBEE Level**

51.1.5.1.1 The bidder must be a **minimum Level Three Contributor** or above according to the provisions of the November 2015 Amended Tourism B-BBEE Code or where applicable, alternative Sector Codes or the Generic Codes of Good Practice, gazetted in terms of Section 9 (1) of the Broad Based Black Economic Empowerment Act No. 53 of 2003 as amended by Act 46 of 2013. Alternatively, **if** the bidder is majority black owned, then the bidder may be a minimum Level Four Contributor or above according to the above-mentioned provisions.

51.1.5.1.2 A bidder must submit proof of its B-BBEE status level of contributor through the submission of a SANAS accredited B-BBEE certificate or affidavit, as per the Amended Tourism B-BBEE Sector Code. This Sector Code applies to all enterprises within the Tourism Sector and all parts of its value chain.

51.1.5.1.3 For the duration of the PPP term, the SPV must maintain the applicable minimum contributor status level mentioned above.

51.1.5.2	<b>Job Creation, Preferential Procurement and Enterprise Development</b>
51.1.5.2.1	The Operator will be required to identify opportunities for local communities in the construction and operation of the hide. An undertaking must be given that this will be done, as well as a plan submitted as part of the bid.
51.1.5.2.2	The Operator will be required to develop and procure services from local community service providers for laundry services and solid waste removal and disposal. An undertaking must be given that this will be done.
51.1.5.2.3	The Operator will be required to develop a minimum of ten (10) enterprises over the duration of the contract term distributed evenly over the period. An undertaking must be given that this will be done, as well as:
51.1.5.2.3.1	The Operator is to compile a plan, which would outline the detail on how the enterprise development will be done and how this enterprise development will evolve into supplier development.
51.1.5.2.3.2	It is integral that the plans proposed as part of the bid submission be backed by thorough research with clear targets that would be met. Failure to meet these will be seen as a material breach of the contract, which could lead to termination.

**51.2 Private Party Prequalification Resolution**

**52. SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS**

**53. SCHEDULE 10– INSURANCE**

54. **SCHEDULE 11 – PERFORMANCE BOND**

54.1 **PART A: FORM OF PERFORMANCE BOND**

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

Whereas:

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

We, the undersigned

\_\_\_\_\_ and \_\_\_\_\_  
(Name) (Name)

acting herein as

\_\_\_\_\_ and \_\_\_\_\_  
(Position) (Position)

of

\_\_\_\_\_  
(hereinafter called the **“Bank”**)

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



1. The Bank shall pay an amount not exceeding 12 (twelve) months' payments of the Minimum PPP Fee, namely an amount of [.....] in aggregate (the "**Maximum Amount**") without delay, on receipt by the Bank of the first written demand of SANParks that the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to **SANParks** upon receipt of a certificate in the form attached signed by an authorised representative of SANParks certifying that SANParks is entitled to draw on this Bond pursuant to the provisions of the PPP Agreement (the "**Certificate**"). SANParks may make partial and/or multiple demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.
2. The demand for payment together with this Bond (or a certified copy hereof) and the Certificate shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of SANParks nor of the Private Party respectively to enforce strict or substantial compliance by the Private Party or any contractor or sub-contractor with their respective obligations nor any act, conduct, or omission by SANParks or Private Party prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Private Party, any contractor or sub-contractor or any other person or by amendment to or variation or waiver of terms of the PPP Agreement, any sub-contract or any ancillary or related document (the "Underlying Documents") will discharge the Bank from liability under this Bond. For the avoidance of doubt, the Bank's liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Private Party, any contractor or sub-contractor or any other Person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.
4. This Bond shall:

- 4.1 remain in full force and effect from the date hereof, and shall expire on the earlier of:
  - 4.1.1 the issuance of a replacement Bond in accordance with the terms of the PPP Agreement;
  - 4.1.2 90 (ninety) Business Days after the expiry or earlier termination of the PPP Agreement; or
  - 4.1.3 the date when the Bank has paid to SANParks an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;
- 4.2 exist independently of the PPP Agreement or any amendment, variation or novation thereof;
- 4.3 not be ceded, assigned or otherwise transferred by SANParks, or otherwise dealt with in any manner whatsoever (save for the purposes and in the manner referred to above) which has or may have the effect of transferring or encumbering or alienating SANParks' rights hereunder;
- 4.4 be returned to the Bank on its expiry, cancellation, withdrawal or this Bond being fully drawn; and
- 4.5 be governed by the laws of the Republic of South Africa.
- 5. The Bank shall deposit any payment made under this Bond into an account designated by SANParks.
- 6. The Bank shall make any payment demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to SANParks equal the amounts that would have been paid to SANParks had no such deduction or withholding been made or been required to be made.

7. The obligations of the Bank under this Bond shall not in any way be affected by the invalidity, illegality or unenforceability for any reason of the obligations of the Private Party.
8. The Bank shall have no right of recourse or claim of whatever nature against SANParks arising out of its obligation to pay or arising out of actual payment under this Bond to SANParks.

9. Addresses and Notices:

- 9.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this PPP Agreement as follows:

SANParks:

Groenkloof National Park  
643 Leyds Street  
Muckleneuk  
Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The Bank:

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Telefax:

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- 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 the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.

- 9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.
- 9.5 A notice sent by one party to another party shall be deemed to be received
- 9.5.1 on the same day, if delivered by hand;
- 9.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.
- 9.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON \_\_\_\_\_ 202\_\_

AT

\_\_\_\_\_  
(Place)

SIGNATURE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 \_\_\_\_\_ WITNESS 2 \_\_\_\_\_

54.2 **PART B: FORM OF CERTIFICATE**

To:[Name and address of Bank]

Attention:

From:South African National Parks

Address:

Dated:

Dear Sirs

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

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

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

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

Yours faithfully,

.....

for and on behalf of

**South African National Parks**

**54.3 Private Party Performance Bond**

**55. SCHEDULE 12 – CAPITAL EXPENDITURE PLAN**

**55.1 Introduction**

55.1.1 The Private Party shall be obliged to comply with and adhere to the Capital Expenditure Plan as proposed with the Private Party's Bid Submission.

55.1.2 Failure by the Private Party to comply with the provisions of this Schedule 12 to the PPP Agreement and the Private Party Default is not remedied before the expiry of the period referred to in the notice by the Institution; the Institution may terminate this PPP Agreement with immediate effect by written notice to the Private Party.

**56. SCHEDULE 13 – EMPLOYEE HOUSING AND RENTALS**

- 56.1 Houses allocated: None – all to be built by the Private Party in line with the approved Bid Submission (unless otherwise agreed to with SANParks).
- 56.2 No rental will be payable by the Private Party on such accommodation.



## **57. SCHEDULE 14 – CONSUMER PROTECTION ACT**

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

### **57.1 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:-

- 57.1.1 establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
- 57.1.2 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:-
  - 57.1.2.1 who are low-income persons or persons comprising low-income communities;
  - 57.1.2.2 who live in remote, isolated or low-density population areas or communities;
  - 57.1.2.3 who are minors, seniors or other similarly vulnerable consumers; or
  - 57.1.2.4 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;
  - 57.1.2.5 promoting fair business practices;

57.1.2.6 protecting consumers from:-

57.1.2.6.1 unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and

57.1.2.6.2 deceptive, misleading, unfair or fraudulent conduct.

57.1.2.7 The Private Party shall in the course of operating the Treehouse Camp Facility in the Protected Area observe the following procedures:

## 57.2 Disclosure and Information

57.2.1 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

57.2.2 Disclosure of price of products - Private Party shall be required to adequately display a written indication of price in relation to any products to be sold by the Private Party at the Treehouse Camp Facility, the price of which should be expressed in South African currency (Rand), and in the following manner:

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

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

57.2.3 Product labelling and trade descriptions - The Private Party shall not:

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

- 57.2.3.2 alter, deface, cover, remove or obscure a trade description or trade mark applied to any products in a manner calculated to mislead consumers;
- 57.2.3.3 not offer for sale, or display any particular products if the Private Party knows, reasonably could determine or has reason to suspect that:-
  - 57.2.3.3.1 a trade description applied to the products is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
  - 57.2.3.3.2 a trade description or trade mark applied to the products has been altered
- 57.2.3.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products to be sold at the Treehouse Camp Facility , such notice shall be in a manner and form as described in CPA and related legislations.
- 57.2.4 Sales records
  - 57.2.4.1 Private Party shall provide a written record of each transaction to the consumer to whom any products are sold.
  - 57.2.4.2 The record must include at least the following information:
    - 57.2.4.2.1 Private Party's full name, or registered business name, and VAT registration number;
    - 57.2.4.2.2 the address of the premises at which, or from which, the products were sold;
    - 57.2.4.2.3 the date on which the transaction occurred;
    - 57.2.4.2.4 a name or description of any products sold or to be sold;

- 57.2.4.2.5 the unit price of any particular products sold or to be sold;
- 57.2.4.2.6 the quantity of any particular products sold or to be sold;
- 57.2.4.2.7 the total price of the transaction, before any applicable taxes;
- 57.2.4.2.8 the amount of any applicable taxes; and
- 57.2.4.2.9 the total price of transaction, including any applicable taxes.

### 57.3 Fair and Honest Dealing

#### 57.3.1 Unconscionable conduct

- 57.3.1.1 Private Party or any of its representatives or employees during the course of conducting the Business in the Treehouse Camp 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.

#### 57.3.2 False, misleading or deceptive representations

- 57.3.2.1 Private shall not, by words or conduct:
  - 57.3.2.1.1 directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;
  - 57.3.2.1.2 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
  - 57.3.2.1.3 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.

**57.4 Quality Service**

- 57.4.1 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:
- 57.4.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Treehouse Camp Facility ;
  - 57.4.1.2 ensuring that the product items provided for sale in the Treehouse Camp 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.
- 57.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 57.4.1 above, the consumer is entitled to demand from the Private Party, to either:-
- 57.4.2.1 remedy any defect in the quality of the service performed or goods bought; or
  - 57.4.2.2 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.

**58. SCHEDULE 15 – INTEGRATED PEST MANAGEMENT PLAN**

## 60. SCHEDULE 16 – SALE OF BUSINESS AGREEMENT

### 60.1 PREAMBLE

60.1.1 The Private Party agrees to dispose of the Business to SANParks on the Transfer Date on the terms and conditions contained in this Sale of Business Agreement.

60.1.2 The Private Party, as the seller, and SANParks (or any person nominated by SANParks), as the purchaser, wish to record their agreement in writing.

### 60.2 INTERPRETATION

In this Sale of Business Agreement unless clearly inconsistent with or otherwise indicated by the context –

60.2.1 “**Business**” means the tourism and recreational facilities operation and management business conducted as a going concern on the Treehouse Camp Facility as at the Termination Date including the Business Assets but shall exclude the Excluded Assets;

60.2.2 “**Excluded Assets**” means the assets of the Business set out in Schedule 18B, including the Stock and Goodwill;

60.2.3 “**Goodwill**” means all goodwill in and relating to the Business as at the Transfer Date;

60.2.4 “**Insolvency Act**” means the Insolvency Act, No. 24 of 1936, as amended from time to time;

60.2.5 “**Liabilities**” means all liabilities and obligations of the Business, incurred in the normal course, in respect of any period prior to the Operation Commencement Date or in respect of which the cause of action shall have arisen prior to the Operation Commencement Date, whether then due or not, including, but not by way of limitation, all actual and/or contingent liabilities, for payment of money, performance of services and obligations, supply of products and/or other performances;

- 60.2.6        **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995, as amended from time to time;
- 60.2.7        **“Purchase Price”** means the purchase consideration payable by SANParks for the Business in accordance with Clause 60.4;
- 60.2.8        **“Stock”** means the inventory stock of the Business as listed in Schedule 17;
- 60.2.9        **“Transfer Date”** means the first Business Day following the Expiry Date or the Termination Date, whichever occurs first; and
- 60.2.10       terms and expressions used in this Sale of Business Agreement and not otherwise defined herein shall bear the meaning assigned to them in the PPP Agreement.

### 60.3        **SALE**

- 60.3.1        The Private Party hereby sells the Business to SANParks and the SANParks hereby purchases the Business as a going concern with effect from the Transfer Date for a purchase consideration equal to the Purchase Price on terms and conditions of this Sale of Business Agreement.
- 60.3.2        Subject to Clause 60.3.3, ownership, risk and benefit in and to the Business will pass to SANParks on and with effect from the Transfer Date.
- 60.3.3        None of the Liabilities of the Business incurred prior to the Transfer Date will be transferred to SANParks and will remain those of the Private Party. The Private Party indemnifies SANParks against any loss or damage that SANParks may incur as a result of the Private Party failing to discharge any of the Liabilities.
- 60.3.4        It is recorded that the Private Party and SANParks agree that the Business is:-
- 60.3.4.1        an enterprise capable of separate operation; and
- 60.3.4.2        being sold as a going concern.



- 60.3.5 SANParks and the Private Party agree that the Business will constitute an income-earning activity following the end of the Project Term; and
- 60.3.6 the Business Assets necessary to carry on the Business are being disposed of by the Private Party to SANParks in terms of this Sale of Business Agreement
- 60.3.7 the sale contained in this Sale of Business Agreement falls within the ambit of Section 11(1)(e) of the VAT Act and therefore VAT is payable at the rate of zero percent.
- 60.3.8 Should the Commissioner for Inland Revenue rule that VAT is payable in respect of the sale of the Business as contemplated in this Sale of Business Agreement or any of the assets sold at a rate exceeding zero percent pursuant thereto, SANParks shall pay that VAT.

**60.4 PURCHASE PRICE**

- 60.4.1 In consideration for the sale of the Business by the Private Party, SANParks shall pay the Private Party a nominal purchase price of R100 (one hundred Rand) on the Transfer Date.
- 60.4.2 The Purchase Price shall be paid in full by or on behalf of SANParks by way of an electronic funds transfer of immediately available funds, without deduction or setoff, into a banking account specified by the Private Party.
- 60.4.3 The Parties agree that payment of the Purchase Price as outlined in this clause 60.4 shall constitute full and final discharge of SANParks' obligation to pay the Purchase Price to the Private Party.

**60.5 OPTION TO PURCHASE THE EXCLUDED ASSETS**

- 60.5.1 The Private Party hereby irrevocably and unconditionally grants to SANParks an irrevocable right and option, which right and option SANParks accepts, to purchase from the Private Party all or some of the Excluded Assets at a price to be negotiated and agreed upon by the Parties ("**Option**

**to Purchase**"). Should Parties fail to reach agreement on price within 30 days of commencement of such negotiations, the price shall be determined by an independent accountant to be appointed by the South African Institute of Chartered Accountants or its successor at the request of either Party ("the Accountant"). The Accountant shall act as an expert, but not arbitrator and his decision shall, in the absence of a manifest error, be final binding upon the Parties. The cost of appointment of the Accountant shall be borne by the Party requesting the appointment.

60.5.2 The Option to Purchase shall be exercisable by SANParks by written notice to the Private Party on any day between the Transfer Date and 90 (ninety) days thereafter stipulating the Excluded Assets that SANParks has elected to purchase, (the "**Purchase Notice**").

60.5.3 The Parties shall, within 90 (ninety) days of receipt by the Private Party of the Purchase Notice, negotiate in good faith the purchase consideration for the Excluded Assets that SANParks has elected to purchase pursuant to the Purchase Notice.

60.5.4 The Private Party hereby unconditionally represents and warrants to and in favour of SANParks that as at the date of the Purchase Notice:

60.5.4.1 it shall be the sole registered and beneficial owner of the Excluded Assets;

60.5.4.2 it shall be entitled and able to give free and unencumbered title of the Excluded Assets; and

60.5.4.3 no person shall have any existing or future right (including any option, pre-emptive right, right of first refusal or similar right of any nature) to acquire all or any part of the Excluded Assets.

## 60.6 POSSESSION

60.6.1 On the Transfer Date -

- 60.6.1.1            the Private Party shall place SANParks in possession of the Business;  
and
- 60.6.1.2            with the exception of the Liabilities, ownership of, risk in and benefit  
attaching to the Business shall pass to SANParks.
- 60.6.2            Signature by the Private Party and SANParks of this Sale of Business  
Agreement shall constitute, with effect from the Transfer Date, delivery to  
SANParks of all of the Private Party's rights in the Business and no further  
formalities shall be required to give effect to such delivery.
- 60.6.3            The Private Party undertakes that until the Transfer Date it will -
  - 60.6.3.1            not pledge or otherwise encumber nor alienate, sell or otherwise  
dispose of the Business except with the prior written consent of  
SANParks;
  - 60.6.3.2            not remove or permit the removal of any of the Business Assets from  
the Treehouse Camp Facility, other than in the normal course of  
Business;
  - 60.6.3.3            continue to keep the Business Assets in good order and condition; and
  - 60.6.3.4            continue to insure the Stock and assets against the risk of loss or  
damage attributable to storm, fire, theft or riot and to also keep them  
insured under the equivalent of an "all risks" policy over them which  
covers them while they are not at the Treehouse Camp Facility .

## 60.7        **DEBTORS**

The Parties hereby record that all debts owed to the Business as at the Transfer Date shall be collected by and be for the account of the Private Party with effect from that date.

**60.8      INSOLVENCY ACT PUBLICATION**

- 60.8.1      The Parties agree that notice of this transaction will not be published as contemplated in section 34 of the Insolvency Act.
- 60.8.2      The Private Party indemnifies SANParks against any loss or damage which SANParks may suffer as a result of notice of this transaction not being published in terms of the Insolvency Act.
- 60.8.3      SANParks shall be entitled to elect to satisfy any claim made by any unsatisfied creditor in which event the Private Party undertakes to reimburse SANParks for the amount concerned.

**60.9      WARRANTIES**

- 60.9.1      The Private Party gives SANParks the warranties in Clause 60.9 (in addition to those given by it elsewhere in this Sale of Business Agreement) and no other warranties, ("**Warranties**").
- 60.9.2      Each Warranty is material and given as at the Transfer Date unless the context clearly indicates a contrary intention.
- 60.9.3      To the extent that the warranties in this Sale of Business Agreement become effective as of a date which results in the use of any tense being inappropriate, the warranties shall be read in the appropriate tense, changing the provisions as necessary.
- 60.9.4      Each warranty shall remain in force notwithstanding completion of other matters provided for in this Sale of Business Agreement, and shall be a separate and independent warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty or by any other provision in this Sale of Business Agreement.
- 60.9.5      The Private Party warrants, to the best of its knowledge and belief -
- 60.9.5.1      all provisions of the Occupational Health & Safety Act, Act No. 85 of 1993, (as amended), have been adhered to by the Private Party in

respect of the Business;

- 60.9.5.2 the Business and its assets will be insured against the risks to which they are subject for amounts which accord with sound business practice for a period terminating not earlier than 40 (forty) Business Days after the Transfer Date;
- 60.9.5.3 the Private Party will not be in breach of any of its statutory or other legal obligations in respect of the Business;
- 60.9.5.4 no transaction will have been entered into in connection with the Business save in the ordinary and regular course of conduct of the Business;
- 60.9.5.5 all VAT, duties and other levies due and payable as at the Transfer Date to the State in respect of the Business will have been paid in full as at the Transfer Date. The Private Party further indemnifies SANParks in respect of any and all claims for VAT, duties and other levies which shall have accrued up to, but not due and payable as at, the Transfer Date;
- 60.9.5.6 the Private Party is not in default of any material obligations affecting the Business;
- 60.9.5.7 the Private Party has discharged all material obligations of any nature owing as at the Transfer Date to the employees transferring to SANParks pursuant to Section 197 of the Labour Relations Act;
- 60.9.5.8 the relevant books, accounts and records of the Private Party in respect of the Business do and will until the Transfer Date continue to accurately reflect all of the material transactions entered into by the Private Party in respect of the Business;
- 60.9.5.9 no person who has any claim in connection with the Business, has instituted proceedings in a division of the High Court having jurisdiction

in the district in which the Business is carried on or in the Magistrate's Court of the district nor is the Private Party aware of any circumstances which may give rise thereto prior to the Transfer Date and which would have the effect of prohibiting the Private Party from transferring the Business to SANParks;

60.9.5.10 all contracts concerning the employees of the Business will be lawfully terminable, subject to the Labour Relations Act, on notice not exceeding 1 (one) month;

60.9.5.11 nothing contained in this Sale of Business Agreement will relieve the Private Party from its obligation to make those disclosures which it is in law obliged to make;

60.9.5.12 all instructions which have from time to time been issued by any inspector appointed in terms of the applicable law have been carried out in respect of the premises from which the Business is conducted;

60.9.5.13 all transactions contemplated in this Agreement does not constitute a breach of any of the contractual obligations of the Private Party in respect of the Business nor will it entitled any person to terminate any contract to which the Private party is a party in respect of the Business; and

60.9.5.14 that it complies with all applicable conditions, limitations, obligations, prohibitions and requirements contained in relevant environmental legislation and the Private Party is not aware of any facts or circumstances which may lead to any breach of any environmental legislation.

## **60.10 EMPLOYEES**

60.10.1 With effect from the Transfer Date, all employees of the Private Party specified in Schedule 13 will automatically have their employment transferred to SANParks in accordance with Section 197 of the Labour

Relations Act.

- 60.10.2 SANParks undertakes to assume and discharge all obligations of the Private Party to those of its employees who are transferred to SANParks as envisaged in Clause 60.10.
- 60.10.3 SANParks confirms that it will recognise all previous years of service of employees of the Private Party who become employed by SANParks in the Business from the Transfer Date.
- 60.10.4 It is recorded that certain of the employees so specified in Schedule 13 might be entitled to post-retirement medical aid company contributions in accordance with Private Party employment conditions. SANParks shall assume and acknowledges that these employees will continue to enjoy the benefit of post-retirement medical aid contributions and that the financial and administrative aspects of executing this benefit will be the responsibility of SANParks.
- 60.10.5 The Private Party undertakes to procure that the actuarially valued balance of all employees retirement fund entitlements (whether the pension, provident or other) including any surplus or accumulated benefits shall be transferred in the normal course to SANParks' pension fund without delay after the Transfer Date. SANParks will have the right to appoint its own actuary for the purpose of verifying the value of each member's share of the Private Parties retirement fund.
- 60.10.6 SANParks will assume the obligations in respect of the existing housing subsidy scheme operated by the Private Party in respect of the employees specified in Schedule 13.

60.11 **INCORPORATION OF THE PROVISIONS OF THE PPP AGREEMENT**

The provisions of Clauses 2 (Definition and *Interpretation*), 13 (*Sale of Business*), 27 (*Private Party Default*), 29 (*Corrupt Gifts and Fraud*), 31 (*Dispute Resolution*), 33 (*Cession, Transfer and Substituted Entity*), 36 (*Amendments*), 37 (*Entire*

Agreement), 38 (Variation, Cancellation and Waiver), 39 (Severability), 40 (Governing Law and Jurisdiction), 41 (Confidentiality), 42 (Notices), 43 (Counterparts) of the PPP Agreement are incorporated, *mutatis mutandis*, into this Sale of Business Agreement so that the parties to this Sale of Business Agreement are bound by the provisions of those clauses as fully and effectively as if those clauses were repeated in this Sale of Business Agreement.

SIGNED AT ..... ON THE ..... 202\_.

For and on behalf of  
**THE PRIVATE PARTY**

---

who warrants his authority hereto

SIGNED AT ..... ON THE ..... 202\_.

For and on behalf of  
**SANPARKS**

---

who warrants his authority hereto



**61. SCHEDULE 17 – STOCK**

**62. SCHEDULE 18A – BUSINESS ASSETS**

**63. SCHEDULE 18B – EXCLUDED ASSETS**

**64. SCHEDULE 19 - COMPLIANCE EVENTS**

The following Compliance Events will apply to the Project:

- 64.1 The Approval of an Environmental Impact Assessment, if required for the Project, by the Relevant Authority.
- 64.2 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 20.
- 64.3 Approval of the Detailed Design by the SANParks Design Review Panel.
- 64.4 The commencement of operations within twenty four (24) months from Signature Date.

65. **SCHEDULE 20 – DEED OF SURETYSHIP**

We, the undersigned,

\_\_\_\_\_  
Name:

Identity Number/ Registration number:

\_\_\_\_\_  
Name:

Identity Number/ Registration number:

\_\_\_\_\_  
Name:

Identity Number/ Registration number:

hereinafter referred to as the “**Sureties**”,

1. On the terms set out in this suretyship, hereby individually, but jointly and severally, irrevocably and unconditionally stand as surety and guarantee in favour of **SANParks** and its successors-in-title, cessionaries and assigns (“**the Creditor**”) for the due and punctual performance of all obligations of any nature which may be owed or become owing in the future to the Creditor by the Private Party, (“**the Debtor**”) pursuant to or howsoever arising (including from contract, delict, enrichment, restitution or other legal theory) directly or indirectly in connection with:
  - 1.1. the Public Private Partnership Agreement concluded or to be concluded by the Creditor and the Debtor contemporaneously with this guarantee and suretyship and to which this guarantee and suretyship is a Schedule, including any component terms or agreements incorporated therein by way of any of annexures or schedules; and
  - 1.2. the obligations and liabilities arising in respect of any of the other sureties under this guarantee and suretyship, and any subsequent amendment thereto or novation or substitution thereof, collectively, referred to as the

**“Secured Obligations”.**

2. We indemnify the Creditor against any loss, liability, damage, cost (including, without limitation, legal costs on a scale as between an attorney and his own client) or expense which the Creditor may suffer or incur howsoever arising in respect of or in connection with the Secured Obligations.
3. The rights of the Creditor under this guarantee and suretyship shall in no way be affected or diminished if the Creditor at any time obtains additional suretyships, guarantees, securities or indemnities in connection with the Secured Obligations unless such additional suretyship, guarantee, security or indemnity is an agreement between the Sureties and the Creditor and specifically provides for such rights to be affected or diminished.
4. The liability of each of the Sureties is joint and several, each Surety being liable to the full extent in respect of the Secured Obligations, and will not be diminished if:
  - 4.1. any intended person (including a Surety) does not sign this suretyship or another agreement of guarantee, indemnity, suretyship or other form of intercession for the debts of another;
  - 4.2. any surety or co-principal debtor is released (whether in respect of then existing or future debts or both) or ceases to be bound for any other reason;  
or
  - 4.3. any intended security may not be obtained or protected or may be released or may cease to be held for any other reason.
5. This guarantee and suretyship shall remain in full force and effect as continuing covering security notwithstanding any temporary fluctuation in or extinction of the Secured Obligations and may not be terminated other than with the written consent of the Creditor, which consent the Creditor shall be obliged to issue upon the full, final and unconditional settlement of the Secured Obligations.
6. No alteration or variation of this guarantee and suretyship, or any other present or future agreement between the Debtor and the Creditor shall in any way release the sureties from their liability hereunder.

7. The Creditor shall be entitled, whether before or after the due dates for payment or performance of the Secured Obligations, without reference or notification to the Sureties and without affecting its rights and the Sureties' liability hereunder to:
  - 7.1. release (or omit to perfect) any other securities (including suretyships and guarantees) held by it in respect of the Secured Obligations;
  - 7.2. grant the Debtor extensions of time for payment; and
  - 7.3. compound, or to make any other arrangements, with the Debtor for the reduction or discharge of the Debtor's indebtedness.
8. If the Debtor is liquidated, submits an offer of compromise, placed under business rescue proceedings or its obligations to its creditors are affected by any insolvency law or in terms of the common law ("**the Insolvent Debtor**"):
  - 8.1. no Surety shall file any claim against such Insolvent Debtor, save with the prior written consent of the Creditor; and
  - 8.2. the Sureties' liabilities in terms of this guarantee and suretyship shall not be discharged or reduced and the Secured Obligations of the Insolvent Debtor immediately prior to such sequestration, compromise, composition or similar legal disability shall, for the purposes of this guarantee and suretyship, be deemed to be unaffected by such event.
9. Upon receipt by a Surety of any written notice from the Creditor stating that any amount is payable by such Surety, or that such Surety is obliged to perform any obligation to the Creditor, in terms of this guarantee and suretyship, the Sureties shall immediately:
  - 9.1. perform such obligation; and/or
  - 9.2. pay such amount, in cash, without set-off or deduction of any nature whatsoever, into the bank account stipulated by the Creditor in writing for this purpose.
10. The Surety/ies shall not be entitled to withhold such payment or performance or

security even if the Surety/ies contend/s that they/it are/is not obliged to make such payment or performance or tender such security on the basis of any fact or allegation which would constitute a legal defence to or discharge of any claim by the Creditor under this guarantee and suretyship, provided that in the event that the defence is upheld and/or resolved in favour of the Surety or Sureties, the Creditor shall be obliged to repay any amounts, the payment of which have been successfully disputed, paid pursuant to clause 10, together with interest thereon at the prime interest rate as from date of payment to the date on which it is repaid to the Sureties.

11. Each Surety shall use its respective best endeavours to procure the fulfilment by the Debtor of the Secured Obligations and shall refrain from taking or permitting to be taken any action which may prevent, hamper or detrimentally affect the fulfilment by the Debtor of the Secured Obligations.
12. Each Surety hereby absolves the Creditor absolutely from any liability for any loss or damage which the Sureties may suffer as a consequence, directly or indirectly, of the Creditor lawfully exercising any of its rights set out in this guarantee and suretyship.
13. Each Surety chooses the place at which a summons or any legal notices shall be served to be the address set out in Annexure 1 to this suretyship, to which address all process relating to this guarantee and suretyship may be served and all notices and communications may be addressed to the Sureties and which shall be deemed to have reached the Sureties on the date of physical delivery thereto.
14. A certificate under the hand of any Manager or Director of the Creditor or any legal advisor of the Creditor, as to the existence and amount of the indebtedness of the Debtor and/or of the Sureties to the Creditor at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon, the rate of interest applicable thereto and as to any other fact, matter or thing relating to the indebtedness of the Debtor and/or of the Sureties to the Creditor shall be, on the face value, proof of the contents and correctness thereof and the amount of the Sureties' indebtedness hereunder for the purpose of provisional sentence or summary judgment or any other proceedings against the Sureties in any competent court, and shall be valid as a liquid document for those purposes. It shall not be necessary to prove the appointment or capacity of the person signing any such certificate.



15. As part of the Sureties' liability in terms hereof, the Sureties shall pay the amount of any reasonable costs, charges and expenses of whatever nature incurred by the Creditor in securing or endeavouring to secure fulfilment of the Secured Obligations as well as the Sureties' obligations hereunder, including, without limitation, collection commission and legal costs on the scale as between an attorney and his own client, insurance premiums, broking costs, storage charges, costs and expenses of valuation, maintenance, advertising, realization (including agent's and auctioneer's commissions and other charges and disbursements), stamp duties, taxes and other fiscal charges.
16. This document constitutes the sole record of the guarantee and suretyship agreement between the Creditor and the Sureties in regard to the subject matter hereof.
17. Neither the Sureties nor the Creditor shall be bound by any express or implied term, representation, warranty, promise or the like relating to this guarantee and suretyship not recorded herein, but the provisions hereof are without prejudice to such other rights as the Creditor may have at law.
18. No addition to, variation, or unilateral or consensual cancellation of this of this clause, this guarantee and suretyship shall be of any force or effect in respect of the Creditor and a Sureties unless such is recorded in writing and signed by or on behalf of the Creditor and the Sureties in respect of whom the amendment is to apply.
19. No indulgence which may be granted to a Surety by the Creditor shall constitute a waiver of any of the rights of the Creditor and the Creditor shall not thereby be precluded from exercising any right against the Sureties (or any other Surety) which may have arisen in the past or which may arise in the future.
20. If any provision of this guarantee and suretyship should be found by a competent court to be wholly or partly invalid or unenforceable then this guarantee and suretyship shall be severable in respect of the provision in question (to the extent that it is invalid, unenforceable or unlawful) and the remaining provisions of this guarantee and suretyship shall remain in full force and effect.
21. This guarantee and suretyship shall in all respects (including, without limitation, its

existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the Republic of South Africa.

22. The costs of this guarantee and suretyship, including any stamp duty payable hereon, shall be borne and paid by the Sureties jointly and severally.
23. The Creditor shall be entitled to cede (whether out and out or by way of a security cession) all or any portion of its rights in terms of this guarantee and suretyship to any one or more third party/ies ("**Cessionary/ies**") without notice or reference to the Sureties and whether such cession is made to one or more Cessionaries. If the Creditor cedes all or any of its rights in terms of this guarantee and suretyship, all references to the Creditor in this guarantee and suretyship (including, but without limitation, in this clause 25 and in clause 12) shall be deemed to include references to the Cessionary/ies.
24. If it is required that the Sureties sign any document or do anything in order for the provisions hereof to be implemented or for the Creditor to be able to exercise its rights in terms hereof, then the Sureties shall, forthwith upon demand, sign or do, or cause to be signed or done, such document or thing.
25. This guarantee and suretyship shall in no manner whatsoever be prejudiced, terminated or limited by any other security held by the Creditor in respect of the Secured Obligations on the date of signature of this guarantee and suretyship or received by the Creditor after the signature of this guarantee and suretyship unless the Creditor has specifically so agreed in writing under the signature of its duly authorised representative.

We, **SANParks** by the signature of our duly authorised representative in the space provided immediately hereunder, accept the benefits and rights conferred upon us in terms of this suretyship:

**SIGNED AT            ON THIS THE            DAY OF APRIL 202**

Witness: \_\_\_\_\_ for **SOUTH AFRICAN NATIONAL PARKS**

We, the Sureties, by our signatures in the space provided immediately hereunder, grant this guarantee and suretyship.

.....

.....

\*\*\*\*\*

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

.....

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

**65.1 ANNEXURE 1 – SURETIES' DOMICILIUM**