PUBLIC PRIVATE PARTNERSHIP AGREEMENT

FOR THE

RATELRIVIER ESTATE

IN THE

AGULHAS NATIONAL PARK

April 2016

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1. DEFINITION AND INTERPRETATION

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

1.1.1	**"Act"**	-	the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) as amended;
1.1.2	**"Annexures"**	-	the annexures to this PPP Agreement, as amended, replaced and varied from time to time;
1.1.3	**"BEE Obligations"**	-	the Black Economic Empowerment requirements detailed in Annexure 5;
1.1.4	**"Bid Submission"**	-	the bid for the right to carry out the Project submitted by the Private Party and accepted by SANParks;
1.1.5	**"Black Economic Empowerment" or "BEE"**	-	an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of Black People who manage, own and control the country's economy, as well as significant decreases in income inequalities, as defined in the Broad Based Black Economic Empowerment Act;
1.1.6	**"Business Day"**	-	a normal business day, excluding weekends and statutory public holidays;

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1.1.7	**"Change in Control"**	-	any change whatsoever in Control, whether effected directly or indirectly;
1.1.8	**Confidential Information**		Any information or know-how in whatever form relating to the business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or finances of either of the Parties;
1.1.9	**"Consents"**	-	all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the performance of any of the Project Deliverables;
1.1.10	**"Constitutional Documents"**	-	the Private Party's memorandum and articles of association, certificate of incorporation and certificate to commence business, as well as the Shareholders PPP Agreement, equity subscription agreements and 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 Annexure 7 and the terms of which are to be to the satisfaction of SANParks;
1.1.11	**"Control"**	-	in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its

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			board of directors (or equivalent body);
1.1.12	**"CPIX"**	-	the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000=100) published from time to time by Statistics SA in Statistical Re PPP P0141.1;
1.1.13	**"Effective Date"**	-	the date of signature of this PPP Agreement by the last signing Party;
1.1.14	**"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 applicable Regulatory Provisions and guidelines;
1.1.15	**"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, and including all or any of the following media: 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;
1.1.16	**"Environmental Laws"**	-	any Laws in respect of the Environment, including (without limitation) at the Signature Date, the following statutes: the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998; the National Environmental Management: Protected Areas Act, 57 of 2003; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act, 25 of 1999;
1.1.17	**"Environmental Specifications"**	-	the requirements, conditions, obligations and specifications detailed in Annexure 6;
1.1.18	**"Estate"**		the Ratelrivier Estate and other associated

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			facilities including all buildings, infrastructure, plant and equipment located within the Estate, as required to enable the Private Party to exercise its rights and perform its obligations included in the Project Deliverable; on the Operation Commencement Date and any new facilities constructed or developed by the Private Party during the Project Term, which is further described in Annexure 1 and the attached site drawings in Annexure 2
1.1.19	**"Expiry Date"**	-	shall be 24h00 on the fifth (5th) anniversary of the Operation Commencement Date ,
1.1.20	**"Force Majeure"**	-	has the meaning ascribed to it in Clause 20;
1.1.21	**"GAAP"**	-	generally accepted accounting practice in the Republic of South Africa as approved from time to time by the South African Accounting Standards Board;
1.1.22	**"Good Industry Practice"**	-	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement; seeking in good faith to comply with his contractual obligations and all applicable Regulatory Provisions, upholding the integrity of SANParks, the intention being that an acceptable balance shall be maintained between tourism and conservation;
1.1.23	**"Gross Revenue"**	-	gross revenue has the meaning as defined in Clause 14;
1.1.24	**"Intellectual Property Rights"**	-	all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed pending applications),

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			utility models, applications for any of the a foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the sui generis rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws or any other jurisdiction;
1.1.25	**"Laws"**	-	the common law, Legislation, and all judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law, issued by any executive, legislative, judicial or administrative entity in South Africa or by SANParks or the municipality in which the Project is located;
1.1.26	**"Legislation"**	-	all applicable statutes, statutory instruments, by-laws, Regulations, orders, rules, executive orders and other secondary, provincial or local Legislation, treaties, directives and codes of practice having force of law in South Africa;
1.1.27	**"Losses"**	-	losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature;
1.1.28	**"Minimum PPP Fee"**	-	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 amount is detailed in Clause 15;
1.1.29	**"Operation Commencement Date"**		the date of Operation Commencement, specifically xxxxx;
1.1.30	**"Operation Period"**	-	the period from the Operation Commencement Date to the Expiry Date, unless this PPP Agreement is terminated earlier in accordance with its terms;
1.1.31	**"Park Management Plan"**	-	the management plan developed by SANParks for the Protected Area in consultation with

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			stakeholders and approved by the Minister as provided for in the Act, the objective of which is to ensure the protection, conservation and management of the Protected Area in a manner which is consistent with the objectives of the Act and the purpose for which the Protected Area was declared a national park; ;
1.1.32	**"Park Manager"**	-	the manager of the Protected Area;
1.1.33	**"Parties"**	-	collectively, SANParks and the Private Party;
1.1.34	**"Party"**	-	SANParks or the Private Party, as the case may be;
1.1.35	**"Person"**	-	any individual, partnership, corporation, company, business organisation trust, governmental agency, para-statal, Relevant Authority or other entity;
1.1.36	**"PPP Agreement"**	-	this Agreement between SANParks and the Private Party including the Annexures hereto as amended, extended, replaced and varied from time to time;
1.1.37	**"PPP Fee"**	-	the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 15;
1.1.38	**"PPP Rights"**	-	the right to operate, manage and maintain the Estate at the Project Site pursuant to this PPP Agreement for the purposes of the Project;
1.1.39	**"Private Party Default"**	-	has the meaning ascribed to it in Clause 21;
1.1.40	**"Private Party Parties"**	-	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;
1.1.41	**"Private Party"**	-	the counterparty to SANParks hereunder, specifically _____ Registration Number _____, a Closed

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			Corporation / a limited company registered according to the company laws of South Africa;
1.1.42	**"Project"**	-	the project to design, operate, manage and maintain the Estate and to execute the PPP Rights as detailed in this PPP Agreement, and if so required by the Private Party, finance, design, equip and/or refurbish the Estate subject to the prior written approval of SANParks and to run the Estate in the Protected Area optimally and to provide accommodation and meals to the guests/visitors in Protected Area at high satisfaction levels;
1.1.43	**"Project Assets"**	-	all assets required to design, construct, develop, install, commission, operate and/or maintain the Project, including the Estate , any books and records, any spare parts and tools, as well as the Intellectual Property and SANParks Assets but excluding all cash and cash equivalents;
1.1.44	**"Project Deliverables"**	-	the meeting of the BEE Obligations, the design, the installation, commissioning, operation and maintenance of the Project Assets and Estate Facilities, including the repair, renewal or replacement thereof; the management and undertaking of the Project including the execution of the PPP Rights; and the exercise and performance of all other rights and obligations of the Private Party under this PPP Agreement and the Annexures from time to time; including the provision of accommodation and preparation, delivery of food to the satisfaction of the Protected Area's visitors and such satisfaction shall exceed ratings of at least seventy-five percent (75%) as

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			measured by SANParks' Customer Survey Monitoring Systems as outlined in Annexure __-, Clause _____, and to comply with Annexure _____ Quality Assessment Criteria;
1.1.45	**"Project Insurance"**	-	those insurances that the Private Party is required by Law and this PPP Agreement to purchase and maintain in terms of Clause 16 a copy of which is attached as Annexure 8;
1.1.46	**"Project Site"**		the Section of the Protected Area as fully described in Annexures 1 and 2.
1.1.47	**"Project Term"**	-	the period from the Operation Commencement Date to the Expiry Date or the Termination Date, whichever occurs first, which is further described in Clause 3;
1.1.48	**"Project Year"**	-	each period of twelve (12) consecutive months, commencing on the Operation Commencement Date and thereafter commencing on every anniversary of the Operation Commencement Date;
1.1.49			
1.1.50	**"Protected Area"**	-	Agulhas National Park declared as such by the Minister of Environmental Affairs under the now repealed National Parks Act No. 57 of 1976 and recognized and continuing to exist as such under the Act;
1.1.51	**"Rand" or "R"**	-	the lawful currency of South Africa;
1.1.52	**"Regulations"**	-	Regulations issued in terms of the Act;
1.1.53	**"Regulatory Provisions"**	-	(a) the Environmental guidelines ("Environmental Specifications") for Private Party's operating within the Protected Area which is further described in Annexure 6, as same may be revised and updated by SANParks from time to time; and (b) collectively the prevailing laws, Regulations, ordinances, policy directives and standards of

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			the State and any Relevant Authority which in any way affects or applies to the conducting 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 Park Regulations, Park Rules and Park Management Plan;
1.1.54	**"Responsible Authority"**	-	National and/or Provincial legislature, any agency, local institution, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over any or all of the Parties or the subject matter of this PPP Agreement. A Responsible Authority shall not include any Utility Private Party or provider;
1.1.55	**"Restaurant Facility"**	-	the buildings and other facilities together with all supporting infrastructure, plant and equipment situated on the Project Site, as required to enable the Private Party to exercise its rights and perform its obligations included in the Project Deliverables; on the Operation Commencement Date and any new facilities constructed or developed by the Private Party during the Project Term, which is further described in Annexure__ and the attached site drawings in Annexure__.
1.1.56	**"SANParks"**	-	South African National Parks, a statutory body established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as a juristic person in terms of the provisions of section 54 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) and its lawfully designated representatives from time to time;
1.1.57	**"Signature Date"**	-	the date of signature of this PPP Agreement by the last signing Party;

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1.1.58	**"South Africa"**	-	the Republic of South Africa;
1.1.59	**"State"**	-	the Government of the Republic of South Africa, acting directly or through its lawfully designated representatives;
1.1.60	**"Subcontractors"**	-	any subcontractor of the Private Party and a third party, who has contracted directly with the Private Party in respect of the Project;
1.1.61	**"Termination Date"**	-	any date of early termination of this PPP Agreement, in accordance with its terms;
1.1.62	**"Utilities"**	-	all facilities serving the public, such as water, sewage, gas and, where appropriate, includes the relevant provider thereof;
1.1.63	**"Variable PPP Fee"**	-	that portion of the PPP Fee that is a percentage of the Gross Revenue of the Private Party, which percentage is detailed in Clause 15;
1.1.64	**"VAT"**	-	Value Added Tax, as defined in the Value Added Tax Act, 1991 (Act No. 89 of 1991), (the "VAT Act") or any similar tax which is imposed in place of or in addition to such tax;

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

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

1.2.2 references to "indexed to CPIX" in relation to any amount of money shall mean that such amount has been expressed in September 2015 prices and shall be escalated annually as at the Operation Commencement Date and each anniversary thereof with reference to the then most recent publication of the CPIX;

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

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

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

1.2.6 the headings of Clauses, sub-Clauses and Annexures are included for convenience only and shall not affect the interpretation of this PPP Agreement;

1.2.7 the Annexures to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Annexures;

1.2.8 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this PPP Agreement, and agree that no provision or word used in this PPP Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this PPP Agreement or any part of it;

1.2.9 words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

1.2.10 references to "this PPP Agreement" shall include this PPP Agreement and its Annexures as amended, varied, novated or substituted in writing from time to time;

1.2.11 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;

1.2.12 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;

1.2.13 when a number of days is prescribed in this PPP Agreement, such number shall be calculated including the first and excluding the last day, unless the last day

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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.

2. INTRODUCTION

2.1 SANParks has the authority, power, control and responsibility in respect of, inter alia, the ownership of the property and the land where this Tourism Accommodation, Catering and Events activities will carried out by the Act.

2.2 SANParks wishes to expand the commercial tourist product potential of the Protected Area by granting the PPP Rights for the design, operation, management and maintenance of the Estate.

2.3 SANParks has identified the Private Party as an appropriate and reputable Private Party and wishes to grant to the Private Party the PPP Rights for the purpose of the Project, all in accordance with Good Industry Practice and the Private Party's Bid Submission i.

2.4 SANParks wishes to appoint the Private Party and the Private Party accepts the appointment to undertake the Project on the terms and conditions of this PPP Agreement.

2.5 Accordingly, the Parties wish to enter into a PPP Agreement on the terms and conditions detailed below.

3. PROJECT TERM

3.1 This agreement shall be for a period of 20 (twenty) years commencing xxxxx, terminating on xxxxxx.

4. STATUS OF THIS PPP AGREEMENT

4.1 Notwithstanding the covenants provided in Clause 8, each Party hereto hereby represents and warrants that on and after the Signature Date this PPP Agreement is legally valid and binding upon it.

4.2 The Private Party will be responsible for all taxes of general application and without limiting the generality of the aforegoing, any duties, fees or taxes assessed by any Relevant Authority in respect of the operation of the Ratelrivier Estate. These taxes will exclude any capital gains tax, income tax, or other taxation on income which is earned by SANParks and, notwithstanding this PPP Agreement, any tax payable by

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SANParks.

4.3 This PPP Agreement imposes binding obligations upon the Parties and sets out the terms on which SANParks agrees that the Private Party may design, operate, manage and maintain the Project.

5. PPP RIGHTS

5.1 Exclusive Grant of PPP Rights

5.1.1 Subject to the terms of this PPP Agreement, the PPP Rights to provide and manage the Project is granted exclusively within the Project Site to the Private Party by SANParks, for the period of this PPP Agreement and any extension thereof.

5.1.2 During the period of this PPP Agreement, SANParks undertakes in respect of the Project Site:

not to establish or operate any commercial accommodation and Catering ;

not to grant to any third parties the rights referred to in 0 and to ensure no third party operates or establishes any such similar activities referred to in Clause 0 at the Project Site.

5.2 PPP Rights

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

The exclusive right to design, operate, manage and maintain the Estate for gain for the duration of the PPP Agreement;

conduct and manage all facets of the Project and to operate and maintain the Estate, infrastructure and/or equipment used for or in connection with the Project;

generate, charge and collect revenues from the execution of such PPP Rights;

the obligation to use the Project Site in accordance with the terms of this PPP Agreement;

access to the Protected Area and access for the Private Party's employees,

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subject to the normal Protected Area's operating rules and hours on the same basis as SANParks' employees.

5.3 **Service Delivery**

The goods and services to be provided by the Private Party on the Project Site shall:

5.3.1 be of an acceptable standard and quality comparable to similar standards and quality found in similar facilities outside of the Protected Area;

5.3.2 be delivered to the customers in a professional, courteous and friendly manner, given the circumstances; and

5.3.3 be in accordance and compliance with the provisions of Consumer Protection Act No 2010, the provisions/requirements of which are set out in Clause 6.2 and Schedule ____ to this PPP Agreement.

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 Estate and of all of the alterations and developments undertaken by the Private Party according to Best Industry Practice during the hours specified by SANParks.

6.1.2 The Private Party shall furnish SANParks with a quarterly report in an agreed format set out by Park Manager regarding the Operation, Management and Maintenance of the Estate which will include, but not limited to a safety audit report by an independent contractor, botany report to assess the impact of the activity on the mountain and the footpaths and a full list of guides accreditation employed in the operation.

6.1.3 The Private Party shall comply with the Environmental Specifications set forth in Annexure 6.

6.1.4 The Private Party shall:

operate the Estate at ANP: The Section properly and strictly in accordance with the provisions of the Private Party's current 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;

use its best endeavours to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Estate. The Private Party will conform with Good Industry Practice or any Regulatory Provisions with regard to the standard or quality of the Estate;

shall at all times maintain the equipment used in the Estate in a clean, orderly and sanitary condition;

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

shall 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.

Private Party shall conduct hygiene audits, at least twice a year on Private Party's costs, at the Restaurant Facility and the Private Party's appointed auditors shall be required to inform SANParks directly about the outcomes of such an audit. In the event the Private Party fails to conduct the audit as contemplated in this Clause, then SANParks shall have the right to conduct or commission such an audit at the cost to be borne by the Private Party.

Private Party is required to score a minimum of at least seventy five percent (75%) on the hygiene audit total quality index.

Private Party shall be required to subscribe to a minimum of the following requirements:

implementing measures to prevent pathogens to be detected on food

Samples;

that all the Restaurant Facility have a certificate of acceptability;

that a cleaning programmes including Cleaning Schedule and cleaning checklist is in existence;

that the staff at the Restaurant Facility is trained in hygiene practices;

that hand washing facilities and proper cleaning chemicals are available;

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that food areas are zoned as per food type; and

that the pest control measures such as screening, closure of windows/doors is implemented.

6.1.5 The Private Party shall ensure that the following packaging is not used on the outside seating area of the Restaurant Facility as such packaging pollutes the environment:

sachets (for sugar, tomato sauce, salt and pepper, etc);

paper serviettes'; and

butter tubs/pads.

6.1.6 The Private Party undertakes to operate in line with SANParks' PPP Operations/Procedure Manual. The Manual's objective is to assist in daily operations and allow for good cooperation between SANParks and the Private Party. Process flows in the manual can be changed by mutual agreement in order to satisfy mutual objectives of parties.

6.1.7 SANParks shall conduct regular quality audits to ensure that the quality of the foodstuffs and products prepared and sold by the Private Party consistently meet the desired standards. Such quality audits shall be conducted by way of "mystery guests", spot checks, customer questionnaires and SANParks quality control checks or other measures as deemed necessary by SANParks.

6.1.8 SANParks shall conduct regular quality audits to ensure that the quality of the Ratelrivier Estate, Accommodation and Events activity offering provided by the Private Party consistently meet the desired standards. Such quality audits shall be conducted by way of "mystery guests", spot checks, customer questionnaires and SANParks quality control checks or other measures as deemed necessary by SANParks.

6.1.9 The Private Party shall comply and subscribe to a minimum standard of Responsible Tourism – SANS 1162.

6.1.10 The Private Party shall comply with the Universal Accessibility Grading Council Standards.

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6.2 **Consumer Protection Act No of 2010 (CPA) Requirements**

6.2.1 CPA regulates the activities of suppliers and creates rights for consumers with the intention of promoting fair business practice and the protection of consumers from exploitation and hazardous or unsafe products

6.2.2 Notwithstanding the generality of Clause SANParks shall require the Private Party to comply with the provisions of CPA that affect the Business.

6.2.3 In the event of the Private Party failing to comply with the CPA provisions in Clause 6.2.1 and such Private Party Default is not remedied before the expiry of the period referred to in the notice by SANParks, SANParks may terminate this PPP Agreement in accordance with Clause by written notice to the Private Party.

6.3 **Unauthorised Payments**

The Private Party shall not:

6.3.1 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 or any other contract or agreement or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract or agreement for SANParks.

6.3.2 enter into this 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 agreement for the payment thereof, have been disclosed in writing to SANParks.

6.4 **Third Party Contracts**

6.4.1 The Private Party may use a third party or third parties through sub-contracting to carry out non-core part of its operation under this PPP Agreement subject to the approval of both SANParks. 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.

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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 the business of operating the Estate and shall use its best endeavours to take all reasonable steps to ensure similar compliance by its contractors, sub-contractors at all levels, assignees and agents, and furthermore agrees to adhere to and ensure**,** as far as practicably possible, adherence to fair labour practices.

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 Regulatory Provisions and consents;

8.1.3 in compliance with all applicable health and safety standards;

8.1.4 in accordance with Good Industry Practice; and

8.1.5 in accordance with SANParks tourism programme for the Protected Area.

8.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties visiting or working at the Estate, 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 Estate;

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, at its absolute sole 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 Protected Area. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule.

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8.3 The Private Party shall be responsible for:

8.3.1 obtaining and keeping current all 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 Estate clean including the area of responsibility described in Annexure 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 Estate or the environment caused by the operation of the Estate during the Project Term arising from any act or omission of 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 staff, guests, invitees and patrons.

8.7 The Private Party shall, upon the written request of SANParks, and at no cost to SANParks, make available at all times documents which are or were required or brought into existence by the Private Party or supplied to the Private Party from other parties to the Associated Agreements for the purposes of operating the Estate, or which the Private Party is required to prepare in terms of this PPP Agreement.

8.8 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 Estate except as provided for in the PPP Agreement or the Associated Agreements.

8.9 At the end of the Project Term or at such earlier time as may be provided herein, the Private Party shall hand over the Estate and its rights or interest in the Estate to

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SANParks free of charges, liens, claims or encumbrances of any kind whatsoever, and free of any liabilities, in good condition**,** fair wear and tear excepted. The Private Party shall not be entitled to payment of any compensation in connection therewith.

9. COMMERCIAL BRANDING

9.1 The Private Party shall not, in the operation, promotion or marketing of the Ratelrivier tourism activities, be entitled to use, directly or indirectly, any commercial branding similar to any branding used outside of the Protected Area by the Private Party, or any of its associated companies or competitors, without the prior written consent of SANParks;

9.2 Any commercial branding developed by the Private Party in respect of the Estate activity may not be used outside the Protected Area without SANParks' prior written consent; and

9.3 The use of any branding, logo, trademark, trade name, get up, signage, outdoor advertising, livery, promotion, promotional or marketing material or other proprietary intellectual property in connection with the Estate activity shall require the prior written approval of SANParks

10. PROJECT SITE

10.1 The Estate

The location and physical boundaries of the Estate shall be the areas defined in Annexure 1 and Annexure 2.

10.2 Access Following Commencement

10.2.1 With effect from the Operation Commencement Date, SANParks shall grant 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 Estate as is required by the Private Party for the carrying out of the Project therein, but subject always to the provisions of this PPP Agreement.

10.3 Suitability and Condition of the Ratelrivier Estate activity

SANParks makes no representation and gives no warranty to the Private Party in

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respect of the condition and suitability of the Project Site or any structures associated therewith or located therein, for the Project, and the Private Party accepts the Estate and structures in their present condition and subject to all defects.

Wendy, will I be correct to assume that the Estate and associated structures are in existence, if so, what about handover and existing employees. The Estate will be taken off the roomseeker system and booked directly with the Private Party?

11. THE ENVIRONMENT

11.1 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, or any other environmental or heritage applications required by relevant authorities, has been undertaken in compliance with the relevant Regulatory Provisions and to the satisfaction of that authority.

11.2 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 an Project in a declared Protected Area and shall adhere to the Regulatory Provisions and the Environmental Specifications.

11.3 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 Estate and the Protected Area.

11.4 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.

11.5 The Private Party shall comply with its statutory duties in terms of the Environmental Laws 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 or by law, to minimise and rectify such pollution or degradation of the Environment.

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12. SANPARKS' REMEDIAL RIGHTS

Without prejudice to SANParks' rights hereunder and at law, if the Private Party fails to perform its obligations and responsibilities in accordance with this PPP Agreement or the Regulatory Provisions, 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 remedy such failure and to protect its rights and interests, at the expense of the Private Party which shall promptly make payment to SANParks for its costs, expenses or other damages suffered or incurred or reasonably expected to be suffered or incurred in connection with such remedial acts.

13. SANPARKS' UNDERTAKINGS

13.1 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.

13.2 SANParks shall continue, in the ordinary course of business, to market and promote the Estate on its website and other marketing material in respect of the Protected Area and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that the Estate is properly marketed and promoted as an integral part of the Protected Area and the marketing and promotional programme for the Protected Area as a whole.

13.3 SANParks will co-operate with and assist the Private Party in whatever reasonable manner possible to ensure the continued viability of the Estate and will not engage in acts or omissions which may materially affect the rights or interests of the Private Party in respect of the Estate.

13.4 SANParks will operate and manage the Protected Area and will promote it in such manner as 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.

13.5 SANParks' procurement processes both in relation to the Estate in question and in relation to the conduct of this tender and the conclusion of the agreements comply to the best of SANParks knowledge and belief in all material respects with

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

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

14. BLACK ECONOMIC EMPOWERMENT

14.1 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 ___.

14.2 Notwithstanding Clause 14.1 above, the Private Party shall specifically ensure that the compliance with all Regulatory Provisions relating to Black Economic Empowerment occurs at a Private Party level or during the appointment of Private Party.

14.3 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.

15. FINANCIAL PROVISIONS AND PAYMENT

15.1 Gross Revenue

15.1.1 For the purposes of this PPP Agreement and its Annexures, Gross Revenue shall be defined as:

15.1.1.1 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 GAAP and including the deemed value of accommodation made available to Shareholders and third parties or sold forward as well as the deemed value of any payments or benefits received by the Private Party that take a form other than a monetary form. Without derogating from its generality, the term “gross revenue” shall mean revenue before the deduction of:

15.1.1.1.1 bad debts (or provisions therefore);

15.1.1.1.2 commissions or similar consideration paid or payable;

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

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

15.1.1.2 and gross revenue shall include:

15.1.1.2.1 commissions received or receivable;

15.1.1.2.2 rentals and other fees received or receivable;

15.1.1.3 but shall exclude:

15.1.1.3.1 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 generally-accepted accounting practice;

15.1.1.3.2 interest received or receivable;

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

15.1.1.3.4 transfers from reserves; and

15.1.1.3.5 bad debts recovered.

15.2 **PPP Fees**

The Private Party shall pay SANParks a PPP Fee as follows:

15.2.1 The annual fee payable by the Private Party to SANParks for any given year shall be the highest of the following:

15.2.1.1 The Minimum PPP Fee for the year; or

15.2.1.2 The Variable PPP Fee for that year.

15.2.2 The payment will be as follows:

15.2.2.1 The Minimum PPP Fee shall accrue and be payable by the Private Party to SANParks within 7 (seven) Business Days following the end of each month.

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15.2.2.2 The Variable PPP Fee shall be calculated by the Private Party for the year in question on the basis of the Private Party's audited statements within 60 days of the end of the year. If this figure is higher than the Minimum PPP Fee, it shall be the total amount payable under this Clause **Error! Reference source not found.** by the Private Party to SANParks. The difference between the Variable PPP Fee thus determined and the aggregate of amounts already paid as Minimum PPP Fee, will be payable within 7 (seven) Business Days following the calculation.

15.2.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated on the aggregate turnover for Ratelrivier Estate at ANP.

15.2.4 All PPP Fees or other amounts payable by the Private Party to SANParks in terms of this PPP Agreement shall be exclusive of value-added tax (VAT).

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

15.3 **Taxes**

15.3.1 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 Estate , 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; value added tax or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

15.3.2 Notwithstanding that all consideration payable hereunder shall be deemed to be exclusive of value added tax payable in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991), as amended ("the Act"), 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 value added tax, as required by the Act.

15.3.3 All payments to be made to SANParks by the Private Party in terms of this PPP Agreement will be made free of set-off or any other deductions whatsoever.

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16. **INSURANCE**

16.1 The Private Party shall insure all their insurable properties within the Estate, with a reputable insurance company by no later than the Operation Commencement Date:

16.1.1 for not less than the full replacement value of the insurable property;

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

16.1.3 property and casualty insurance;

16.1.4 public liability and third party insurance;

16.1.5 employer's liability insurance;

16.1.6 business interruption insurance; and

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

16.2 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.

16.3 Should the Private Party be in breach of the provisions of Clause 16.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30) days within which to comply with Clause 16.1, but will not be obliged to, procure and maintain, at the sole cost and expense of the Private Party, the insurances referred to in Clause 16.1 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.

16.4 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 16 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.

16.5 The Private Party undertakes to provide SANParks with certified copies of the

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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 Annexure 8. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.

17. INDEMNITIES AND LIABILITY

17.1 Private Party Indemnity

17.1.1 The Private Party shall indemnify SANParks, and hold SANParks harmless from and shall be responsible to third parties for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any third party or SANParks on or after the Operation Commencement Date, including any claim against SANParks by a Relevant Authority, as a result of any act or omission of the Private Party or any Responsible Person, (including without limitation any default or failure by the Private Party under this PPP Agreement) with regard to the operation and management of the Estate except to the extent directly caused by any gross negligence, material default or material breach of statutory duty on the part of SANParks or such Relevant Authority.

17.1.2 Without limiting the generality of the foregoing, the Private Party shall indemnify SANParks against all liability, loss, damage, damages, cost or costs and claims by third parties against SANParks in respect of:

17.1.2.1 death or injury to any Person;

17.1.2.2 any economic loss; or

17.1.2.3 loss of or damage to any property;

arising out of any such act or omission by the Private Party referred to in Clause 17.1.1 above.

It is recorded that notwithstanding the provisions of Clause 17.1.1 to and including 17.1.2 each of SANParks and the Private Party shall be responsible for loss of, or damage to its own property or personal injury or death of its own employee and each party shall hold harmless the other and waive any right of recourse against the other party in respect of such loss and shall obtain the same waiver of right of recourse from its insurers. Each party shall obtain the agreement of its insurers in respect of the provisions of this Clause 17.1.2.

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17.2 **Signage**

17.2.1 The Private Party will erect and display a notice at the Estate to the effect that the Estate are operated by an independent Private Party under contract from SANParks.

18. GENERAL REPORTING AND FINANCIAL REPORTING REQUIREMENTS

18.1 General Reporting

18.1.1 Should the Private Party propose any alterations, amendments and/or refurbishments to Estate, the Private Party shall supply SANParks with all documents, drawings, data, reports, specifications and other information (whether in printed form or in electronic form) produced in respect of such work, copies of all "as-built" drawings and such other technical and design information and completion records relating to the finished work as SANParks may reasonably request.

18.1.2 From the Operation Commencement Date as well as during the Project Term, the Private Party shall provide SANParks with written reports in respect of the following matters, within 30 (thirty) Business Days of the end of each Project Year:

18.1.2.1 names, identity numbers and any other relevant details of any employees of the Private Party or its Subcontractors who are engaged in respect of the Project and who have resigned or been dismissed during the relevant calendar year;

18.1.2.2 its compliance with the Environmental Specifications as detailed in Schedule __;

18.1.2.3 the Insurance provisions of Clause 6;

18.1.2.4 its BEE Obligations contained in Schedule ___; and

18.1.2.5 its compliance with Schedule ___.

18.2 Annual Financial Reporting

The Private Party shall furnish SANParks, as soon as practicable but in any event not later than 4 calendar months after the end of each Project Year, with:

18.2.1 three (3) copies of the Private Party's complete audited financial statements for such financial year (which are consistent with the books of accounts and prepared in accordance with GAAP), together with an audit report thereon, all in accordance with the requirements of the laws and Regulations pertaining to accounting; and

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18.2.2 a copy of any management letter or other communication sent by the auditors to the Private Party or to its management in relation to the Private Party's financial, accounting and other systems, management and accounts.

18.2.3 an annual report by the auditors certifying that, based on its said financial, accounting and other systems, management and accounts, the Private Party was in compliance with its financial obligations in respect of the Project as at the end of the relevant Project Year or detailing any non-compliance by the Private Party therewith..

19. DEFAULT INTEREST

Interests shall accrue on all overdue amounts payable in terms of this PPP Agreement at the prime overdraft interest rate charged by First National Bank of South Africa plus 2 % (two percent).

20. FORCE MAJEURE

20.1 Definition and Procedure

20.1.1 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:

20.1.1.1 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

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

20.1.1.3 chemical or biological contamination of the Estate Facilities from any of the events referred to in Clauses 20.1.1.1 and 20.1.1.2 above,

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

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20.1.2 Subject to Clause 20.1.3, 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.

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

20.1.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this PPP Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

20.1.3.2 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 20.1.3.1.

20.1.4 The Party claiming relief shall serve written notice on the other Party within 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.

20.1.5 A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 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 20.1.3.1, 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.

20.1.6 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.

20.1.7 If, following the issue of any notice referred to in Clause 20.1.4, 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.

20.1.8 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.

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20.1.9 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. Clause 24 shall not apply to a failure of the Parties to reach agreement pursuant to this Clause 20.1.9, and this PPP Agreement shall terminate in terms of Clause 20.2 if no such agreement is reached.

20.2 **Termination for Force Majeure**

If, in the circumstances referred to in Clause 20, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that Clause, within 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.

21. PRIVATE PARTY DEFAULT

21.1 **Definition**

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

21.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 1973) being entered into by or in relation to the Private Party;

21.1.2 a liquidator, judicial manager or the like taking possession of or being appointed over, or any judicial management, winding-up, execution or other process being levied or enforced (and not being discharged within 15 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);

21.1.3 the Private Party ceasing to carry on business;

21.1.4 a resolution being passed or an order being made for the administration or the judicial management, winding-up, liquidation or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);

21.1.5 the Private Party commits a breach of any of its material obligations under this PPP

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Agreement, and 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 Annexures to this PPP Agreement shall be deemed to be a breach of a material obligation;

21.1.6 the Private Party breaches any of the provisions of Schedule 5 (BEE)or Clause 14;

21.1.7 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement (which sums are not bona fide in dispute) and such failure continues for 20 Business Days from receipt by the Private Party of a notice of non-payment from SANParks;

21.1.8 the Private Party breaches the provisions of Clause 6.2 or the standards and requirements set out in Schedule ____ (PPP Fees);

21.1.9 the Private Party or any of its directors or officers is found guilty of a criminal offence involving fraud or bribery or dishonest, by a court of law, with punishment imposed of a fine of not less than R500 000 (five hundred thousand rand) or imprisonment for a period exceeding 6 months unless such finding is the subject of an appeal that is being diligently pursued by the Private Party or its relevant director or officer (as the case may be);

21.1.10 the Private Party fails to meet mutually agreed performance targets as set out in the attached Schedule ____ (Quality Assessment Criteria).

21.1.11 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;

21.1.12 any breach of any provision of this PPP Agreement has occurred more than once and:

21.1.12.1 SANParks has given an initial warning notice to the Private Party describing that breach in reasonable detail and stating that if that breach persists or recurs then SANParks may take further steps to terminate the PPP Agreement; and

21.1.12.2 SANParks has issued a second and final warning notice following the persistence or recurrence of that breach in the period of 90 days after the initial warning notice, stating that if that breach persists or recurs within the period of 30 days after the final warning notice then SANParks may terminate the PPP Agreement on 30 days' notice to the Private Party;

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

21.2 **SANParks' Options**

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

21.2.1.1 in the case of the Private Party Default referred to in Clauses 21.1.1, 21.1.2, 21.1.3, 21.1.4, 21.1.6, 21.1.8 and 21.1.10 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

21.2.1.2 in the case of any other Private Party Default referred to in Clauses 21.1.5 and 21.1.12, serve notice of default on the Private Party requiring the Private Party at the Private Party's option to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within 20 Business Days of such notice of default.

21.2.1.3 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 21.2.1.2 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.

21.3 **SANParks' Costs**

21.3.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 21.1 (including, without limitation, any relevant increased administrative expenses).

21.3.2 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).

22. **SANParks DEFAULT**

22.1 **Definition**

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

22.1.1 an expropriation of a material part of the Ratelrivier Estate at ANP, Project Assets of

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the Private Party by SANParks or other Responsible Authority; and

22.1.2 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 3 months.

22.2 **Termination for SANParks Default**

22.2.1 On the occurrence of an SANParks Default, or within 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 30 Business Days of such notice, the Private Party may serve a further notice on SANParks terminating this PPP Agreement with immediate effect.

22.2.2 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.

23. TERMINATION BY NOTICE

Prior to the expiry of the Project Term, SANParks may on written notice of not less that 6 (six) months, give the Private Party notice of termination of this PPP Agreement, in which event this PPP Agreement shall terminate.

24. CORRUPT GIFTS AND FRAUD

24.1 **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 **Error! Reference source not found.**.

"**Corrupt Act**" means:

24.1.1 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:

24.1.2 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

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

24.1.4 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;

24.1.5 committing any offence:

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

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

24.1.5.3 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

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

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

24.2.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause **Error! Reference source not found.** (including, without limitation, any relevant increased administrative expenses).

24.2.2 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).

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25. DISPUTE RESOLUTION

25.1 Referable Disputes

The provisions of this Clause 24 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.

25.2 Internal Referral

25.2.1 If a dispute arises in relation to any aspect of this PPP Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

25.2.1.1 all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and

25.2.1.2 if the Parties have been unable to resolve the dispute within 30 days of referral to the persons specified in Clause 25.2.1.1, either Party may refer the dispute for a decision by the Accounting Officer or Accounting Authority of SANParks and the Chief Executive Officer or equivalent officer of the Private Party.

25.2.2 In attempting to resolve the dispute in accordance with the provisions of this Clause 25.2.2, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

25.2.3 Any dispute which has not been resolved by the representatives contemplated in Clause 25.2.1.2 within 30 days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

25.3 Arbitration

25.3.1 Any Party (“the claimant”) may demand by written notice given to the other Party (“respondent”) that a dispute be referred to arbitration.

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25.3.2 The arbitration will be held and will be completed as soon as possible:

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

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

25.3.2.3 in Gauteng in the English language; and

25.3.2.4 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.

25.3.3 The arbitrator shall be one who is acceptable to both claimant and respondent and, if the matter in dispute is, or matters are, principally:

25.3.3.1 a legal or deemed legal matter, a practising attorney or advocate of at least 15 years' standing;

25.3.3.2 an accounting matter, a practising chartered accountant of at least 15 years standing; or

25.3.3.3 any other matter, any independent person.

25.3.4 Should the claimant and respondent fail to agree whether a dispute is principally a legal, accounting or other matter within 5 days after the arbitration has been demanded by notice as aforesaid, the dispute will be deemed to be principally a legal matter.

25.3.5 Should the claimant and respondent fail to agree on an arbitrator within 14 days after the giving of notice in terms of Clause 25.2.3 , the arbitrator will be appointed at the request of either or both of the claimant and/or respondent by the President for the time being of the Law Society of the Northern Provinces or its successor in law, or by such President's nominee, according to the provisions of clauses 25.3.2.1 to 25.3.2.3, 25.3.3 and 25.3.5. 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.

25.3.6 Any dispute submitted to and decided by arbitration in terms of this clause 25.3 shall:

25.3.6.1 be determined by a single arbitrator to be agreed by the Parties within

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seven (7) days; or

25.3.6.2 otherwise, in the event the Parties do not agree as envisaged in Clause 25.3.6.1 above, then the President of Law Society of the Northern Provinces shall be required to nominate such an arbitrator,

25.3.6.3 who will be suitably qualified professionals as envisaged in clause 25.3.2 above ("the arbitrator").

25.3.7 The decisions of the arbitrator/s will be final and binding on the claimant and respondent 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.

25.3.8 The arbitrator will be entitled to make such award, including an order for specific performance, interdict, damages or penalty or otherwise as he in his sole discretion may deem fit and appropriate in accordance with applicable law and to deal as he deems fit with the question of costs, including if applicable, costs on an attorney and own client scale, and his own fees and expenses; provided that the costs of the arbitration (i.e. the costs of the arbitrator, the venue and the related costs of the arbitration itself, but for the avoidance of doubt not the costs of the other Party/ies) will be paid upfront by both parties equally (subject to the arbitrator's final award in this regard). The arbitrator shall be entitled to receive and rely on expert advice and/or expert evidence in reaching his determination.

25.3.9 Notwithstanding the provisions of this clause 25.3, 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 to this Agreement against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the North Gauteng High Court of South Africa.

25.4 **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.

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26. EFFECT OF EXPIRY OR TERMINATION

26.1 On the expiry or termination of this PPP Agreement and/or the Project Term for whatever reason and without prejudice to any rights of the Parties hereto (subject as herein provided):

26.1.1 this PPP Agreement (other than this Clause 26 and Clauses 28, 31, 32, 29 and 34) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

26.1.2 such rights as the Private Party may have over the Estate shall terminate;

26.1.3 the Private Party shall deliver all documentation relating to the Estate to SANParks.

26.2 Upon termination of this PPP Agreement, SANParks shall have the right to:

26.2.1 enter and take immediate control of the Estate; or

26.2.2 select and substitute a new entity to take over the operation of the Estate.

26.3 **Payment Procedure**

26.3.1 Except as otherwise provided for expressly in this PPP Agreement, whenever under this PPP Agreement an amount is required to be paid by any Party, such Party shall make the same available to the other Party within 5 (five) Business Days to such account with such bank in the Republic of South Africa as the other Party may have specified for this purpose.

26.3.2 Without prejudice to any other right or remedy, each Party shall be entitled to receive interest on an amount due under this PPP Agreement, at the rate referred to in Clause 26.3.3. Interest which has accrued on an amount due under this PPP Agreement shall be paid on the same date as payment of such amount.

26.3.3 For the purposes of Clause 26.3.2, interest shall accrue at a rate equal to the prime rate charged by SANParks' bankers. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

26.3.4 All payments to be made under this PPP Agreement shall be made in Rand.

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26.4 **Other Rights and Remedies**

26.4.1 No Party shall have any rights or remedies against any other Party arising on termination save for the rights and remedies specified in this PPP Agreement.

26.5 **Calculations**

26.5.1 If any forecast or calculation is required to be made for the purposes of determining an amount payable by one Party to the hereunder, the same shall be made by agreement between the Parties, and failing agreement by an internationally recognised firm of accountants appointed by the Parties. In the absence of agreement, each Party shall nominate an independent expert, each of whom will produce its forecast or calculation. If the difference between the results of either forecasts or calculations is 10% (ten percent) or less, then the amount payable shall be based on the average of both results. Should the difference exceed 10% (ten percent), then both independent experts shall, by agreement, appoint a third independent expert which will make its own forecast or calculation, and the amount payable will be based on the average of the three results. In the absence of agreement on the appointment of the third independent expert, that expert shall be appointed by the President of the South African Institute of Chartered Accountants.

26.5.2 Each forecast or calculation to be made by the independent expert shall be made in accordance with prevailing Best Industry Practice. For the purpose of making any such calculation or forecast, the independent expert shall not be obliged to rely on the information submitted by the Private Party prior to the Effective Date but must have reference to the actual financial experience of the Private Party during the existence of the PPP Agreement.

27. **CHANGES IN CONTROL**

From the Signature Date as well as 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.

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28. EXIT PROVISIONS

28.1 The Private Party recognises and acknowledges that SANParks, on the termination of this PPP Agreement for whatever reason, requires continuity in the conducting of the Project. The Private Party therefore irrevocably undertakes, on termination of this PPP Agreement, if required:

28.1.1 to meet with SANParks at such times prior to the termination of this PPP Agreement and in such manner as SANParks shall reasonably require, to negotiate the manner in which this PPP Agreement shall be terminated and the delivery to SANParks, or its nominee, by the Private Party to ensure the continuity of conducting the Project;

28.1.2 to use its best efforts to assist SANParks to effect the orderly and uninterrupted transition of conducting the Project;

28.1.3 to assist SANParks and to provide advice to SANParks in respect of specific service management issues such assistance and advice shall exclude the sharing of Private Party's Intellectual Property and Confidential information as defined in Clauses 2.1.__ and Clauses 2.1.10 respectively..

28.1.4 to commit available resources to effect the transition;

28.1.5 for the purpose of this Clause 28, to allow SANParks reasonable access to any employee/s of the Private Party who has been employed by the Private Party in respect of conducting the Project;

28.1.6 to allow SANParks, the nominee or a new operator, to make offers of employment to employees of the Private Party who are, as at the termination of this PPP Agreement, employed by the Private Party for the purposes of conducting the Project;

28.1.7 to cede and assign to SANParks all of the contracts required by SANParks, concluded between the Private Party and third parties, in connection with the Project, however, the said contracts shall exclude Private Party's contracts containing Confidential Information as defined in Clause 2.1.10.

28.1.8 to work with SANParks and/or the new Private Party for a smooth handover of the Estate including the Business;

28.1.9 to agree with SANParks the reasonable costs, including, but not limited, to overhead expenses and management PPP Fees, payable to the Private Party in respect of the functions and obligations undertaken by the Private Party in terms of this Clause 28,

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and

28.1.10 in the event that the Parties shall fail to come to an agreement in respect of any of the provisions of this Clause 28, the failure of the Parties shall be deemed to be a dispute, and shall be dealt with in accordance with Clause 25.

29. CESSION, TRANSFER AND SUBSTITUTED ENTITY

29.1 Transfer by the Private Party

The Private Party may not without the prior written consent of SANParks, sub-let, cede, assign or transfer:

29.1.1 this PPP Agreement or any Associated Agreement; or

29.1.2 any of its rights, interests or obligations thereunder;

save, in each case, to the extent required for the financing of the operation of the Estate as envisaged in the Loan Agreements, and in terms of the provisions of Clause 29.2.

29.2 Subject to the provisions of Clause 29.1, the Private Party may either sub-let, cede, assign or transfer the operation of the whole or a part of the Estate, provided that:

29.2.1 the period of the sub-lease, cession, assignment or transfer shall not exceed the unexpired portion of the Project Term;

29.2.2 the Private Party shall continue to be liable for the payment to SANParks of all rentals due and payable in terms of the PPP Agreement and the fact that the Private Party enters into such an agreement shall not absolve the Private Party from any liability, existing or future, of the Private Party in terms hereof;

29.2.3 the sub-lessee shall be bound by all the same terms and conditions as set out in this PPP Agreement as if originally a party hereto.

29.3 In the event of a breach, default or transgression of the provisions of this PPP Agreement or applicable Laws and regulations by any sub-lessee of the Private Party, SANParks shall be entitled to take the necessary action and directly intervene in the operations of the relevant Estate in order to rectify such breach, default or transgression provided that SANParks has given 30 days prior written notification to the Private Party and such sub-lessee of the breach, default or

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transgression and its intention to take the necessary action and directly intervene in the operations of the Estate.

29.4 **Substitute Entity**

29.4.1 Upon the occurrence of an event in Clause 21 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 to appoint a Substitute Entity, subject to agreement by the Lenders, that the Substitute Entity nominated by SANParks-

29.4.1.1 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;

29.4.1.2 has the financial and technical capability sufficient to perform and assume the obligations of the Private Party under the PPP Agreement and the Loan Agreements; and

29.4.1.3 has the financial capability to pay any damages or other sums outstanding which SANParks is entitled to receive from the Private Party before or at the time of such substitution.

29.4.2 In the event of SANParks appointing a Substitute Entity pursuant to this Clause 29.4, the provisions of Clause ____, shall apply, *mutatis mutandis.*

29.4.3 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 29.4 (including, without limitation, any relevant increased administrative expenses).

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

29.5 **Disposal of Shares**

29.5.1 SANParks will, notwithstanding the provisions of Clause 29, 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 as understood in terms of the Companies Act 2008 (Act No. 71 of 2008) and provided that:

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29.5.1.1 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;

29.5.1.2 the sale of such shares or beneficial interest does not alter the financial and technical capability of the Private Party to perform and assume the obligations of the Private Party in terms hereof.

29.5.2 SANParks shall only have the right to refuse such sale of shares or beneficial interest if either of the two criteria above are not met, or if the proposed buyer has been convicted or otherwise fined in a court of law, or other Relevant Authority, for breaches of trading or environmental regulations in the Republic of South Africa or elsewhere.

30. INTELLECTUAL PROPERTY

30.1 It is specifically recorded that all intellectual property rights whatsoever, whether capable of registration or not, regarding SANParks' trademarks, names, logo, image and all other intellectual property matters relating to SANParks, its name, logo and/or image shall remain the sole property of SANParks.

30.2 Subject to existing rights and obligations, SANParks shall, on application by the Private Party, grant a non-exclusive right and licence to the Private Party to use SANParks' trademarks which relate to the Protected Area. Should any of SANParks' trademarks, names, logos, images and all other intellectual property matters be required for use outside of this PPP Agreement, they will be subject to terms and conditions negotiated with SANParks. This includes the granting of licences to trade merchandise with SANParks' trademarks, names, logos, images and all other intellectual property matters outside of SANParks' tourism facilities.

30.3 In order to establish and maintain high standards of style, quality and proprietary associated with the Park, in the event the Private Party desires to use SANParks' trademarks or logos which relate to the Park in any way, the Private Party shall first submit the concept or a sample of the proposed use to SANParks for approval. Under no circumstances shall any use of SANParks' trademarks or logos, which relate to the Park, or the image or likeness of any trademark, logo or image, which SANParks in good faith believes reflects unfavourably upon or disparages the Park, be approved. SANParks shall use its best efforts to advise the Private Party of its approval or disapproval of the concept or sample within 15 (fifteen) Business Days of its receipt of the concept or sample. If SANParks approves the concept or

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sample, the Private Party shall not depart therefrom in any material respect without SANParks' further written approval.

30.4 If at any time SANParks withdraws its approval for the specified use of any trademark or logo, the Private Party shall forthwith discontinue all use of SANParks' trademark or logo and shall remove from public sale or distribution, any previously approved product in respect of which SANParks has rescinded approval.

30.5 SANParks may withdraw approval immediately upon 5 (five) Business Days written notice to the Private Party if the Private Party or any of its officers, directors or employees commits any act or engages in any conduct which constitutes a crime, is contrary to any Regulatory Provision or offends against public morals and decency and in SANParks' reasonable opinion, materially prejudices the reputation and public goodwill of SANParks. The Private Party acknowledges that the name of the Park (the "**Protected Name**") is associated with and peculiar to the Park and is the intellectual property of SANParks. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Name shall vest in SANParks and should the Private Party utilise the Protected Name, it does so only in terms of this PPP Agreement and with the prior written approval of SANParks.

30.6 In circumstances where the Private Party utilises any of the Protected Names, either singularly or in combination or association with any other name, it does so only in terms of this PPP Agreement and on termination of this PPP Agreement, the Private Party shall not be entitled to operate or conduct any business using the Protected Name in combination or association with any other name.

30.7 Within 30 (thirty) Business Days after the termination of this PPP Agreement and where the Private Party has operated a company utilising the Protected Name with the permission of SANParks, the Private Party shall either:

30.7.1 de-register the company bearing the Protected Name; or

30.7.2 change the name to a name not substantially similar to the Protected Name.

30.8 The naming and the exterior decoration of the Ratelrivier Estate Facilities shall be done in consultation with SANParks and subject to SANParks' approval.

30.9 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 28 shall not be applicable and the intellectual property shall be the sole property of the Private Party.

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31. 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.

32. ENTIRE AGREEMENT

32.1 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.

32.2 Each of the Parties acknowledges that:

32.2.1 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

32.2.2 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.

32.3 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.

33. GOVERNING LAW AND JURISDICTION

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

33.2 Subject to Clause 24, each Party agrees that the Magistrates 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

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irrevocably submits to the jurisdiction of the Magistrates Court of South Africa.

34. NOTICES

34.1 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 or sent by fax followed by the original delivered by hand.

34.2 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) 343-3849

Private Party**:**

Marked for the attention of the Chief Executive Officer:
Xxxxx
xxxxxxx
xxxxxx
xxxxx
xxx
Telephone: xxx
Email: xxx

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

34.3.1 on the same day, if delivered by hand;

34.3.2 on the same day of transmission if sent by telex or telefax and if sent by telefax with receipt confirming completion of transmission.

34.4 Either Party may change its nominated address to another address in the Republic

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of South Africa by prior written notice to the other Party.

SIGNED AT ……. ON THE ……. 201

For and on behalf of

SOUTH AFRICAN NATIONAL PARKS

_____

who warrants his authority hereto

SIGNED AT ……. ON THE ……. 201

For and on behalf of

_____

who warrants his authority hereto

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35. SCHEDULE 1 - DESCRIPTION OF ESTATE

35.1 Facilities

35.2 Equipment assessment

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36. SCHEDULE 2 – SITE DRAWINGS OF RATELRIVIER TOURISM ACTIVITIES

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37. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS

37.1 Standards of Accommodation, Catering and Events

37.1.1 In the conduct of the above activities the Private Party shall at all times maintain the above activities and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers, including public access areas and toilets.

37.2 Product Offering

The operator will have to access the site by means of hiking or transport, which is the property and operation of the concessionaire .The product offering must be professional at all times and in line with best industry practices.

37.3 Uniforms

Staff must at all times be professional, neat and tidy and dressed in uniform.

37.4 Benchmark Pricing and Control

The Private Party to ensure that the pricing each fiscal is approved by SANParks and based on similar tourism products so as to ensure competitive pricing structures for the operation.

37.5 Staff and Staff Transport

The Private Party will be responsible for their staff and their transport to and from the operational site

37.6 Advertising

In the conduct of the Accommodation, Catering and Events business the Private Party shall comply with all the reasonable advertising requirements as may be specified by SANParks from time to time.

37.7 Maintain stocks

The Private Party to ensure that stock levels are maintained according to good industry practice as per similar tourism offerings like the Ratelrivier Estate.

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37.8 **Supplier Accounts**

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

37.9 **Utility Charges**

The Private Party is responsible for all utility charges i.e. water, waste and refuse removal and sewerage. SANParks will charge the utilities to the Private Party on a monthly basis and the Private Party is obliged to settle such accounts within 7 (seven) days.

37.9.1 Telephone accounts - In the conduct of the Accommodation, Catering and Events activities, the Private Party shall procure its own telephone lines and the maintenance of sufficient telephone services within the Ratelrivier Estate. The Private Party shall be responsible for the payment of all telephone accounts at the Ratelrivier Estate.

37.9.2 Waste - The Private Party must ensure that waste disposal facilities, including rubbish or waste removal bins, are clean and free from noxious or offensive odorous, 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. The Private Party must adhere to SANParks' Waste Policies as amended from time to time. The Private Party will be responsible for the costs of all solid and liquid waste processing.

37.9.3 Water – Water meters are installed at the Ratelrivier Estate to monitor the water usage by the Private Party. The related cost will be for the account of the Private Party.

37.10 **Quality Audit**

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

37.11 **Institutional Policies and Objectives**

The Private Party is obliged to comply with and adhere to SANParks' Policies and Initiatives as amended from time to time i.e. HIV Aids Policy, Health and Safety

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Forums etc.

37.12 **Publications**

The Private Party may not display, offer for sale or sell any offensive reading material and shall be obliged, at no cost to SANParks, to promote SANParks' publications, magazines or other publication material.

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38. SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION

The Private Party shall adhere to and comply with the Private Party's Bid Submission.

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39. SCHEDULE 5 – PRIVATE PARTY BEE OBLIGATIONS

39.1 Local Community Involvement

It is envisaged that this opportunity should provide employment opportunity to local community members. The Private Party should liaise with park management to leverage their community links to ensure that a suitable BEE and social development agenda is achieved.

39.2 Private Party BEE Obligations as per the Bid Submission

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40. SCHEDULE 6 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF RATELRIVIER ESTATE WITHIN THE PROTECTED AREA

40.1 Introduction

South African National Parks (SANParks) in 2001, embarked on an initiative to commercialise certain of its operations. One aspect of this effort is the outsourcing out of services within the National Parks to Private Party. As the custodian for the Parks, however, SANParks will retain broad oversight responsibility for theoperation of the outsourced facilities. In this context, SANParks has established Environmental Specifications to ensure that the operation of the Ratelrivier Estate continues to be and is seen to be an integral part of the Protected Area.

40.2 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) (NEMPAA); the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998 (NEMA); the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act.

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

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

The EIA laws and Regulations do not specifically require an EIA for a development such as the refurbishment and/or expansion of a building. However, given that the development is taking place within a protected area such as a National Park, SANParks requires environmental scoping to be conducted on any proposal to expand or modify the existing Accommodation and Events that are being bid for. Modifications include both structural changes to the facility and additions to the facility or its environs, including signage. The scoping report must be submitted to DEA, the "relevant environmental authority" as defined in the EIA Guideline

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documents.[1]

40.3 **Environmental Specifications**

SANParks anticipates that national Legislation together with the OMP will adequately cover many of the environmental issues that will arise. In the interim, SANParks has developed internal Specifications for the operational components of the Ratelrivier Estate at ANP: the Section that must be adhered to by the Private Party. These Specifications are developed in-line with Corporate and the parks' management plan and internal operational policies, procedures and standards. However, the Private Party must be aware; therefore, that the terms and conditions set forth in the Specifications are subject to amendment. Private Parties will be expected to comply at all times with the provisions of the Environmental Specifications as amended from time to time.

40.3.1 **Visual Impacts**

40.3.1.1 Any development within the Protected Area must take due cognisance of the visual impacts it may have on surrounding areas and other Park users. SANParks has based its Specifications for visual impacts on interpretations of existing management documents. It is assumed that 'visible' means to the naked eye. Private Parties proposing to modify existing Facilities must consider the issue of visual impacts, and include in their proposals sufficient detail regarding the design of all structures to enable evaluation during the Bid evaluation process. Depending on the extent of the proposed modifications, an EIA may be required to assess the visual impacts, including signage, advertising, get up and the like, of the proposal and recommend mitigation measures, if necessary.

40.3.1.2 The building style -- structure, materials and design -- must be in harmony with the environment. The height of buildings is important. Structures more than two stories in height are not permissible.

•[1]In the case of the SANParks, the 'relevant environmental authority' for review of EIAs conducted in National Parks is the national Department of Environmental Affairs.

40.3.2 **Building Materials**

The use of building materials sourced inside the Protected Area will not be permitted as a general rule. In exceptional circumstances, it may be appropriate to use such materials. In those instances, the Private Party must obtain written approval from SANParks.

40.3.3 **Lightning Arrestors and Radio Masts**

40.3.3.1 If the Private Party proposes to erect new structures, these must be (where possible) included in the Bid Submission. Construction of radio masts is a prescribed activity under South Africa's EIA Regulations.

40.3.3.2 SANParks is well aware that standards and "best practices" with regard to telecommunications technology are currently changing at a rapid pace. SANParks is currently in the process of determining which sorts of communications are most appropriate within a Protected Area. The Private Party acknowledges, therefore, that SANParks' determination as to what is acceptable may change over time, and that it will be expected to comply at all times with SANParks' OMP and recommended "best practices."

40.4 **Bulk Infrastructure**

40.4.1 **Solar power and gas**

Provision of above services are in place for most of the facilities proposed for outsourcing. Some Private Parties may wish to utilise alternative energy sources, including solar power or generators. If new solar panels are installed, their visual impacts must be considered, along with the disposal of batteries and their by-products. Generators are permitted, although potential environmental impacts (noise, potential contamination from oil and fuel spills) must be considered in the OMP and EMP and, if approved, effective mitigation measures implemented to address these impacts.

40.4.2 **Water**

40.4.2.1 Water is a scarce resource in South Africa, and the facilities' size in respect to available water resources must be

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considered, particularly if the Bidder intends to expand the facility significantly. Given constraints on water supplies in many Protected Areas, SANParks encourages systems that enable reuse of treated water. The water allocation and requirements should also be determined by the OMP and subjected to subsequent audits.

40.4.2.2 Under the provisions of the National Water Act,[2] South African law requires that a permit be obtained from the Department of Water Affairs and Forestry (DWAF) for use of water from both surface and underground sources. The DWAF permit requirement applies to existing developments. SANParks will monitor the use of all water. In circumstances where there is insufficient water the Private Party will be required to reduce consumption accordingly.

40.4.2.3 It is important to remember that elephants occur in abundance in several Parks and any underground water pipes must be buried to a minimum depth of 1 meter to ensure that they are not unearthed or otherwise damaged.

40.5 Waste Management

40.5.1 Liquid Waste

Fuels, solvents, cleansers and other liquids must be stored in areas equipped with secondary containment structures to prevent contamination of soil, groundwater and surface waters due to accidental spills. These must be removed from the facility and disposed of in accordance with all applicable national, local or SANParks' requirements.

40.5.2 Solid Waste

40.5.2.1 Private Parties must use biodegradable packaging wherever possible and specifically may ***not use*** plastic shopping bags or polystyrene or aluminium foil take away container or "doggy bag". SANParks requires Private Parties to implement a policy of sorting and recycling solid wastes.

[2] Government of South Africa, 1998. *National Water Act (No, 36 of 1998).*

Wastes that cannot be recycled must be removed from the Protected Area and disposed of appropriately. Burning or incinerating in the Protected Area by the Private Party is prohibited. New landfills are not permitted. Biodegradable wastes must be disposed of in incinerators or in approved waste site outside the Protected Area. SANParks will process Private Parties' biodegradable wastes in its incinerators, where these are available and providing the units have sufficient capacity. SANParks will charge the Private Party a fee for disposal services, on a cost recovery basis. The Private Party will be required to transport wastes to these units in a responsible manner.

40.5.2.2 Solid wastes may need to be stored before being processed or removed from the Facilities. All such storage facilities must be secured from wildlife and constructed to ensure that pollution does not occur.

40.5.2.3 Solid waste management during both the Construction and Operational Phases must be included as items in the EMP and OMP.

40.6 Fire Management

40.6.1 Fire management is an important concern in all Protected Areas and is a major policy and operational issue in the Protected Area. The Private Party must familiarise itself with the relevant fire policies and procedures of the Protected Area in which the Ratelrivier Estate is located.

40.6.2 The Private Party must subject the existing designs plus any proposed modifications to a 'fire safety audit' carried out by a qualified fire safety expert. Recommendations made in the audit report must be incorporated into the EMP and OMP.

40.7 Staff Issues

40.7.1 Construction Workers

SANParks will make arrangements for gate access to the Facilities for all permanent and casual workers involved in the construction and operational phases of the Houseboat Facilities on the same basis as for SANParks'

contractors, if applicable. The total number of people to be employed on site during construction must be provided and addressed in the EIA. The Private Party must abide by all of the recommendations presented in the construction phase EMP. The Private Party must maintain close communication and co-ordination with Protected Area staff throughout the construction phase.

40.7.2 **Collection of Natural Resources by Staff**

No natural resources may be collected and used within any Protected Area without written approval from SANParks. Specifically, the collection of firewood for cooking and other uses is not permitted, during either the construction or operational Phase. If firewood is brought in from outside the Protected Area, it must be done in accordance with relevant Protected Area policies. Some Parks may only permit the use of firewood from approved alien vegetation clearing operations. Estatefires, gas cookers and outdoor recreation facilities will only be allowed as agreed with SANParks in writing.

40.7.3 **Staff Health and Safety**

The health and safety of staff and their families must be ensured at all times, including when commuting between accommodation facilities and places of work. The Private Party must implement a staff medical plan that complies with current Legislation. The Private Party also must have an emergency medical evacuation policy that covers both guests and staff in the event of a serious injury or acute medical emergency. Relevant staff must be trained in and aware of this policy. All buildings, vehicles, machinery and other structures (including their operation) must comply with relevant South African Legislation and SANParks standards. The design, layout and operation of all Facilities must take cognisance of dangerous animals that occur at all the Facilities.

40.8 **Access**

40.8.1 All deliveries and other vehicles entering Parks will have to do so through SANParks designated or otherwise agreed entrance gates and will be subject to the same rules and Regulations applicable to SANParks' personnel. Standard opening and closing times will apply. The travelling times to and from the picnic sites are restricted to half an hour before and after the closing times from rest Estates to reduce the traffic in the park after hours.

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40.8.2 The Private Party must ensure that its contractors, suppliers and the like adhere to all the access rules and Regulations applicable to SANParks personnel. Wherever possible the Private Party and anyone claiming title through them must try and reduce the volume of traffic on the roads.

40.8.3 The road deaths of animals inside the Protected Area have shown a dramatic increase over the last few years. Accordingly, should suppliers to the Private Party receive 3 (three) traffic offences within the Protected Area, such suppliers shall be blacklisted and entry to the Protected Area shall be prohibited for a period of 2 (two) years. The Private Party should ensure that their suppliers are aware of travel times and speed limits to avoid them being banned from the Protected Area.

40.9 **Monitoring**

40.9.1 All of the issues discussed and described in this document will require monitoring. SANParks reserves the right to monitor all these issues according to the standards set out in these Specifications, the findings of the EIA (if one is required), and/or in a manner agreed between the parties as the process develops.

40.9.2 The Private Party will be obliged to develop a comprehensive monitoring, auditing and review system and implement the system in the Facilities at their own cost.

40.10 **Meteorological Equipment**

The Private Party shall not be permitted to interfere with existing weather and/or measuring equipment at formal or informal weather stations.

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41. SCHEDULE 7 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS

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42. SCHEDULE 8 – INSURANCE

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