



RESTAURANT FACILITY PPP AGREEMENT

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

FOR THE

RESTAURANT FACILITY

IN THE

TSITSIKAMMA SECTION, GARDEN ROUTE NATIONAL PARK

AUGUST 2012

TABLE OF CONTENTS

1. INTRODUCTION 5

2. DEFINITION AND INTERPRETATION 6

3. PROJECT TERM 20

4. STATUS OF THIS PPP AGREEMENT 21

5. PPP RIGHTS 21

6. OPERATION, MANAGEMENT AND MAINTENANCE..... 24

7. LABOUR LAWS..... 27

8. PRIVATE PARTY COVENANTS 27

9. COMMERCIAL BRANDING..... 29

10. PROJECT SITE..... 30

11. HANDOVER 30

12. THE ENVIRONMENT..... 31

13. SANPARKS' REMEDIAL RIGHTS..... 32

14. SANPARKS' UNDERTAKINGS 32

15. BLACK ECONOMIC EMPOWERMENT 33

16. FINANCIAL PROVISIONS AND PAYMENT 34

17. PERFORMANCE BOND 36

18. SALE OF BUSINESS 37

19. INSURANCE..... 38

20. INDEMNITIES AND LIABILITY 39

21. GENERAL REPORTING AND FINANCIAL REPORTING REQUIREMENTS 40

22. DEFAULT INTEREST..... 41

23. FORCE MAJEURE 41

24. PRIVATE PARTY DEFAULT 44

25. SANPARKS DEFAULT 47

26. TERMINATION BY NOTICE 48

27. CORRUPT GIFTS AND FRAUD..... 48

28. DISPUTE RESOLUTION..... 50

29.	EFFECT OF EXPIRY OR TERMINATION	53
30.	EXIT PROVISIONS	55
31.	CHANGES IN CONTROL.....	56
32.	CESSION, TRANSFER AND SUBSTITUTED ENTITY	57
33.	INTELLECTUAL PROPERTY.....	59
34.	AMENDMENTS	60
35.	ENTIRE AGREEMENT	60
36.	VARIATION, CANCELLATION AND WAIVER.....	61
37.	LIMITATIONS ON PRIVATE PARTY ENCUMBRANCES	62
38.	GOVERNING LAW AND JURISDICTION	62
39.	STIPULATIONS FOR THE BENEFIT OF THE LENDERS	62
40.	NOTICES	63
41.	SCHEDULE 1 - DESCRIPTION OF THE RESTAURANT FACILITY.....	65
42.	SCHEDULE 2 – SITE DRAWINGS OF PROTECTED AREA RESTAURANT FACILITY AND PRIVATE PARTY DESIGN PLAN.....	68
43.	SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS	70
44.	SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION.....	77
45.	SCHEDULE 5 – BEE OBLIGATIONS.....	80
46.	SCHEDULE 6 – PPP FEE.....	89
47.	SCHEDULE 7 – EMPLOYEES	91
48.	SCHEDULE 8 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF RESTAURANT FACILITIES WITHIN THE PROTECTED AREAS	92
49.	SCHEDULE 9 – PRIVATE PARTY PREQUALIFICATION RESOLUTION	100
50.	SCHEDULE 10 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS.....	101
51.	SCHEDULE 11 – INSURANCE	102
52.	SCHEDULE 12 – PERFORMANCE BOND	103
53.	SCHEDULE 13 – CAPITAL EXPENDITURE PLAN	108
54.	SCHEDULE 14 – EMPLOYEE HOUSING AND RENTALS	110
55.	SCHEDULE 15 – PRIVATE PARTY LOAN AGREEMENTS	111
56.	SCHEDULE 16 – QUALITY ASSESSMENT CRITERIA	112

57.	SCHEDULE 17 – ASSOCIATED AGREEMENTS	151
58.	SCHEDULE 18 – CONSUMER PROTECTION ACT NO. 68 OF 2008 (CPA).....	152
59.	SCHEDULE 19 – PROHIBITED CHEMICAL SUBSTANCES	156
60.	SCHEDULE 20 – PEST MANAGEMENT PLAN	157
61.	SCHEDULE 21 – BAT MANAGEMENT GUIDELINES	158
62.	SCHEDULE 22 – PREFERRED PEST CONTROL CHEMICALS	159
63.	SCHEDULE 23 – SALE OF BUSINESS AGREEMENT	160
64.	SCHEDULE 24 – STOCK.....	170
65.	SCHEDULE 25 – SALE ASSETS.....	171

DRAFT

1. INTRODUCTION

- 1.1 SANParks has the authority, power, control and responsibility in respect of the Restaurant Facility in Protected Area as stipulated in the Act.
- 1.2 SANParks wishes to expand the income generation potential of the Protected Area by granting PPPs for the design, operation, management and maintenance of the Restaurant Facility for the benefit of visitors to the Protected Area, and its employees.
- 1.3 Private Party has acquired experience, know-how and skill in manufacture, cooking, presentation and merchandising of certain foods under the style and name of its registered and unregistered trademarks and a reputation in its distinctive get-up, recipes, know-how and other intellectual property.
- 1.4 SANParks has identified the Private Party as an appropriate, a reputable, and an experienced Restaurant Facility operator and wishes to grant to it a PPP for the purpose of designing, operating, managing, and maintaining the Restaurant Facility in the Protected Area, all in accordance with Good Industry Practice, and the Private Party's Bid Submission, annexed hereto as Schedule 4, in respect of the Restaurant Facility.
- 1.5 Private Party is authorised to appoint, administrate and manage Private Parties in the Protected Area according to this PPP agreement and Associated Agreement annexed hereto as Schedule 17.
- 1.6 Private Party shall acquire the Restaurant Business as contemplated in Clause 18, from the Current Operator and the existing employees transferred in terms of Section 197 of the Labour Relations Act No. 66 of 1995 (as amended) to the Private Party.
- 1.7 In terms of the Act, SANParks wishes to appoint the Private Party and the Private Party accepts the appointment to undertake the Project as a PPP and on the terms and conditions of this PPP Agreement.
- 1.8 Accordingly, the Parties wish to enter into an agreement on the terms and conditions detailed below.

2. DEFINITION AND INTERPRETATION

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

- 2.1.1 **“Act”** - the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (as amended);
- 2.1.2 **“Associated Agreement”** - is the agreement entered into by the Private Party and a Franchisee for the operation and management of Restaurant Facility/ies in the Protected Area attached hereto as Schedule 17;
- 2.1.3 **“BEE Obligations”** - the Black Economic Empowerment requirements detailed in Schedule 5;
- 2.1.4 **“Bid Submission”** - the bid as detailed in Schedule 4, for the right to carry out the Project submitted by the Private Party and accepted by SANParks;
- 2.1.5 **“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;
- 2.1.6 **“Business Day”** - a normal business day, excluding weekends and statutory public holidays;
- 2.1.7 **“Capital Investment Assets”** - the assets provided by the Private Party as part of its obligations in terms of the PPP Agreement and includes the equipment, furnishings, fixtures and

- improvements set out in Schedule 13 to the agreement;
- 2.1.8 **“Change in Control”** - any change whatsoever in Control, whether effected directly or indirectly;
- 2.1.9 **“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;
- 2.1.10 **“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;
- 2.1.11 **“Constitutional Documents”** - the Private Party's memorandum 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 Schedule 10 and the terms of which are to be to the satisfaction of SANParks;
- 2.1.12 **“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

	Assessment	with applicable Regulatory Provisions and guidelines;
2.1.18	“Employees”	- all the employees of the Restaurant Business, the names of whom are set out in Schedule 7;
2.1.19	“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;
2.1.20	“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;
2.1.21	“Environmental Specifications”	- the requirements, conditions, obligations and specifications detailed in Schedule 8;
2.1.22	“Expiry Date”	- shall be 24h00 on the tenth (10 th) anniversary of the Operation Commencement Date;
2.1.23	“Force Majeure”	- has the meaning ascribed to it in Clause 23;
2.1.24	“Franchisee”	- is a party appointed by the Private Party according to the Associated Agreement to

operate and manage the Restaurant Facility in the Protected area according to this PPP Agreement;

- 2.1.25 **“Franchisor”** - is the Private Party as defined in Clause 2.1.51 below;
- 2.1.26 **“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. The industry practice will specifically refer to franchise outlets as operated outside the Protected Area and standards within the Protected Area should be in line with those outside;
- 2.1.27 **“Gross Revenue”** - gross revenue has the meaning as defined in Clause 16;
- 2.1.28 **“Handover Period”** - the period between the Effective Date and the Operation Commencement Date;
- 2.1.29 **“Intellectual Property Rights”** - all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or form part of pending applications), utility models, applications for any of the 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;

- 2.1.30 **“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;
- 2.1.31 **“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;
- 2.1.32 **“Lenders”** - means any person providing financing to the Private Party and/or a Franchisee for the Project, other than shareholders of the Private Party and a Franchisee;
- 2.1.33 **“Local”** - the geographic area specified by SANParks in respect of the Project, being either within 50 km kilometre radius of the Restaurant Facility or within a 30 km reach of the boundary of the Protected Area fence;
- 2.1.34 **“Losses”** - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature;
- 2.1.35 **“Minimum PPP** - that portion of the PPP Fee that is payable by the

	Fee”	Private Party at all times after the Operation Commencement Date, regardless of the amount of the Gross Revenue, which amount is detailed in Clause 16;
2.1.36	“Operation Commencement Date”	- the date of Operation Commencement, specifically [insert date] 2012;
2.1.37	“Park Management Plan”	- SANParks' management plan or its impact management plan in respect of the Protected Area;
2.1.38	“Park Manager”	- the manager of the Protected Area in which the Restaurant Facility fall;
2.1.39	“Park Regulations”	- Environmental Regulations in respect of the Protected Area which may be revised and updated by SANParks from time to time;
2.1.40	“Park Rules”	- Environmental Rules in respect of the Protected Area which may be revised and updated by SANParks from time to time;
2.1.41	“Parties”	- collectively, SANParks and the Private Party;
2.1.42	“Party”	- SANParks or the Private Party, as the case may be;
2.1.43	“Performance Bond”	- the guarantee to be issued by a financial institution in favour of SANParks on behalf of the Private Party, in respect of the Private Party's obligations to perform under this agreement and to comply with the Environmental Specifications and the Project Specifications, to undertake the Project, which guarantee shall be substantially in the form of the document attached to this PPP Agreement as Schedule 12;

- 2.1.44 **“Person”** - any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;
- 2.1.45 **“PPP Agreement”** - this agreement between SANParks and the Private Party including the Schedules hereto as amended, extended, replaced and varied from time to time;
- 2.1.46 **“PPP Fee”** - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 16;
- 2.1.47 **“PPP Rights”** - the right to design, operate, maintain, and manage a Restaurant Business at the Restaurant Facility pursuant to this PPP Agreement for the purposes of the Project;
- 2.1.48 **“PPP”** - public private partnership, as defined in the Treasury Regulations promulgated under the Public Finance Management Act, 1999;
- 2.1.49 **“Private Party Default”** - has the meaning ascribed to it in Clause 24;
- 2.1.50 **“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;
- 2.1.51 **“Private Party”** - the counterparty to SANParks hereunder, specifically **[insert name of the Party]**, Registration Number **[insert company registration number]**, a limited liability company registered according to the company laws of

South Africa;

- 2.1.52 **“Project Assets”** - all assets required to design, construct, develop, install, commission, operate and/or maintain the Project, including the Restaurant Facility, the Sale Assets, Capital Investment Assets, any books and records, any spare parts and tools, as well as the Intellectual Property pertaining to the Business, but excluding all cash and cash equivalents;
- 2.1.53 **“Project Deliverables”** - the meeting of the BEE Obligations, the design, installation, commissioning, operation, maintenance, and management of the Project Assets and Restaurant Facility, 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 Schedules from time to time including the preparation, delivery of food to the satisfaction of the Protected Area’s visitors and such satisfaction shall exceed ratings of at least seventy percent (70%) as measured by SANParks’ Customer Survey Monitoring Systems as outlined in Schedule 3, Clause 43.10, and to comply with Schedule 16 Quality Assessment Criteria;
- 2.1.54 **“Project Insurance”** - those insurances that the Private Party is required by Law and this PPP Agreement to purchase and maintain in terms of Clause 19 a copy of which is attached as Schedule 11;
- 2.1.55 **“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;

- 2.1.56 **“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;
- 2.1.57 **“Project”** - the project to design, operate, manage and maintain the Restaurant Facility 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 Restaurant Facility subject to the prior written approval of SANParks, and to run Restaurant Facility in the Protected Area optimally and to provide meals to the guests/visitors in Protected Area at high satisfaction levels.
- 2.1.58 **“Protected Area”** - Tsitsikamma Section, Garden Route National Park;
- 2.1.59 **“Purchase Price”** - the purchase price to be paid by the Private Party to the Current Operator in respect of the Sale Assets and the Stock in terms of the Sale of Business Agreement;
- 2.1.60 **“Rand” or “R”** - the lawful currency of South Africa;
- 2.1.61 **“Regulations”** - Regulations issued in terms of the Act;
- 2.1.62 **“Regulatory Provisions”** - (a) the Environmental guidelines (“Environmental Specifications”) for operators operating within the Protected Area which is further described in Schedule 8, 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 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;

- 2.1.63 **“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 operator or provider;
- 2.1.64 **“Restaurant Facility”**
- the land, buildings and other facilities together with all supporting infrastructure, plant and equipment, as required to enable the Private Party to exercise its rights and perform its obligations included in the Project Deliverables; 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 Schedule 1 and the attached site drawings in Schedule 2.
- 2.1.65 **“Sale Assets”**
- those assets which are listed on Schedule 25 and which are sold by the Current Operator to the Private Party, but excludes computer equipment and accessories comprising of related copyrights as defined in Clause 2.1.29 and information as defined in Clause 2.1.9;

- 2.1.66 **“Sale of Business Agreement”** - is an Agreement entered into by the Current Operator and Private Party for the Sale of Business as contemplated in Clause 2.1.677;
- 2.1.67 **“Sale of Business”** - the sale of business, which forms an integral part of this PPP Agreement, in terms of which inter alia the Sale Assets and Stock are acquired by the Private Party;
- 2.1.68 **“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;
- 2.1.69 **“Schedules”** - the schedules to this PPP Agreement, as amended, replaced and varied from time to time;
- 2.1.70 **“Signature Date”** - the date of signature of this PPP Agreement by the last signing Party ;
- 2.1.71 **“Skills Development Spend”** - has the meaning as set out in Schedule 5;
- 2.1.72 **“South Africa”** - the Republic of South Africa;
- 2.1.73 **“State”** - the Government of the Republic of South Africa, acting directly or through its lawfully designated representatives;
- 2.1.74 **“Subcontractors”** - any subcontractor of the Private Party and a third party, who has contracted directly with the Private Party in respect of the Project;

- 2.1.75 **“Termination Amount”** - the amount payable on termination of this PPP Agreement in terms of Clause 24.4;
- 2.1.76 **“Termination Date”** - any date of early termination of this PPP Agreement, in accordance with its terms;
- 2.1.77 **“the Liabilities”** - all liabilities and obligations of the Business, incurred in the normal course, in respect of any period prior to the Operation Commencement Date or in respect of which the cause of action shall have arisen prior to the Operation Commencement Date, whether then due or not, including, but not by way of limitation, all actual and/or contingent liabilities, for payment of money, performance of services and obligations, supply of products and/or other performances;
- 2.1.78 **“the Restaurant Business”** - the business conducted on behalf of the SANParks by Private Party at the Restaurant Facility, carried on as a going concern, but specifically excluding, for the avoidance of doubt, the Liabilities and all Debtors;
- 2.1.79 **“the Stock”** - the stock-in-trade of the Restaurant Business as at the Operation Commencement Date, including goods-in-transit (being stock purchased by Current Operator prior to, but not yet delivered to Current Operator on, the Operation Commencement Date), but excluding goods sold by Current Operator and not yet delivered to the buyers of those goods at the Operation Commencement Date;
- 2.1.80 **“Utilities”** - all facilities serving the public, such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes the relevant provider thereof;

- 2.1.81 **“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 16 and Schedule 6;
- 2.1.82 **“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;
- 2.2 This PPP Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:
- 2.2.1 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;
- 2.2.2 references to “indexed to CPIX” in relation to any amount of money shall mean that such amount has been expressed in June 2012 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;
- 2.2.3 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this PPP Agreement, their respective cessionaries and assignees;
- 2.2.4 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;
- 2.2.5 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;
- 2.2.6 the headings of Clauses, sub-Clauses and Schedules are included for convenience only and shall not affect the interpretation of this PPP Agreement;

- 2.2.7 the Introduction and Schedules to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Introduction and Schedules;
- 2.2.8 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;
- 2.2.9 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;
- 2.2.10 references to “this PPP Agreement” shall include this PPP Agreement and its Introduction and Schedules as amended, varied, novated or substituted in writing from time to time;
- 2.2.11 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this PPP Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;
- 2.2.12 general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words;
- 2.2.13 When a number of days are prescribed in this PPP Agreement, such number shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day.

3. PROJECT TERM

- 3.1 The Project Term shall commence on the Operation Commencement Date, and shall continue thereafter for a period of five (5) years.

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 foregoing, any duties, fees or taxes assessed by any Relevant Authority in respect of the operation of the Restaurant Facility. 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 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 operate the Restaurant Facility.
- 4.4 Notwithstanding Clauses 4.1, 4.2, and 4.3 above, the terms and conditions of the Associated Agreement with a Franchisee as outlined in Clause 2.1.2 shall in all material respects reflect the relevant provisions of this PPP agreement.

5. PPP RIGHTS

5.1 Exclusive Grant of PPP Rights

- 5.1.1 Subject to the terms of this PPP Agreement, the PPP Rights for the purposes of the Project are granted by SANParks to the Private Party on an exclusive basis during the Project Term.
- 5.1.2 During the period of this agreement, SANParks undertakes :
- 5.1.2.1 not to establish or operate any restaurant facilities and any facilities which involve any preparation of food and/or beverage products including but not limited to reheating, rehydrating and/or regeneration of food and/or beverage products;
- 5.1.2.2 not to grant to any third parties the rights to referred to in 5.1.2.1 and to ensure no third party operates or establishes any such facilities referred to in Clause 5.1.2.1. However,
- 5.1.2.2.1 SANParks reserves the right to manage and operate picnic sites and provide catering for conferences, weddings, bush and boma braais in

the Protected Area; and

5.1.2.2.2 SANParks reserves the right to set up community and staff shops within Protected Area to serve exclusively the staff and community of the Protected Area.

5.1.3 The Private Party is obliged to operate, manage and maintain the Restaurant Facility as a public facility, open to all visitors to the Park, and shall not be permitted to bar entrance to the public.

5.1.4 For the purposes of this Clause 5, the grant of exclusive rights is limited to the PPP Rights, expressly, to conduct and operate the restaurant facilities, take-away/deli facilities at the Restaurant Facility including proposed services as outlined in the Business Plan that forms part of the Private Party's Bid Submission, and/or services approved by SANParks.

5.2 **Restaurant Facility Rights**

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

5.2.1.1 the exclusive right to operate the Restaurant Facilities in the areas as outlined in Schedule 1 and 2 for gain for the duration of the PPP Agreement;

5.2.1.2 Notwithstanding Clause 5.2.1.1, SANParks reserves the right to add Restaurant Facilities as new capacity is built or added in the Protected Area;

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

5.2.1.4 focus on the sale of food items that are prepared and consumed on site inclusive of take away food but is excluded to sell items that are in direct competition with Retail operations. The excluded items include packaged biltong, snacks, large packets (125 g) of chips, sweets such as chocolate slabs or bars, cigarettes, phone cards, meat assortment (fresh, vacuum packed and frozen) not meant for on-site consumption, dairy products such as milk, yogurt and cheese not forming part of the meals prepared, kitchenware, i.e. plates, pans, cutlery and crockery, canned food, boxed cereals, coffee table books, games, curio, wood, camping

equipment, toiletries, medicines, newspapers, magazines, insecticides and other fast moving consumer goods typically bought by the customer for preparation away from the restaurant;

- 5.2.1.5 notwithstanding Clause 5.2.1.4 above, the Private Party shall focus on seafood offering in the Protected Area;
- 5.2.1.6 appoint and manage a Franchisee for the Restaurant Facility in the Protected Area;
- 5.2.1.7 generate, charge and collect revenues from the execution of such PPP Rights;
- 5.2.1.8 use the Restaurant Facility in accordance with the terms of this PPP Agreement;
- 5.2.1.9 cause the Franchisee through the Associated Agreement to acquire the Restaurant Business from the Current Operator and the existing employees transferred in terms of Section 197 of the Labour Relations Act No.66 of 1995 to the Franchisee on the Operation Commencement Date;
- 5.2.1.10 make use of SANParks' tourism accommodation at a forty percent (40%) discounted rate in "out-of-season" periods for management purposes and as per SANParks travel trade rules (which will make these bookings).
- 5.2.1.11 access to the Protected Area and access for the Private Party's employees, subject to the normal Protected Area's operating rules and hours on the same basis as SANParks' employees;
- 5.2.1.12 introduce the new services and thematic activities as per the Private Party's Bid Submission;
- 5.2.1.13 undertake the refurbishment and infrastructural development as per the Capital Investment proposed in the Private Party's Bid Submission and detailed in Schedule 13; and

all of which rights shall be exercised in accordance with the terms of this PPP Agreement, and subject to the Regulatory Provisions, Environmental Laws, Environmental Specifications and Legislation.

5.3 **Service Delivery**

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

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

- 5.3.2 be delivered to the end user in a professional, courteous and friendly manner, in suitable packaging where applicable or using an acceptable method of preparation, 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 18 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 Restaurant Facility 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 half-yearly report in an agreed format regarding the Operation, Management and Maintenance of the Restaurant Facility.
- 6.1.3 The Private Party shall comply with the Environmental Specifications set forth in Schedule 8.
- 6.1.4 The Private Party shall:
 - 6.1.4.1 operate the Restaurant Facility 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;
 - 6.1.4.2 use its best endeavours to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Restaurant Facility and shall not sell, display for sale or consumption, deliver to the end user or provide any foodstuffs or products or anything else which does not conform with Good Industry Practice or any Regulatory Provisions with regard to the standard or quality of preparation, display or sale of any foodstuffs at the Restaurant Facility;
 - 6.1.4.3 shall at all times maintain the equipment used in the Restaurant Facility in a clean, orderly and sanitary condition;

- 6.1.4.4 shall ensure that all personnel and staff employed by the Private Party in the Restaurant Facility shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;
- 6.1.4.5 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.
- 6.1.4.6 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.
- 6.1.4.7 Private Party is required to score a minimum of at least seventy five percent (75%) on the hygiene audit total quality index.
- 6.1.4.8 Private Party shall be required to subscribe to a minimum of the following requirements:
- 6.1.4.8.1 implementing measures to prevent pathogens to be detected on food Samples;
- 6.1.4.8.2 that all the Restaurant Facility have a certificate of acceptability;
- 6.1.4.8.3 that a cleaning programmes including Cleaning Schedule and cleaning checklist is in existence;
- 6.1.4.8.4 that the staff at the Restaurant Facility is trained in hygiene practices;
- 6.1.4.8.5 that hand washing facilities and proper cleaning chemicals are available;
- 6.1.4.8.6 that food areas are zoned as per food type; and
- 6.1.4.8.7 that the pest control measures such as screening, closure of windows/doors is implemented.
- 6.1.5 The Private Party undertakes to operate in line with SANParks' Restaurant

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.

6.1.6 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.

6.2 **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 6.1, 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 24 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

Notwithstanding the provisions of Clause 4.4 above, the Private Party may use a third party or third parties through sub-contracting to carry out all or part of its operation, and management obligations under this PPP Agreement. The terms of any such sub-contract as aforementioned shall in all material respects reflect the relevant provisions of this PPP Agreement and be subject to the prior written notification and delivery of a copy of the relevant contract to SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations hereunder.

7. LABOUR LAWS

7.1 The Private Party agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in the business of operating the Restaurant Facility 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.

7.2 The Private Party shall enter into a separate Housing Rental Agreement with SANParks in respect of the housing of staff transferring to the Private Party.

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; and

8.1.4 in accordance with Good Industry Practice.

8.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties, employees, contractors, assignees, employees, guests, invitees and

patrons visiting or working at the Restaurant Facility, adhere to, abide by and comply with:

- 8.2.1 all Regulatory Provisions, the Environmental Specifications in respect of the Protected Area and specifically in respect of the Restaurant Facility and the EIA;
 - 8.2.2 the terms of this PPP Agreement; and
 - 8.2.3 any valid and enforceable directives or rules issued by the Park Manager from time to time. In cases where the Private Party believes that the Park Manager has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Project, the Private Party shall have the right to appeal against such rule or directive with SANParks and/or any other person determined by SANParks, 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 Park. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule.
- 8.3 The Private Party shall be responsible for:
- 8.3.1 obtaining and keeping current all 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 Restaurant Facility clean including the area of responsibility described in Schedule 1 hereto.
- 8.4 Without prejudice to Clauses 8.3.1 and 8.3.2, the Private Party shall obtain all necessary permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the relevant Regulatory Provisions governing all facets of the conduct of the Project during the Project Term.

- 8.5 The Private Party shall bear all risks and costs with respect to material damage to the Restaurant Facility or the environment caused by the operation of the Restaurant Facility 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 Restaurant Facility, 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 Restaurant Facility 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 Restaurant Facility, and all Sale Assets, subject to the provisions of Clause 18, and its rights or interest in the Restaurant Facility to 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, in accordance with the standards set out in SANParks' Operational Requirements (as certified by SANParks). The Private Party shall not, other than as provided for in Clauses 24, 25 and 26 of this PPP Agreement, be entitled to payment of any compensation in connection therewith.

9. COMMERCIAL BRANDING

- 9.1 Any commercial branding developed by the Private Party in respect of the Restaurant Facility may not be used outside the Protected Area without SANParks' prior written consent; and
- 9.2 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 Restaurant Facility shall require the prior written approval of SANParks

10. PROJECT SITE

10.1 Restaurant Facility

The location and physical boundaries of the Restaurant Facility shall be the areas defined in Schedule 1 and Schedule 2.

10.2 Access Following Commencement

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, the Private Party Parties and the Franchisee have such access to the Restaurant Facility 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 Restaurant Facility

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

11. HANDOVER

11.1 It is a fundamental requirement by SANParks that the transfer of the Restaurant Facility is undertaken on the basis that:

11.1.1 there is no or minimal disruption in the provision of goods and services to visitors to the Park;

11.1.2 any structural alterations do not cause the Restaurant Facility to be closed to visitors to the Protected Area unless alternative Restaurant Facility are provided;

11.1.3 the handover shall be undertaken in such a manner to cause the least disruption and/or intrusion to SANParks, employees and visitors and then only

in a manner which is mutually acceptable to both SANParks and the Private Party;

11.1.4 no decisions of any direct material import relating to the operation of the Business will be taken without the prior written approval of the Private Party;

11.1.5 the business of the Restaurant Facility will be conducted in the usual manner throughout the Handover Period; and

11.1.6 SANParks shall not be liable for any claims or actions which arise during the Handover Period irrespective of the cause or nature of same.

11.2 During the Handover Period:

11.2.1 the Private Party and SANParks shall co-operate and work together to achieve an effective transfer of the Restaurant Facility on the Effective Date;

11.2.2 SANParks shall retain responsibility for all operations, and expenses thereof, relating to the Facility;

11.2.3 the Private Party shall be entitled to nominate one or more representatives to be stationed at the Restaurant Facility, to work with SANParks management to effect a smooth handover. The Private Party's representatives shall however have no authority in relation to SANParks operations or employees during the Handover Period.

11.3 On the Operation Commencement Date, the Private Party shall assume full responsibility under this PPP Agreement for the operations, and expenses thereof, relating to the Restaurant Facility, and be entitled to the fruits hereof.

12. THE ENVIRONMENT

12.1 To the extent that the Private Party needs to construct infrastructure, buildings or any other structures to support the carrying out of the Project, which pursuant to the relevant Regulatory Provisions requires an EIA, the Private Party shall not commence such construction until SANParks is satisfied that the said EIA has been undertaken in compliance with the relevant Regulatory Provisions and to the satisfaction of that authority.

12.2 During the Project Term, the Private Party shall conduct, manage and carry out the Project at all times in an Environmentally responsible way by adopting appropriate

operating methods and practices for conducting such a Project in a proclaimed National Park and shall adhere to the Regulatory Provisions and the Environmental Specifications.

- 12.3 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 Restaurant Facility and the Protected Area.
- 12.4 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.
- 12.5 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, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the Environment.

13. 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.

14. SANPARKS' UNDERTAKINGS

- 14.1 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.
- 14.2 SANParks shall continue, in the ordinary course of business, to market and promote the Restaurant Facility and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that the Restaurant Facility is

properly marketed and promoted as an integral part of the Park and the marketing and promotional programme for the Park as a whole.

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

14.4 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.

14.5 SANParks' procurement processes both in relation to the Restaurant Facility 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:

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

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

15. **BLACK ECONOMIC EMPOWERMENT**

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

15.2 Notwithstanding Clause 15.1 above, The Private Party shall specifically ensure that the compliance with all Regulatory Provisions relating to Black Economic Empowerment occurs at a Franchisee level or during the appointment of a Franchisee.

15.3 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.

16. FINANCIAL PROVISIONS AND PAYMENT

16.1 Gross Revenue

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

16.1.1.1 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. Without derogating from its generality, the term “gross revenue” shall mean revenue before the deduction of:

16.1.1.1.1 bad debts (or provisions therefore);

16.1.1.1.2 commissions or similar consideration paid or payable;

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

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

16.1.1.2 and gross revenue shall include:

16.1.1.2.1 commissions received or receivable;

16.1.1.2.2 rentals and other fees received or receivable;

16.1.1.3 but shall exclude:

16.1.1.3.1 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;

16.1.1.3.2 interest received or receivable;

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

16.1.1.3.4 transfers from reserves; and

16.1.1.3.5 bad debts recovered.

16.2 **PPP Fees**

16.2.1 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of the following two figures:

16.2.1.1 the Minimum PPP Fee; or

16.2.1.2 the Variable PPP Fee

16.2.2 The minimum PPP Fee or the Variable PPP Fee will be calculated on the turnover for the Restaurant Facilities listed in Schedule 6.

16.2.3 The monthly Minimum PPP Fee and the Variable PPP Fee are set out in detail in Schedule 6 attached hereto. Irrespective of which of these elements determines the final amount payable in any given month, the PPP Fee payment will be the higher of the Minimum PPP Fee or the Variable PPP Fee for the Restaurant Facility listed in Schedule 6 and shall accrue and be payable by the Private Party to SANParks within 7 (seven) Business Days following the end of each month, free of deduction or set-off, to SANParks.

16.2.4 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).

16.2.5 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.

16.3 **Taxes**

16.3.1 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 Restaurant Facility, or in respect of the Project or any other activities conducted within the Park or activities undertaken by SANParks relating to the regulation of this PPP Agreement. These taxes will exclude any capital gains tax, income tax; value added tax or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any tax payable by SANParks.

16.3.2 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.

16.4 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.

17. PERFORMANCE BOND

17.1 The Private Party shall provide to SANParks an on demand guarantee (the “Performance Bond”), which shall be operative from the Effective Date, in favour of SANParks issued by a bank or financial institution acceptable to SANParks substantially in the format specified in Schedule 12.

17.1.1 The Private Party shall maintain a valid Performance Bond (in accordance with the provisions hereof) from the Effective Date until 90 (ninety) Business Days after the expiry or earlier termination of this PPP Agreement.

17.1.2 Within 90 (ninety) Business Days of the expiry or earlier termination of this PPP Agreement, SANParks shall release all or so much of the Performance Bond as shall remain undrawn after such expiry or termination.

17.1.3 The amount to be guaranteed by the Performance Bond for the first twelve month period as from the Effective Date shall be the equivalent of 3 (three) months Minimum PPP Fees.

17.1.4 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the figure indicated in Clause 17.1.3 as adjusted to reflect changes in the Consumer Price Index since Bid Submission.

17.1.5 The Performance Bond shall secure the Private Party’s performance under this PPP Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Private Party of this PPP Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Private Party of any Regulatory Provision(s), Laws,

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

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

17.1.7 The Performance Bond may only be enforced to the extent of any costs, losses, damages or expenses suffered or incurred and/or reasonably expected to be suffered or incurred as a result of the breach that gave rise to the right to enforce the Performance Bond.

18. SALE OF BUSINESS

18.1 Private Party shall enter into a Sale of Business Agreement with the Current Operator, and the Current Operator is obliged to enter into such agreement on the terms and conditions as set out in the Sale of Business Agreement annexed herein as Schedule 23.

18.2 To be certain, Sale of Business as contemplated in the aforementioned Clause 18.1 shall be subject to this PPP Agreement, and more specifically to Clause 18.3 below.

18.3 Automatic Buy-Back

18.3.1 SANParks shall, subject to the provisions of Clause 25.3 and Clause 26 at the termination of this agreement for whatever reason, be entitled to re-purchase the Restaurant Business including the Sale Assets and the Capital Investment Assets.

18.3.2 The amount payable by SANParks under Clause 18.3.1 shall accrue interest at the rate specified in Clause 29.3.3 from the date of termination to the due date for payment as specified in Clause 29.3.

18.4 Insolvency Act Publication

18.4.1 The Parties agree that notice of this transaction will not be published as contemplated in section 34 of the Insolvency Act, 1936 (Act No. 24 of 1936)

(as amended) (the “Insolvency Act”).

18.4.2 SANParks indemnifies the Private Party against any loss or damage which the Private Party may suffer as a result of notice of this transaction not being published in terms of the Insolvency Act.

18.5 The Private Party warrants to SANParks that on Operation Commencement Date it will be registered as a vendor in terms of the VAT Act. The Franchisee intends to carry on the Business continuously and regularly from the Operation Commencement Date and acknowledges that it reasonably expects this activity to result in taxable supplies in excess of R20 0000 (twenty thousand Rand) over a period of 12 (twelve) months from the Operation Commencement Date.

19. INSURANCE

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

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

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

19.1.3 property and casualty insurance;

19.1.4 public liability and third party insurance;

19.1.5 employer’s liability insurance;

19.1.6 business interruption insurance; and

19.1.7 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.

19.2 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.

19.3 Should the Private Party be in breach of the provisions of Clause 19.1, SANParks may, after consultation with the Private Party and giving the Private Party thirty (30)

days within which to comply with Clause 19.1 , 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 19.1 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.

19.4 The Private Party shall comply with all the terms and conditions embodied in the insurance policy or insurance policies referred to in Clause 19 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.

19.5 The Private Party undertakes to provide SANParks with certified copies of the certificates of insurance and certified copies of the insurance policies within seven (7) days of the Operation Commencement Date to be attached to this PPP Agreement as Schedule 11. Such certificates and policies shall reflect all insurance coverage stipulated by SANParks.

19.6 SANParks shall insure all the buildings or physical structures of the Retail Facilities with a reputable insurance firm.

20. INDEMNITIES AND LIABILITY

20.1 Private Party Indemnity

20.1.1 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 Restaurant Facility 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.

20.1.2 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:

20.1.2.1 death or injury to any Person; or

20.1.2.2 loss of or damage to any property;

arising out of any such act or omission by the Private Party referred to in Clause 20.1.1 above.

It is recorded that notwithstanding the provisions of Clause 20.1.1 to and including 20.1.2 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 20.1.2.

20.2 Legal Action

20.2.1 The Private Party will erect and display a notice at the Restaurant Facility to the effect that the Restaurant Facility is operated by an independent operator under contract from SANParks.

21. GENERAL REPORTING AND FINANCIAL REPORTING REQUIREMENTS

21.1 General Reporting

21.1.1 Should the Private Party propose any alterations, amendments and/or refurbishments to the Facility, 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.

21.1.2 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:

21.1.2.1 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;
- 21.1.2.2 its compliance with the Environmental Specifications as detailed in Schedule 8;
- 21.1.2.3 the Insurance provisions of Clause 19;
- 21.1.2.4 its BEE Obligations contained in Schedule 5; and
- 21.1.2.5 its compliance with Schedule 13.

21.2 **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:

- 21.2.1 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;
- 21.2.2 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;
- 21.2.3 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.

22. **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).

23. **FORCE MAJEURE**

23.1 **Definition and Procedure**

- 23.1.1 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:

- 23.1.1.1 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
 - 23.1.1.2 nuclear contamination unless the Private Party and/or any Sub-contractor is the source or cause of the contamination; or
 - 23.1.1.3 chemical or biological contamination of the Restaurant Facility from any of the events referred to in Clauses 23.1.1.1 and 23.1.1.2 above,
that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.
- 23.1.2 Subject to Clause 23.1.3, 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.
- 23.1.3 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 23.1.3.1 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
 - 23.1.3.2 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 19.
- 23.1.4 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.

- 23.1.5 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 23.1.3.1, 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.
- 23.1.6 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.
- 23.1.7 If, following the issue of any notice referred to in Clause 23.1.4, 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.
- 23.1.8 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.
- 23.1.9 The Parties shall endeavour to agree any modifications to this PPP Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. Clause 28 shall not apply to a failure of the Parties to reach agreement pursuant to this Clause 23.1.9, and this PPP Agreement shall terminate in terms of Clause 23.2 if no such agreement is reached.

23.2 **Termination for Force Majeure**

If, in the circumstances referred to in Clause 23, 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.

24. PRIVATE PARTY DEFAULT

24.1 Definition

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

- 24.1.1 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, 2008) being entered into by or in relation to the Private Party;
- 24.1.2 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);
- 24.1.3 the Private Party ceasing to carry on business;
- 24.1.4 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);
- 24.1.5 the Private Party commits a breach of any of its material obligations under this PPP 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 Schedules to this PPP Agreement shall be deemed to be a breach of a material obligation;
- 24.1.6 the Private Party breaches any of the provisions of Schedule 5 or Clause 15;
- 24.1.7 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;
- 24.1.8 the Private Party breaches the provisions of Clause 6.2.1 or the standards and requirements set out in Schedule 6;
- 24.1.9 The Private Party or any of its directors or officers is found guilty of a criminal

offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 500,000 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 relevant director of officer.;

24.1.10 the Private Party fails to meet mutually agreed performance targets as set out in the attached Schedule 16.

24.1.11 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;

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

24.1.12.1 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

24.1.12.2 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;

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

24.2 SANParks' Options

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

24.2.1.1 in the case of the Private Party Default referred to in Clauses 24.1.1; 24.1.2; 24.1.3; 24.1.4; 24.1.6; 24.1.7; 24.1.8; 24.1.9 and 24.1.12 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

24.2.1.2 in the case of any other Private Party Default referred to in Clauses 24.1.5 and 24.1.13, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within 20 Business Days of such

notice of default.

24.2.2 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 24.2.1.2 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.

24.3 **SANParks' Costs**

24.3.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 24 (including, without limitation, any relevant increased administrative expenses).

24.3.2 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).

24.4 **Termination Amount on Private Party Default**

24.4.1 On termination of this PPP Agreement as a result of Private Party Default, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Sale Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

24.4.2 Subject to the provisions of Clauses 24.4.1, the following amounts shall be added to the amount payable in terms of Clauses 24.4.1;

24.4.2.1 the cost and expense incurred or to be incurred in the reinstatement of the Restaurant Facility as at date of termination, fair wear and tear accepted;

24.4.2.2 an amount equal to all damages recoverable at law;

24.4.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying material damage to the Restaurant Facility and the Environment caused by the Private Party and/or any Person for whom it is legally responsible in terms of this PPP Agreement; and

24.4.2.4 all reasonably foreseeable economic losses suffered or reasonably expected to be suffered by SANParks as a result of the breach or breaches by the Private Party of this PPP Agreement which resulted in termination of this PPP Agreement pursuant to Clause 24.2.2.

24.4.3 Should SANParks not exercise its rights to terminate pursuant to Clause 24.2.2, the Private Party shall compensate SANParks for all damages, costs and expenses incurred by SANParks as a result of events set forth in Clause 24.

25. SANPARKS DEFAULT

25.1 Definition

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

25.1.1 an expropriation of a material part of the Restaurant Facility and/or Project Assets of the Private Party by SANParks or other Responsible Authority; and

25.1.2 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.

25.2 Termination for SANParks Default

25.2.1 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.

25.2.2 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.

25.3 Termination Amount for SANParks Default

25.3.1 On termination of this PPP Agreement as a result of SANParks Default,

SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Sale Assets and the Capital Investment Assets, set out in the annual audited books of account of the Private Party on the date of such termination.

25.3.2 Subject to the provisions of Clause 24.4.1 the following amounts shall be added to the amount payable in terms of Clause 24.4.1:

25.3.2.1 an amount equal to all damages recoverable at law; and

25.3.2.2 all reasonably foreseeable economic losses suffered or reasonably expected to be suffered by Private Party as a result of the breach or breaches by SANParks of this PPP Agreement which resulted in termination of this PPP Agreement pursuant to Clause 25.3.1.

25.3.3 Should the Private Party not exercise its rights to terminate pursuant to Clause 25.3.1, SANParks shall compensate the Private Party for all damages, costs and expenses incurred by the Private Party as a result of events set forth in Clause 25.

26. TERMINATION BY NOTICE

Prior to the expiry of the Project Term, SANParks may, subject to Clause 28, on written notice of not less than 6 (six) months, give the Private Party notice of termination of this PPP Agreement, in which event this PPP Agreement shall terminate. On termination of this PPP Agreement in accordance with this Clause 26, SANParks shall pay the Private Party an amount equal to the Depreciated Value of the Sale Assets and Capital Investment Assets, set out in the annual audited books of account of the Private Party on the date of such termination but also pay the Private Party the depreciated value for any capital investments made.

27. CORRUPT GIFTS AND FRAUD

27.1 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 24.1.5.

"Corrupt Act" means:

27.1.1 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:

- 27.1.2 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
- 27.1.3 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;
- 27.1.4 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;
- 27.1.5 committing any offence:
 - 27.1.5.1 under any law from time to time dealing with bribery, corruption or extortion;
 - 27.1.5.2 under any law creating offences in respect of fraudulent acts; or
 - 27.1.5.3 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
 - 27.1.5.4 defrauding or attempting to defraud or conspiring to defraud SANParks or any other public body.

27.2 Termination Amount for Corrupt Gifts and Fraud

- 27.2.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 24 (including, without limitation, any relevant increased administrative expenses).
- 27.2.2 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).

28. DISPUTE RESOLUTION

28.1 Referable Disputes

The provisions of this Clause 28 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.

28.2 Internal Referral

28.2.1 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:

28.2.1.1 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

28.2.1.2 if the Parties have been unable to resolve the dispute within 30 days of referral to the persons specified in Clause 28.2.2, 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.

28.2.2 In attempting to resolve the dispute in accordance with the provisions of this Clause 28.2.3, 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.

28.2.3 Any dispute which has not been resolved by the representatives contemplated in Clause 28.2.1.2 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 and may be referred to Arbitration in accordance with Clause 28.3 within five (5) days of such a failure.

28.3 Arbitration

- 28.3.1 Any Party ("the claimant") may demand by written notice given to the other Party ("respondent") that a dispute be referred to arbitration.
- 28.3.2 The arbitration will be held and will be completed as soon as possible:
- 28.3.2.1 governed by the provisions of the Arbitration Act, 1965;
- 28.3.2.2 in accordance with the provisions of the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("AFSA");
- 28.3.2.3 in Sandton, Johannesburg, in the English language; and
- 28.3.2.4 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.
- 28.3.3 The arbitrator shall be one who is acceptable to both claimant and respondent and, if the matter in dispute is, or matters are, principally:
- 28.3.3.1 a legal or deemed legal matter in terms of Clause 28.4.4, a practising attorney or advocate of at least 15 years' standing;
- 28.3.3.2 an accounting matter, a practising chartered accountant of at least 15 years standing; or
- 28.3.3.3 any other matter, any independent person.
- 28.3.4 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.
- 28.3.5 Should the claimant and respondent fail to agree on an arbitrator within 14 days after the giving of notice in terms of Clause 28.2.3, 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 28.3.2.1 to 28.3.2.3, 28.3.3 and 28.3.5. 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.

28.3.6 Any dispute submitted to and decided by arbitration in terms of this clause 28.3 shall:

28.3.6.1 be determined by a single arbitrator to be agreed by the Parties within seven (7) days; or

28.3.6.2 otherwise, in the event the Parties do not agree as envisaged in Clause 28.3.6.1 above, then the President of Law Society of the Northern Provinces shall be required to nominate such an arbitrator,

who will be suitably qualified professionals as envisaged in clause 28.3.2 above ("the arbitrator").

DRAFT

- 28.3.7 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.
- 28.3.8 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.
- 28.3.9 Notwithstanding the provisions of this clause 28.3, 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.

28.4 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.

29. EFFECT OF EXPIRY OR TERMINATION

- 29.1 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):
- 29.1.1 this PPP Agreement (other than this Clause 29 and Clauses 30, 33, 34, 35, 36,

38 and 39 shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

29.1.2 such rights as the Private Party may have over the Restaurant Facility, the Project Assets and all other immovable property thereon shall terminate;

29.1.3 the Private Party shall deliver all documentation relating to the Restaurant Facility to SANParks.

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

29.2.1 enter and take immediate control of the Restaurant Facility; or

29.2.2 select and substitute a new entity to take over the operation of the Restaurant Facility.

29.3 **Payment Procedure**

29.3.1 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.

29.3.2 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 29.3.3. Interest which has accrued on an amount due under this PPP Agreement shall be paid on the same date as payment of such amount.

29.3.3 For the purposes of Clause 29.3.2, 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.

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

29.4 **Other Rights and Remedies**

29.4.1 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.

29.5 **Calculations**

29.5.1 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.

29.5.2 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.

30. **EXIT PROVISIONS**

30.1 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:

30.1.1 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;

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

- 30.1.3 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 2.1.29 and Clauses 2.1.9 respectively;
- 30.1.4 to commit available resources to effect the transition;
- 30.1.5 for the purpose of this Clause 30, 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;
- 30.1.6 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;
- 30.1.7 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 2.1.9;
- 30.1.8 to work with SANParks and/or the new Private Party for a smooth handover of the Retail Business;
- 30.1.9 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 30, and
- 30.1.10 in the event that the Parties shall fail to come to an agreement in respect of any of the provisions of this Clause 30, the failure of the Parties shall be deemed to be a dispute, and shall be dealt with in accordance with Clause 28.

31. 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.

32. CESSION, TRANSFER AND SUBSTITUTED ENTITY

32.1 Transfer by the Private Party

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

32.1.1 this PPP Agreement or any Associated Agreement; or

32.1.2 any of its rights, interests or obligations thereunder;

save, in each case, to the extent required for the financing of the operation of the Restaurant Facility as envisaged in the Loan Agreements, and in terms of the provisions of Clause 32.2.

32.2 Subject to the provisions of Clause 32.1, the Private Party may either sub-let, cede, assign or transfer the operation of the whole or a part of the Restaurant Facility, provided that:

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

32.2.2 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;

32.2.3 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.

32.3 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 or franchisee of the Private Party, SANParks shall be entitled to take the necessary action and directly intervene in the operations of the relevant Restaurant Facility 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 or franchisee of the breach, default or transgression and its intention to take the necessary action and directly intervene in the operations of the Restaurant Facility.

32.4 Substitute Entity

32.4.1 Upon the occurrence of an event in Clause 24 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-

32.4.1.1 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;

32.4.1.2 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

32.4.1.3 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.

32.4.2 In the event of SANParks appointing a Substitute Entity pursuant to this Clause 32.4, the provisions of Clause 18, shall apply, *mutatis mutandis*.

32.4.3 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 32.4 (including, without limitation, any relevant increased administrative expenses).

32.4.4 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.

32.5 **Disposal of Shares**

32.5.1 SANParks will, notwithstanding the provisions of Clause 32, 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:

32.5.1.1 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;

32.5.1.2 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.

- 32.5.2 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.

33. INTELLECTUAL PROPERTY

- 33.1 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.
- 33.2 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' Restaurant Facility.
- 33.3 In order to establish and maintain high standards of style, quality and proprietary associated with the Protected Area, in the event the Private Party desires to use SANParks' trademarks or logos which relate to the Protected Area 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 sample, the Private Party shall not depart therefrom in any material respect without SANParks' further written approval.
- 33.4 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 withdrawn approval.

33.5 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.

33.6 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.

33.7 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:

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

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

34. **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.

35. **ENTIRE AGREEMENT**

35.1 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.

35.2 Each of the Parties acknowledges that:

35.2.1 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

35.2.2 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.

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

36. VARIATION, CANCELLATION AND WAIVER

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

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

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

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

37. LIMITATIONS ON PRIVATE PARTY ENCUMBRANCES

The Private Party may not cede, assign, pledge, hypothecate or otherwise encumber its assets and rights in and to this PPP Agreement, either in whole or in part, without prior written consent of SANParks, which consent shall not be unreasonably withheld. The Private Party may not cede, assign, pledge, hypothecate or otherwise encumber the rights and assets of SANParks.

38. GOVERNING LAW AND JURISDICTION

- 38.1 This PPP Agreement is to be governed by and construed in accordance with the laws of the Republic of South Africa.
- 38.2 Subject to Clause 28, each Party agrees that the High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with the Project and this PPP Agreement, and irrevocably submits to the jurisdiction of the High Court of South Africa.

39. STIPULATIONS FOR THE BENEFIT OF THE LENDERS

The Parties agree that the provisions of this PPP Agreement that refer to the Lenders comprise stipulations for the benefit of the Lenders and the Lenders may at any time by written notice accept such stipulations in their favour provided that they accept the obligations imposed upon them in terms of this PPP Agreement and provides the Parties with their address for notices. Upon receipt of acceptance by the Lenders of the rights and obligations imposed upon them in this PPP Agreement, the Lenders shall be bound by the provisions of this PPP Agreement that relate to them. The Lenders' consent shall be required in respect of any variation or amendment to any provision of this PPP Agreement that directly confers rights and/or imposes obligations on the Lenders or that reduces the Project Term and such consent may not to be unreasonably withheld.

40. NOTICES

40.1 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.

40.2 The addresses for Notices are as follows:

SANParks:

Marked for the attention of the CEO:

c/o Legal Services

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5000

Facsimile: (012) 343-0155

Private Party:

Marked for the attention of the Directors:

Telephone:

Facsimile:

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

40.3.1 on the same day, if delivered by hand;

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

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

SIGNED AT ON THE 2012.

For and on behalf of

SOUTH AFRICAN NATIONAL PARKS

who warrants his authority hereto

SIGNED AT ON THE 2012.

For and on behalf of

PRIVATE PARTY

who warrants his authority hereto

DRAFT

41. SCHEDULE 1 - DESCRIPTION OF THE RESTAURANT FACILITY AND RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE FACILITY

The Restaurant Facility will include all the facilities and infrastructure within the designated 'exclusive use' area in respect of each of the Buildings shown on the attached site maps attached as Schedule 2.

41.1 Tsitsikamma Restaurant

The following restaurant facilities are available: Wooden building with a deck, outside storage rooms, offices and ablution block.

Size of the buildings:

Description of the area Restaurant	Measurements M ²
Old deck	138
Dining room	127.5
Reception	65.5
Coffee station	7.0
Kitchen area	95
Cool Room	8
Freezer room	8
Cool Room (container)	8
Liquor store	33
Dry store	22.5
Office kitchen	10
Offices (top)	23.5
Compressor room	23.5
Guest store	8
Staff room	25
Laundry room	5.5
Sharks deck	88
Deck ablutions	57
New Deck	236
Total Area	989

The area of operation is the area indicated on plans as well as the reception area behind the counter as well as the counter itself will be split into approximately a 2/3

to 1/3 configuration with the 1/3 portion being allocated as dedicated area to the restaurant operator. Two upstairs offices accessible by the staircase from the Restaurant are included.

The area in front of the reception desk up to the partition and to the single entry/exit door. This will be a communal area, but the operator will be allowed to operate a type of Coffee Shop operation in line with the consent and approval given by the Rest Camp Manager. This excludes the area directly inside the sliding doors being the entrance to the complex and to the shop.

Grassed area to the east and alongside the Restaurant as well as the grassed embankment and lower terrace are for communal/visitor use. SANParks will maintain this terrain. The operator is to be responsible to ensure that this area is kept clean and tidy at all times.

Stairs to / from Sharks Den will be kept clean and tidy by the operator. The toilets on the deck are to be serviced by the operator.

41.2 **Private Party Responsibility**

41.2.1 The Private Party shall be responsible for the maintenance and renovation of all finishes and fittings of the interior of the building including electrical light fittings, sanitary ware, ironmongery, tiling, plastering, and painting. It includes but not limited to the following:

41.2.1.1 internal electrical (DB plus contents and all internal electrical works);

41.2.1.2 internal wall finishes (plastering, painting, tiling, cladding);

41.2.1.3 internal floor finishes (screed, tiling, tinted granos and carpets);

41.2.1.4 sanitary fittings where these falls within the footprint area (basins, sinks, toilets, urinals);

41.2.1.5 internal plumbing (all internal piping, valves and taps);

41.2.1.6 internal waste drainage system (all internal piping up to and including the first fat trap or gulley situated on the outside of the building);

41.2.1.7 air conditioning; and

41.2.1.8 geysers and boilers.

41.2.2 The Private Party shall ensure that the electrical supply and installations comply with the required statutory standards (Registered electrician to issue a certificate of competence).

41.2.3 The Private Party shall be responsible for all kitchen equipment, including the walk-in cool rooms and freezers with their refrigeration equipment.

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

41.3 **SANParks Responsibility**

41.3.1 SANParks shall be responsible for the maintenance and renovation of the exterior of the building structure, comprising of the roof structure, roof finishes and other exterior finishes which includes the following:

- 41.3.1.1 foundations (wall foundations and bases);
- 41.3.1.2 superstructure (walls, columns and beams);
- 41.3.1.3 roof structure (roof timbers, trusses, and members);
- 41.3.1.4 floor construction (floor slabs and surface beds);
- 41.3.1.5 external wall finishes (plastering, tiling, and painting);
- 41.3.1.6 external roof finishes (thatching, roof tiles and roof sheeting);
- 41.3.1.7 external drainage (from after the fat trap or gulley);
- 41.3.1.8 external plumbing (up to the last shut off valve); and
- 41.3.1.9 external electrical system (supply up to Distribution Board excluding Distribution Board contents).

**42. SCHEDULE 2 – SITE DRAWINGS OF PROTECTED AREA RESTAURANT FACILITY
AND PRIVATE PARTY DESIGN PLAN**

42.1 Site Drawings

DRAFT

42.2 **Private Party Design Plan**

DRAFT

43. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS

43.1 Promotion and conduct of business

43.1.1 In the conduct of the Restaurant business the Private Party shall actively promote the Restaurant Facility and use its best endeavours to further the mutual business interests of SANParks and the Private Party and, without limiting the generality of the foregoing, shall provide and promote the goods and/or services required of the Restaurant business as specified herein.

43.2 Standards of Restaurant Facility

43.2.1 In the conduct of the Restaurant business the Private Party shall at all times maintain the Restaurant Facility and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers.

43.2.2 SANParks has compiled Food and Beverage Requirements that should be adhered to by the Private Party. The said requirements are outlined in Schedule 16. SANParks will require the Private Party to score a minimum of seventy percent (70%). In order to achieve a score of 70%, the Private Party should score seven (7) or above on items listed in the Schedule with the requirement that the Private Party/Franchisee should not score less 7 on more than two (2) items and no items to score below four (4). Private Party is required to score above six (6) on all service items as listed in the Schedule.

43.3 Branding

43.3.1 SANParks would like to attract an established and proven restaurant brand to manage and operate the Restaurant Facility in the Protected Area

43.3.2 Private Party's brand design must take cognisance of the Protected Area's ambience. Preferably, the brand should be internally focused rather external and products sold by the Franchisee should be clear on what brand it is.

43.4 Service Provision

43.4.1 In the conduct of the Restaurant business, the Private Party shall keep the Restaurant Facility open for business in accordance with the reasonable

requests of the Park and the requirements of any relevant statute, bye-law or regulation relating to the Restaurant business.

43.4.2 The Private Party will be required to, at a minimum, have in their menu ninety percent (90%) of food items similar to the menu of their Franchises outside the Protected Area. The Private Party will be permitted to re-define the service offering provided they comply with the minimum service provision and subject to approval of SANParks.

43.4.3 The Private Party will be required to have an extensive range of hot and cold foods, serving three meals per day (breakfast, lunch and dinner) and have various courses including starters, mains and desert as part of dinner menu.

43.4.4 The Private Party should focus on a la carte menu which includes fish as well as red and white meat options, pastry/bread selection, good coffee and tea selection, extensive wine list with good selection per cultivar, selection of dietary requirements, i.e. halaal and vegetarian as well as a kiddies menu.

43.4.5 The Private Party should have well established operational procedures and processes focusing on quality presentation of dishes, consistent delivery of the product, options inclusive of portion size variation, high level of service and friendliness, food preparation time medium to long (not a fast food outlet but rather focus on quality food), waiter menu knowledge high;

43.4.6 The Private Party will be required to have seating available at all Quick Service facilities.

43.5 **Product Offering**

43.5.1 The Private Party is required to plan a design around the unique ambience, facilities, and guest profiles of the camp.

43.5.2 The Design Plan submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.

43.5.3 The Private Party must introduce price differentiation, providing pricing options to accommodate the varied consumer requirements (this implies that price options are available at each outlet to cater for the guests with varying affordability).

43.5.4 The Private Party will be obliged to adapt their menu on request by SANParks

to reflect any changes that may have been identified through research, or that is otherwise offensive or undesirable. For the purposes of this Clause 43.5.4 as well as any other additional Clauses in this PPP Agreement that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Director: Tourism.

43.5.5 The Private Party is obliged to provide universal access at the Restaurant Facility.

43.6 **Uniforms**

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

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

43.6.3 Notwithstanding the generality of the foregoing Clause 43.6.2, any member of staff serving guests in the Restaurant Facility will not be permitted to wear open shoes or sandals.

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

43.7 **Benchmark Pricing and Control**

43.7.1 SANParks will take the necessary steps to ensure that the Private Party does not abuse the monopoly status of the Restaurant Facility. The Private Party will not be permitted to charge prices which are significantly higher than charged in the same Franchises outside the Protected Area. A slight mark-up will be allowed to cater for cost not incurred outside. Specials offered outside the Protected Area should be offered inside as well. SANParks will have the right to do conduct periodic checks and otherwise monitor the pricing of the food offered by the Private Party.

43.7.2 Failure to charge market-related prices will result in termination of this PPP Agreement.

43.8 **Loyalty Card Programme**

43.8.1 The Private Party has an option to participate at any time during the period of

this PPP Agreement in the SANParks' Loyalty Card Programme.

43.9 Customer Survey Programme

A Customer Survey Programme including a Mystery Guest Programme could be implemented by SANParks for all accommodation facilities and tourism activities provided by SANParks. The Private Party will be required to collaborate with SANParks in the implementation of such Programmes and/or other customer surveys in the Restaurant Facility.

43.10 Customer Feedback System

Private Party is required to achieve an average score of seventy percent (70%) for dining experience on the SANParks' Customer Satisfaction Survey System. The Survey shall request customers' feedback on at least the following, staff friendliness and service, food presentation, quality of food and value for money.

43.11 Restaurant Facility Staff and Staff Transport

In the conduct of the Restaurant business the Private Party shall be solely responsible for all staffing requirements at the Restaurant Facility. The Private Party is responsible for the transport of their employees from the workplace to the living quarters, particularly after-hours transport where living quarters are logistically distanced from the Restaurant Facility. The Private Party is responsible for the transport of their staff to the required medical facilities. In the event that SANParks' transport can be utilised, the related cost of transport will be for the Private Party's account.

43.12 Staff Housing

43.12.1 The Private Party will be obliged to conclude separate Housing Rental Agreements with SANParks for the employees that currently reside in SANParks' housing. The housing availability and rentals are detailed in Schedule 17; however, the rental rates are subject to revision from time to time. The Private Party will be directly accountable to settle all housing rentals with SANParks within 7 (seven) days following the end of each calendar month. SANParks will not be accountable for the recovery thereof from individual employees of the Private Party.

43.11.2 In the event that SANParks is unable to provide the necessary building/s for staff housing or accommodation as envisaged by Clause 43.11.1, or such a building is in such a state that it needs repairs and/or renovations and SANParks is not able to undertake such repairs or renovations immediately, then the Private Party has a right to build or repair and/or renovate such a building/s subject to Private Party negotiating and agreeing on terms with SANParks for building, or renovating, and/or repairing such building/s.

43.13 **Advertising**

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

43.14 **Maintain stocks**

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

43.15 **Supplier Accounts**

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

43.16 **Utility Charges**

The Private Party is responsible for all utility charges i.e. electricity, 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.

43.16.1 Telephone accounts - In the conduct of the Restaurant business the Private Party shall procure the maintenance of sufficient telephone services within the Restaurant Facility. The Private Party shall be responsible for the payment of all telephone accounts at the Restaurant Facility.

43.16.2 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.

43.16.3 Water – A water meter is installed at the Restaurant Facility to monitor the water usage by the Private Party. The related cost will be for the account of the Private Party.

43.17 **Meetings**

To provide for a forum where the parties can resolve disputes and agree operational issues, the Private Party is obliged to facilitate the participation of the individual Restaurant Facility Management in daily Camp Management meetings held by SANParks, unless agreed otherwise. Minutes of all such meetings will be circulated to both parties.

43.18 **Procedure Manuals**

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

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

43.19 **Quality Audit**

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

43.20 **Games**

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

DRAFT

44. SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION

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

44.1 Private Party Business and Operational Plan

DRAFT

44.2 **Private Party Risk Matrix**

DRAFT

44.3 **Private Party Environmental Proposal**

DRAFT

45. SCHEDULE 5 – BEE OBLIGATIONS

In this Schedule,

- 45.1 any term, defined in the Broad-based Black Economic Empowerment Act, No. 53 of 2003 ("**BEE Act**"), or in terms of any Codes of Good Practice issued in terms of section 9 of the BEE Act, when used in the scorecard below shall have the same meaning as there defined, save where such meaning may be in conflict with the provisions of the Tourism BEE Charter and Scorecard, in which case the provisions of the Tourism BEE Charter and Scorecard will prevail.
- 45.2 The following terms, as used herein, shall have the following meanings:
- 45.2.1 "**Black Empowered SMME**" means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has between 25 percent and 50 per cent direct ownership and management by Black People;
- 45.2.2 "**Black Owned SMME**" means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which has more than 50 per cent direct ownership and management by black people;
- 45.2.3 "**Black People**" means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent or who became citizens of the Republic of South Africa by naturalisation –
- (a) Before 27 April 1994; or
 - (b) On or after 27 April 1994 and who have been entitled to acquire citizenship by naturalisation prior to that date but were precluded from doing so by Apartheid policies;";
- 45.2.4 "**Black Person**" means any such citizen;
- 45.2.5 "**Black Women**" means female Black People;
- 45.2.6 "**Board Representation**" refers to membership by Black People of the duly constituted board of directors (or equivalent structure) of an enterprise and is calculated upon the basis of the percentage that black directors hold to the total number of directors of that enterprise;
- 45.2.7 "**Community Trust**" means a trust registered in terms of the Trust Property

Control Act;

45.2.8 **"Community Trust Ownership"** means Equity in the Private Party which must, as a mandatory provision of the Project, be acquired by a Community Trust;

45.2.9 **"Direct Ownership"** means ownership of an equity interest in an enterprise where such equity interest comprises:

45.2.9.1 the right to participate in the voting rights in that enterprise;

45.2.9.2 the right to receive unencumbered economic interest (such as dividends) flowing to the shareholders of that enterprise; and

45.2.9.3 Broad-based BEE schemes, employee share option schemes (ESOPs) and other employee share schemes, where the beneficiaries have the unconditional right to receive economic benefits and the capacity to elect and remove trustees, are specifically recognised as direct ownership. The flow-through principle will be applied to determine the level of black ownership represented by the employee share option scheme;

45.2.9.4 Direct ownership is measured as being the lower of the level of black participation in voting rights and black participation in the unencumbered economic interest of an enterprise, measured using the flow-through principle;

45.2.10 **"Discretionary Procurement"** includes all amounts expended by an enterprise subject to measurement. Discretionary procurement excludes:

45.2.10.1 employment related expenditure;

45.2.10.2 procurement from public utilities and natural monopolies; and

45.2.10.3 facilitated procurement by travel agencies or other travel distribution providers where the choice of service providers remains with the consumer;

45.2.11 **"Employees with no prior working experience"** refers to those employees who have no formal employment experience prior to joining an enterprise in tourism. Formal employment does not include learnerships, traineeships or short-term and temporary assignments;

45.2.12 **"Enterprise Development"** may take a variety of forms, including:

45.2.12.1 direct investment in Black Owned and Black Empowered SMMEs;

- 45.2.12.2 joint ventures with Black Owned and Black Empowered SMMEs that result in "substantive" skills transfer;
- 45.2.12.3 support and funding for the grading of emerging tourism companies, as well as providing mentorship, business relationships and linkages which, in turn, provide business opportunities to these enterprises; and
- 45.2.12.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;
- 45.2.13 "**Executive Representation**" refers to the participation by Black People in the senior non-board level management of an enterprise and more specifically, targets management levels which influence the strategic and operational management of an enterprise. Participation is measured upon the basis of the percentage that black executive managers hold to the total number of executive managers of that enterprise;
- 45.2.14 "**Learnership**" refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;
- 45.2.15 "**Local**" means the geographic area specified by SANParks in respect of the Project, being either within 50 km kilometre radius of the Restaurant Facility or within a 30 km reach of the boundary of the Protected Area fence;
- 45.2.16 "**Management**" refers to all senior and middle management who do not form part of the executive management of the board of directors of the Private Party;
- 45.2.17 "**Ownership**" refers to equity participation and the ability to exercise rights and obligations, including voting rights and the rights to the flow of economic benefits, which accrue under such ownership;
- 45.2.18 "**Preferential Procurement**" refers to all spend with BEE compliant suppliers, to be calculated as follows:
- 45.2.18.1 one Rand (R1) for every one Rand (R1) spent with Excellent BEE Contributors, Good BEE Contributors, BEE Compliant SMMEs and Black Women Owned BEE Contributors; and
- 45.2.18.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory BEE Contributors;

all of which terms are defined as follows:

- 45.2.18.3 an Excellent BEE Contributor means a company which has scored in excess of 90 percent on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 45.2.18.4 a Good BEE Contributor means a company which has scored in excess of 65 percent, but less than 90 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 45.2.18.5 a Satisfactory BEE Contributor means a company which has scored in excess of 40 percent but less than 65 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 45.2.18.6 a Limited BEE Contributor means a company which has scored less than 40 percent, on a BEE scorecard under a scorecard governing that company's sector or a BEE scorecard issued in the Codes of Good Practice and under the BEE Act;
- 45.2.18.7 a BEE Compliant SMME means a small, medium or micro enterprise (with a turnover of up to R10 million per annum) which is either an Excellent, Good or Satisfactory Contributor to BEE; and
- 45.2.18.8 a Black Women Owned BEE Contributor is a company which is more than 30 percent owned by black women and which is also an Excellent, Good or Satisfactory contributor to BEE;
- 45.2.19 "**Skills Development Spend**" refers to investment in skills development initiatives through both external training providers and the quantifiable costs of accredited internal training programmes. Internal training spend does not include the opportunity cost of employees attending the skills development initiatives;
- 45.2.20 "**Supervisory**" refers to the junior management and professional staff;
- 45.2.21 "**TOMSA (Tourism Marketing South Africa) Levy Collectors**" refers to tourism enterprises who are registered to raise funds on behalf of the trust;
- 45.2.22 "**Total Employee Time**" refers to the total working hours calculated as the product of the total number of employees and their standard working hours;
- 45.2.23 "**Total Staff**" refers to all employees and/or contractors, excluding those

accounted for under Strategic Representation, from whom the tourism enterprise is responsible for the collection and payment of applicable employee tax. The intention of the scorecard below is to include temporary staff in the definition of total staff, since tourism is an industry that relies heavily on temporary, casual and seasonal staff.

45.3 2014 Milestones and Weightings

45.3.1 The Private Party shall from Effective Date to 31 December 2014 ("First Period") comply with the commitments and undertakings set out in the following table.

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
	A	B		C
Ownership	20%	13%	Percentage share of economic benefits as reflected by direct shareholding by black people	20%
		7.0%	Community trust ownership	10%
Strategic representation	12%	2.5%	Black people as a percentage of board of directors	50%
		2.5%	Black women as a percentage of board of directors	25%
		2.0%	Local people as a percentage of board of directors	20%
		2.5%	Black people as a percentage of executive management	50%
		2.5%	Black women as a percentage of executive management	25%
Employment equity	12%	1.0%	Black people as a percentage of management	50%
		2.0%	Black women as a percentage of management	25%
		1.0%	Local people as a percentage of management	25%
		1.0%	Black people as a percentage of supervisors, junior and skilled employees	65%
		2.0%	Black women as a percentage of supervisors, junior and skilled employees	35%
		1.0%	Local people as a percentage of supervisors, junior and skilled employees	45%

Indicator	2014 Weightings		2014 MILESTONES	
	Weighting	Sub-weighting	Indicators to measure BEE achievement	2014 Milestone
				Target
				C
A	B			
		1.0%	Black people as a percentage of total staff	75%
		1.0%	Black women as a percentage of total staff	40%
		2.0%	Local people as a percentage of total staff	60%
Skills development	18%	4.5%	Percentage of payroll spend on skills development (including skills development levy) on all accredited training	3%
		4.5%	Percentage of skills development spend on all black employees	75%
		4.5%	Number of learnerships as a percentage of total employees	2%
		4.5%	Number of black learners as a percentage of total learners	80%
Preferential procurement	18%	12%	Spend on BEE compliant companies as a percentage of total procurement spend	50%
		6%	Spend on local BEE compliant companies as a percentage of total procurement spend	25%
Enterprise development	10%	5.0%	The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time	1%
		5%	Enhanced revenue and/or cost savings and/or twining initiatives facilitated for black owned SMMEs, as a percentage of revenue.	1%
Social development and industry specific	10%	6.0%	Percentage CSI spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourist market (or percentage management time over total employee time)	1%
		1.0%	Percentage of new recruits with no prior work experience	10%

		2014 Weightings		2014 MILESTONES	
Indicator			Indicators to measure BEE achievement	2014 Milestone	
	Weighting	Sub-weighting		Target	
	A	B		C	
		3.0%	Status of TOMSA levy collector	Yes	
Total points	BEE	100	100		

45.4 Milestones and Targets Post-2014

45.4.1 The BEE Milestones and Targets for the duration of the PPP Term and in particular for the period from 1 January 2015 to the end of the PPP Term shall be determined by the restructured editions of the Tourism Charter and Scorecard as gazetted from time to time.

45.4.2 The Tourism BEE Charter was developed to be in line with the Department of Trade and Industry's first phase of the Codes of Good Practice. Once the Codes of Good Practice has been gazetted, the Tourism Charter will be guided of how best it can be aligned to the final draft Codes of Good Practice.

45.4.3 The milestones and targets of the Tourism BEE Charter and Scorecard could thus be amended from time to time and the provisions of this Section and PPP Agreement would be modified accordingly. The Private Party would receive notification of such amendments and be provided with a satisfactory remedy period to address the amendments.

45.5 External BEE Verification

45.5.1 The Private Party shall appoint a reputable external verification agency to determine the Private Party's BEE status and a copy of such an independent verification certificate shall be provided to SANParks within 15 (fifteen days) after the end of each Project Year.

45.5.2 The BEE Verification Certificate will categorise the Private Party according to the Private Party's contribution to BEE.

45.5.3 The Private Party shall be obliged in terms of this PPP Agreement to, at a

minimum, comply with the category of a Good BEE Contributor for each Project Year.

- 45.5.4 In the event of default by the Private Party to comply with the provisions of the foregoing Clauses and the 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 with immediate effect by written notice to the Private Party.

DRAFT

45.6 **Schedule 5A – Private Party’s BEE Proposal**

DRAFT

46. SCHEDULE 6 – PPP FEE**46.1 Variable PPP Fee**

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

46.1.2 The Variable PPP Fee shall be as follows:

VARIABLE PPP FEE = _____ % of GROSS REVENUE

46.2 Minimum PPP Fee

The following Minimum PPP Fees are expressed in June 2012 South African Rand, and will be adjusted throughout the Project Term of the PPP Agreement according to movement in the Consumer Price Index:

Packages	MINIMUM PPP FEE	
	Per Annum	Per Month
Tsitsikamma	October	R 55 710.00
	November	R 55 710.00
	December	R 55 710.00
	Annual Total:	R 597 100.00

46.3 **Private Party PPP Fee Offer**

DRAFT

47. SCHEDULE 7 – EMPLOYEES

Employee Number	Surname & Initials	Allocation

DRAFT

48. SCHEDULE 8 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF RESTAURANT FACILITIES WITHIN THE PROTECTED AREAS

48.1 Introduction

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

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

48.2 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 a Restaurant Facility 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 Restaurant Facility. 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 Restaurant Facility that is 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 DEAT, the "relevant environmental authority" as defined in the EIA Guideline documents.¹

Private Party proposing significant expansions or structural modifications should anticipate that an EIA will be required, and should factor the cost of carrying out the EIA into their financial projections.

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

48.3 **Guidelines Based on SANParks Internal Requirements**

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

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

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

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

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

amendment. Private Parties will be expected to comply at all times with the provisions of the Environmental Guidelines as they may change from time to time.

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

48.4 **Precautionary Principle**

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

48.5 **Code of Conduct**

48.5.1 The Private Party undertakes to induct all staff employed on the Parks Code of Conduct if and where such a code exist (where a code does not exist the general conditions as contained in the Code of Conduct of the Kruger National Park will apply).

48.5.2 The Private Party confirms that the Code of Conduct is understood and will be complied with.

48.6 **Environmental Impact**

48.6.1 The Private Party undertakes to bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Restaurant and or Retail Facility and the Protected Area.

48.6.2 The operator needs to subscribe to the South African Seafood Initiative (SASSI) and only sell fish in the shops and restaurants with green status or SASSI certified.

48.7 **Water Management and Guidelines**

48.7.1 The Private Party undertakes to implement water conservation measures in the design and implementation of their operations;

48.7.2 The Private Party undertakes to:

48.7.2.1 Monitor the use of water;

48.7.2.2 Educate staff via on-site notices on the use of water;

48.7.2.3 Set water usage targets (monitored weekly/monthly) and manage these targets;

48.7.2.4 Aim to avoid accidental loss through effective maintenance, installing quality storage and reticulation systems and implementing leak detection systems

48.8 **Chemical Substances**

48.8.1 The Private Party undertakes to not sell or use (including staff of the Private Party) any of the chemicals that are banned from use in National Parks (as determined by any Environmental Manager in National Parks);

48.8.2 The Private Party acknowledges that all chemicals listed as “Prohibited” may not be brought into, sold or used in any National Park. The products include items such as Rattex, Finale, Dyant, Doom and Target (an extensive list is attached herein as Schedule 19);

48.8.3 The Private Party undertakes to ensure safe storage and disposal of chemicals and their containers;

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

48.8.5 The Private Party undertakes to use environmentally friendly and biodegradable detergents and cleaning agents;

48.9 **Waste Management**

48.9.1 **Liquid Wastes**

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

48.9.1.2 The Private Party undertakes to manage liquid waste in accordance with national and local legislation requirements;

48.9.1.3 The Private Party undertakes to design management techniques to be both economically viable and environmentally sustainable;

- 48.9.1.4 The Private Party undertakes to implement waste procedures that optimize the principles of waste reduction and waste recycling and ensures that the end product do not pollute the environment;
- 48.9.1.5 The Private Party undertakes to install a grease tap for:
- 48.9.1.5.1 Pot and Rinse Sinks attached to Dish Washers;
- 48.9.1.5.2 Fixtures or drains through which significant amount of fats, oils or grease may be introduced;
- 48.9.1.5.3 Soup Kettles or similar devices;
- 48.9.1.5.4 All sinks that are used to clean any dishes, pots, pans or cooking utensils.
- 48.9.1.6 The Private Party undertakes to implement processes and procedures which stipulates the following:
- 48.9.1.6.1 Kitchen staff should inspect grease traps and interceptors at least monthly and maintain a log sheet of each trap inspection detailing condition of the trap and any maintenance activity;
- 48.9.1.6.2 that grease traps are cleaned when 25% of the liquid level of the trap is grease or oil; and
- 48.9.1.6.3 That waste recovered from the grease traps be removed from the park and disposed of at an authorized facility.
- 48.9.2 Solid Wastes**
- 48.9.2.1 The Private Party undertakes to manage all waste that are generated in such a way that direct and indirect impacts are kept to a minimum.
- 48.9.2.2 The Private Party undertakes to achieve Solid Waste Management Best Practices which implies the following:
- 48.9.2.2.1 Manage solid waste from source to disposal;
- 48.9.2.2.2 Strive to eliminate non-recyclable or hazardous packaging or containers at the procurement phase;
- 48.9.3 The Private Party undertakes to include the following policies in the waste management:

- 48.9.3.1 Green Procurement Policy: This policy defines the procedures that the Private Party will implement to ensure that all produce, containers and packaging comes from suppliers that under-write environmental principles, and that waste be recyclable as far as possible;
- 48.9.3.2 Hazardous Waste Policy: The Hazardous Waste Policy defines procedures that the Private Party will implement to manage any hazardous waste, to ensure that it is firstly minimized, but also that it is stored and discarded in a safe and legal way.
- 48.9.4 The Private Party will follow the following guidelines to minimize the effect of the solid waste on the ecosystem:
- 48.9.4.1 Minimize solid waste production at all sources, by striving for the minimization of all waste
- 48.9.4.2 Maximize the recycling of solid waste. Glass, tin, paper and cardboard must be sorted on site for recycling, while actual recycling will take place off site at the approved camp waste disposal site.
- 48.9.4.3 All waste must be removed to the respective approved camp waste disposal site and incinerator for disposal and recycling. The dumping and disposal of waste other than at the approved waste site is strictly prohibited and failure to comply may result in a penalty.
- 48.9.4.4 Waste storage and sorting areas must be properly constructed and maintained. Back-of-house waste cages and waste storage areas must remain clean and secure from problem animals.
- 48.9.4.5 Waste storage areas must remain visually hidden from visitors to the park.
- 48.9.4.6 Packaging and containers given to visitors to the park must be environmentally friendly, bio-degradable and recyclable.
- 48.9.4.7 The distribution of plastic bags to visitors is strictly prohibited and only brown paper bags are allowed to be given for the purpose of carrying items purchased.
- 48.9.4.8 Ensure that the all areas are kept free of litter by:
- 48.9.4.8.1 Promoting an ethic amongst guests and staff alike.
- 48.9.4.8.2 Soliciting the co-operation of all staff to pick up litter wherever they find it.

48.10 Pest Control

- 48.10.1 The Private Party undertakes to comply with the integrated pest management plan as outlined in Schedule 20.
- 48.10.2 Where and if required the Private Party undertakes to control bats as outlined in Schedule 21.
- 48.10.3 The Private Party undertakes to make use of preferred pest control chemicals as outlined in Schedule 22.

48.11 Visual Impacts

- 48.11.1 Describe building materials to be used (where applicable) for all structures and obtain approval from SANParks where appropriate;
- 48.11.2 Describe efforts to minimise the visual impacts of the development, including lighting;
- 48.11.3 Provide locations of lightning arrestors and radio masts (where applicable) and how the visual impacts of these will be minimised;
- 48.11.4 Specifically outline how brand signage will be mitigated to complement the environment; and
- 48.11.5 The Private Party undertakes to implement mitigation measures in order to reduce the visual impact in the park.

48.12 Monitoring

- 48.12.1 The Private Party agrees to cooperate with SANParks in compiling a monitoring checklist that encompasses all environmental conditions. The checklist would be used for auditing purposes and would be conducted once every 4 months; and
- 48.12.2 The Private Party agrees that SANParks will monitor, evaluate and score the operations (based on the line items in the checklist) and that a score of less than 85% for three (3) consecutive audits would imply material breach of the PPP Agreement

DRAFT

49. SCHEDULE 9 – PRIVATE PARTY PREQUALIFICATION RESOLUTION

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

49.1 Private Party Prequalification Resolution

DRAFT

50. SCHEDULE 10 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS

DRAFT

51. SCHEDULE 11 – INSURANCE

DRAFT

52. **SCHEDULE 12 – PERFORMANCE BOND**

PART A – FORM OF PERFORMANCE BOND

To be provided to South African National Parks having its principal place of business at [](hereinafter called “**SANParks**”)

Whereas:

1. SANParks has awarded a PPP Agreement for the design, financing, operation, management and maintenance of the [] Restaurant Facility in the Tsitsikamma Section, Garden Route National Park under a PPP Agreement (hereinafter called the “**PPP Agreement**”) to [] (hereinafter called the “**Private Party**”); and
2. The Private Party is obliged by the terms of the PPP Agreement to provide this Bond to SANParks to secure the performance of its obligations under the PPP Agreement.

We, the undersigned

_____ and _____
(Name) (Name)

acting herein as

_____ and _____
(Position) (Position)

of

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

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

- 1 The Bank shall pay amounts not exceeding R _____ (_____ Rand) in aggregate (the “**Maximum Amount**”) without delay, on receipt by the Bank of the first written demand of SANParks that the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to **SANParks** upon receipt of a certificate in the form attached signed by an authorised representative of SANParks certifying that SANParks is entitled to draw on this Bond pursuant to the provisions of the PPP Agreement (the “**Certificate**”). SANParks may make partial and/or multiple

demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.

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

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

- Telefax: _____
- The Bank: _____
- Telefax: _____
- 9.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.
- 9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.

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

SIGNED ON _____ 2012

AT _____ (Place)

SIGNATURE _____ SIGNATURE _____

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 _____ WITNESS 2 _____

DRAFT

PART B: FORM OF CERTIFICATE

To: [Name and address of Bank]

Attention:

From: South African National Parks

Address:

Dated:

Dear Sirs

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

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

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

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

Yours faithfully,

.....

for and on behalf of

South African National Parks

53. SCHEDULE 13 – CAPITAL EXPENDITURE PLAN

53.1 Introduction

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

53.1.2 Failure by the Private Party to comply with the provisions of this Schedule 13 to the PPP Agreement and the Private Party Default is not remedied before the expiry of the period referred to in the notice by the Institution; the Institution may terminate this PPP Agreement with immediate effect by written notice to the Private Party.

DRAFT

53.2 **Private Party Financing and Capital Plan**

DRAFT

54. SCHEDULE 14 – EMPLOYEE HOUSING AND RENTALS

Camp	Location	House / Unit Number	Name and surname	Size	Tariff Calc

DRAFT

55. SCHEDULE 15 – PRIVATE PARTY LOAN AGREEMENTS

DRAFT

56. SCHEDULE 16 – QUALITY ASSESSMENT CRITERIA

56.1 Restaurant Quality Assessment Criteria

56.1.1 SANParks requires an assessment tool to measure performance of the Private Party in operating and managing the Restaurant Facility. The tool will be developed for both the restaurant and fast food/take away sections of the Protected Area Restaurant Facility. The assessment will be used to inform the Private Party of current performance and will also be used to improve performance (if required). The assessment will be conducted by an independent assessor who will be appointed after consultation with the Private Party.

56.1.2 In order to objectively measure and assess the services and/or products provided by the Private Party in the restaurant section of the Restaurant Facility of the Protected Area, SANParks has compiled and developed a table as described herein below, which contains restaurant areas that will be evaluated by the appointed independent assessor as well as expected outcomes of such an assessment. Some of the areas that will be evaluated are the following:

- Exterior
- Internal Fabric
- Toilets
- Menu
- Food and Beverage
- Housekeeping
- Services and service

56.1.3 The following are guidelines of the scores per area to be used to assess and evaluate the Private Party in providing the products and/ services at the Restaurant Facility in the Protected Area:

- 10:Excellent
- 9:Very good
- 8:Good
- 7:Standard / Acceptable
- 5-6:Below Standard

- 4:Poor
- 1-2-3:Unacceptable

56.1.4 The Private Party will be expected to achieve at least the following:

- Overall score of above 70%;
- Items to score 7 or above;
- No more than 2 items to score below 7 and none items to score below 4;
and
- All service items to score above 6.

56.1.5 Should the Private Party not achieve the score as described in Clause 56.1.4 above, for two (2) consecutive assessments, Private Party Default will be implied and actions taken accordingly which could ultimately result in termination of this PPP Agreement.

DRAFT

RESTAURANT SCORE SHEET

Restaurant		
Date and meal taken:		
Name and company of assessor:		

1. Exterior	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
Guidelines						
1.1 Appearance of buildings <u>Comment:</u>		New buildings, absence of weathering, fresh well-maintained paintwork, an overall clean and “new” look. Older buildings – no unsightly staining and well-maintained paintwork. Visible outbuildings or annexes to be of a similar standard. Addition of attractive architectural features, etc	High quality maintenance of paint, stone or brickwork although a certain natural weathering may be present. All areas of paintwork to be in sound condition. Some additional external features to enhance appearance.	Windows, drains, etc in good state of repair, though not necessarily recent. Small structural defects or damage. “Plain” architectural features.	Paint areas ageing and rather weathered. Large defects, damage, cracks, etc. No evidence of recent repairs, paintwork, etc	Generally neglected buildings. Obvious structural defects or damage. Flaking paint, illegible signs, rotting wood.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>1.2 Grounds and gardens <u>Comment:</u></p>		<p>Evidence of systematic programme of maintenance (excellent standard) – well-tended formal gardens or attractive “natural” environment. Tidy pathways. Attractive appearance throughout the year. Well maintained driveway and entrance. No disorder or rubbish and no evidence of litter. Provision of garden furniture or architectural features appropriate to the nature of the guests attracted to the establishment</p>	<p>High standards of maintenance in formal gardens. Pleasant and tidy appearance throughout the year. No clutter or disorder around service areas. Good driveway. Some architectural features appropriate to the market.</p>	<p>No overgrown, tangled areas. Immediate surrounds kept tidy and well maintained. Some attempt to produce a pleasing effect with interesting design. Uncluttered access to establishment and pathways. Clear access</p>	<p>Gardens and enclosed area around the establishment are kept under control. Little attempt at interesting design. Drive may have an uneven surface. Domestic disorder kept to a minimum.</p>	<p>Neglected and overgrown appearance. Badly surfaced driveway with large pot-holes or puddles. Rubbish and clutter visible. Disorderly appearance</p>
<p>1.3 External lighting and signage (on property) <u>Comment:</u></p>		<p>Very good external security lighting. Effective and attractive lighting guiding patrons along pathways on property. Use of lighting to enhance appearance and highlight features. Good clear signage, guiding patrons to the main entrance, annexes, parking, etc.</p>	<p>Good security lighting in parking facilities and in grounds. Sufficient lighting to guide patrons to establishment and along pathways. Some attempt at attractive lighting to highlight features. Clear signage to guide patrons.</p>	<p>Some external lighting in important areas. Pathways sufficiently lit to guide patrons. Signage to guide patrons but perhaps not clear enough or insufficient.</p>	<p>Ageing and limited signage. Limited external lighting. Some security lighting. Difficult to navigate along pathways at night. Lights shining at eye level.</p>	<p>Poor or no lighting. Difficult to find to establishment, entrance and pathways. No signage.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
2. Internal Fabric		All reception rooms, bars, dining rooms and eating areas accessible to patrons will be evaluated under this section. Where different standards are present, an average score will be applied, unless there is significant difference between the highest and the lowest score, in which case the lowest score will apply.				
2.1 Decoration <u>Comment:</u>		High quality wall covering (paint, tiles, wallpaper, etc). Attention to detail. Thoughtful co-ordination of patterns, colours and textures. If the décor is “plain” then the addition of high quality pictures, objects d’art, etc. Although some “minimalist” styles require less. All work should look professional and be well executed.	High quality wall covering, but need not be in excellent condition. Slight signs of wear and tear (i.e. scratches, water splashes, finger marks, etc). Room décor may range from excellent to good.	Competent, average quality wall coverings. Some pictures in good frames. Attempt to co-ordinate patterns and colours. No jarring mismatch of colours and styles. Décor may be some years old but not obviously damaged, scratched, torn or stained.	Ageing looking décor, of average quality to begin with. Amateur application of paint or wall paper. Little attention to detail. Plain style with no adornment. Some wear and tear, stains, marks, etc.	Low-grade materials poorly executed. Uncoordinated styles and colours. Noticeable wear and tear, stains, splashes, scratches, tears, marks, etc. Few pictures, graphics, wall hangings or works of art (if any). Unsightly pipe work, exposed wiring. Signs of damp.
2.2 Furniture and furnishings <u>Comment:</u>		Excellent intrinsic quality and condition. Furniture of sound construction, attractive professional finish and detailing. Little or no sign of ageing, wear and tear or ill-use. Full, well lined curtains with	High intrinsic quality of materials may show some signs of use. Alternatively new, good (instead of excellent) quality furniture and furnishings. Some contract furniture even	Furniture which may have been “excellent” or “very good”, but through ageing, showing signs of wear and tear. Alternatively, a medium quality range of materials and construction in sound	Furniture of average quality and in well-used condition. Little co-ordination of styles, some slight damage may be apparent, but all items capable of use. Surfaces not well-	Furniture of a low quality material, poor construction, damaged, marked or scratched. Uncoordinated styles. Thin, unlined curtains, stained, worn upholstery. Inadequate

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		appropriate accessories, in working order or attractive and appropriate window coverings. High degree of comfort, well-spaced chairs of appropriate height for tables. Co-ordinated themed design. Spacious tables. Where antique furniture is used these may show signs of “distress” which does not detract from its excellence depending on the degree of deterioration.	when brand new will only be “very good”. Curtains to be full and effective in retaining heat/keeping out light. Good quality and attractive window coverings. All of high quality but not necessarily the same design though co-ordinated. Good sized tables.	and useable condition. There should be no damage, stains or fraying on furniture. No jarringly uncoordinated styles – all furniture to be of a similar standard. Window coverings showing slight wear and tear. Average quality. Tables large enough for uncluttered use. May be a mix of styles and ages, but all in good condition. Design may take precedence over comfort.	maintained. Thin, short, skimpy curtains. Some stains, marks on soft furnishings. Maybe a mix of styles, ages, designs, shapes and heights. Chairs not very comfortable. Tables close together. Wobbles in tables and or chairs.	table size – cluttered and inconvenient. Table cracked. Tables or chairs very wobbly. Cramped, uncomfortable layout
2.3 Flooring and ceiling <u>Comment:</u>		High quality fitted carpets (high percentage wool content), good thick pile and underlay. Alternatively excellent quality domestic carpeting, fit for purpose. High quality wooden or tiled flooring with high quality occasional rugs or mats. Ceilings to be of an excellent quality, no sagging or evidence of water leakage or seeping, marks or stains. All of the above should be professionally fitted, painted and in pristine condition.	High quality carpets beginning to show some signs of ageing (flattening or wearing). No stains, burns or marks, etc. Alternatively carpet with higher percentage of man-made fibre but in new condition. Wooden or tiled flooring in need of buffing but with high quality rugs. Ceiling of good quality, no sagging, and evidence of water leakage or seeping. Professionally fitted and painted.	High quality carpet with flattening in areas of most traffic but all in sound condition – some small discolouration in places. Alternatively a cheaper new carpet. Wooden or tiled floors a little scratched in places. Ceiling of average quality, competent job of application. Paintwork competently applied, although not necessarily of a professional standard.	Carpets showing considerable use – flattened spots, bleaching by windows, some thinning. Unprofessionally fitted with ripples, rough ill-fitting edges, thin or no underlay. (There should be no holes, tears, burns or other defects that render the carpet unsound). Vinyl or low quality flooring. Chipped wooden or tiled floors. Poor quality ceiling, amateurishly fitted, but no evidence	Carpets with distinct signs of wearing, visible canvas or backing fabric, patches, stains, discolouration, obvious seams. DIY fitting with gaping joints, gaps between carpet and wall. Several unmatched styles or newer carpets laid on top of damaged or worn-through older ones. Wooden floors that have aged – now in need of a new coat of varnish, with worn and stained rugs. Missing

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
					of sagging. Ceilings slightly stained paintwork of a poor standard.	tiles and obvious chips. Poor quality sagging ceilings and evidence of water seepage. Stained paintwork, old and amateurishly done.
<p>NB: In all levels there may be a high quality natural alternative to carpeting, tiles or wooden floors. In these cases the intrinsic quality and condition would be assessed, taking the style of the property into consideration (especially in relation to National Parks and product offered in National Parks).</p>						
<p>2.4 Temperature control <u>Comment:</u></p>		<p>Thermostatically controlled heating and or cooling system capable of maintaining a comfortable room temperature of between 18°C and 25°C in each separate dining or eating room (climate dependent). Appropriate to size and location of room. Appliance in excellent condition and quiet. In larger establishments an excellent score would apply for ducted or air-conditioning hidden from general view. In smaller establishments new domestic, excellent quality heating or cooling appliances are acceptable (free standing, wall or ceiling mounted – fan, heater or air-conditioner).</p>	<p>Some ageing of excellent appliances. Good quality and quiet wall mounted (visible) air-conditioners could receive an 8 rating. In smaller establishments, new, good quality domestic heating or cooling appliances are acceptable (free standing, wall or ceiling mounted – fan, heater or air-conditioner). Good free airflow achieved throughout dining or eating areas in moderate climate. Appliances are clean and no dust build up is visible.</p>	<p>Effective heating and or cooling provided in rooms when appropriate. Not necessarily the most up to date system. Large, slightly noisy, wall mounted air-conditioners apply here. In a smaller establishment good quality, not necessarily new heating or cooling, freestanding appliance is acceptable. Adequate free airflow in a moderate climate. Appliances are clean and no dust build up is visible.</p>	<p>Free standing apparatus able of maintaining a reasonably comfortable temperature in room. Ageing appliances. In a smaller establishment low quality heating or cooling, freestanding appliance in good condition is acceptable. Limited free airflow in moderate climate. Room slightly stuffy and or cold in winter. Dust build up and general lack of maintenance is visible.</p>	<p>Old low quality appliances. Hot or cold only available close to appliance i.e. unable to maintain a comfortable temperature throughout the room. No heating or cooling system in extreme temperature environment. Very limited free airflow. No free airflow in moderate climate. Stuffy room. Very cold in winter and very hot in summer. Dust build up and general lack of maintenance is visible.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		In moderate climate, an adequate natural ventilation system i.e. large opening doors and windows may suffice.				
2.5 Lighting <u>Comment:</u>		Overall high standard of lighting providing sufficient light for all appropriate purposes. Also designed for good effect, showing off features, rooms, corridors, etc. Lighting appropriate to create the required mood. All lights and shades of high quality manufacture and in excellent order. No wobbly connections, burnt shades, flimsy bases that fall over, etc. No harsh fluorescent tubes. Picture lights. Recessed spot lamps. Lighting appropriate for the ambience.	Provision of more sources of light than is strictly necessary i.e. more than just central lights. Able to create an appealing dining experience. High quality fittings, lamps bases, etc. with more adequate spread of lighting for practical use, though no sophisticated use of lighting "effects". Lighting appropriate for the ambience.	More than adequate room light. Good blend of natural and electric light during day. Medium quality fittings in sound condition. No burnt shades, ageing lamps, etc. No extra lights for effect.	Minimum lighting in room. Restricted natural light. Fittings ageing, beginning to look scruffy. Enough light for practical use, but nothing more. No lighting provided for effect. Fittings dated, ageing, discolouration. Stark, unattractive, harsh lighting.	Low quality fittings in poor condition. Exposed, fraying wires, wobbly fittings, loose plugs. Dim, gloomy effect with dark areas. Glaring, irritating, harsh fluorescent lights with no diffuser. Light in inappropriate places. Poor natural light. Shades burnt, scruffy, stained, etc.
2.6 Table appointments <u>Comment:</u>		An emphasis on style and high quality (stainless steel, silver, etc). All cutlery and crockery of a high quality, matching and co-ordinated. No wear, damage, cracks, chips, etc. Additional features such as flowers, candles	Items of similar style and quality as above but perhaps more limited in range, fewer glasses and smaller napkins. Alternatively, high quality crockery rather than high quality china. Fine glass rather than crystal, good	Middle to high range cutlery and crockery. Good condition and main service matching. Accessories of different style but good quality. Thick (multi-ply) paper or fabric napkins. Alternatively sufficient	Cutlery and crockery of varying of styles and quality (not intentional). Wear and tear (fading of pattern or glaze) but no chips or cracks. Thin (1-ply) but large paper napkins or well-used thin linen napkins. No	Mismatched patterns. Cracks, chips, well-used appearance. Low quality functional crockery. Small, thin (one-ply) napkins. Sticky sauce bottles on table. Cutlery, crockery, glassware obviously

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		and candlesticks, coasters, etc. Good quality linen or cloth napery. Large, fabric napkins. Tables all preset as per standard etiquette. All unclothed tables or surfaces to be in pristine condition. Equally high quality accessories i.e. ice buckets, sauce boats, etc. Provision of appropriate styles of cutlery and crockery for different dishes.	quality stainless steel rather than silver, etc. Limited wear but no damage (chips, imperfections, etc).	quantities of large 1-ply serviettes accompanied by a refresher towel or finger towel.	accessories. Sauces in bottles or packets. Slight smudging on glasses, cutlery, crockery.	dirty.
2.7 Atmosphere and ambience <u>Comment:</u>		Harmonious combination of décor and lighting. Spacious room and good layout of tables. No intrusive noise or smells. Themes or designs may add to the ambience. Music/entertainment to be appropriate to the style of the outlet.	High standard of décor and lighting. Perhaps busy, with some background noise. Tables rather close together. Smaller room. Atmospheric lighting. Pleasant aromas.	Tables quite close but with sufficient space to allow private conversation, staff and customers can pass without inconvenience. A certain amount of noise and activity from other areas.	Crowded tables. Awkward access. Difficult to have private conversation. Intrusive noise and stuffy. Strong smells.	Very crowded, cramped, uncomfortable. Loud noise. Very stuffy. Impossible to have privacy. Intrusive. Unpleasant smells.
3. Toilets		If toilets are only available off the premises (for example, in shopping centres), management of the restaurant should have control to ensure safety and security.				

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>3.1 Decorating and flooring <u>Comment:</u></p>		<p>Highest quality floor and wall coverings. Tiles well fitted. Grouting in excellent condition. No marks, stains, condensation damage. No peeling wallpaper or flaking paint. Flooring well-fitted and free from stain or water damage. Overall attractive and high quality décor.</p>	<p>Maybe high quality finish but not recent – some signs of wear but all in good condition. Alternatively, maybe recently decorated but not with the highest quality materials, though a competent and professional job. High quality floor covering or tiles.</p>	<p>Not necessarily recently decorated though in good condition. Some signs of wear. Standard quality bathroom flooring. No stains or marks.</p>	<p>Lower quality materials, ageing and evidence of poor standard of DIY. Very plain with no attempt at adornment. Grouting discoloured. Tired, dated style. Some stains and marks.</p>	<p>Very tired and old style. Damp or condensation marks. Cheap very low quality finish, unprofessionally applied. Sealant or grouting mouldy, carpet rotting, smelly. Paintwork chipped, flaking. Area around toilet discoloured, damp. Smells.</p>
<p>3.2 Fixtures and fittings <u>Comment:</u></p>		<p>High quality, solid, well-made fittings in excellent order and matching style. High quality finish. Easy to use with responsive controls. Plenty of hot water at all times.</p>	<p>Generally high quality fittings throughout, but not necessarily new. All porcelain in good condition– no cracks, crazing or dull finish, no stains. Matching and co-ordinated styles.</p>	<p>Standard domestic range of bathroom fittings. Maybe showing some wear but in good clean condition.</p>	<p>Ageing fittings – dull finish to porcelain, chrome wearing off. Fittings not matching. Out of date style or colour, well used. Rough DIY grouting or sealant. Not clean.</p>	<p>Stained or mouldy grouting or sealant. Cracked washbasin or toilet. Ill fitted cheap plastic toilet and cover. Discoloured plastic cistern. Plastic taps. Loose or broken towel rail. Evidence of cigarette burns, damage, etc.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>3.3 Linen, hand drying facilities and accessories <u>Comment:</u></p>		<p>Thick, heavy, fluffy hand towels with plenty of pile (replaced frequently). Effective, efficient and quiet hot-air hand dryers. Thick, good quality paper towelling with easy to use dispenser. Excellent quality liquid hand-washing soap. Pleasant aroma. Extensive quantities of two-ply toilet paper. Addition of accessories such as air fresheners, flowers, hand cream to create a pleasing environment.</p>	<p>Hand towels - linen not as high quality as found above (replaced after each use). Slightly smaller or thinner paper towels with easy to use dispenser. Hot-air hand dryer not excellent (loud or less efficient). Very good quality liquid, hand-washing soap (not a bar of soap). Pleasant aroma. Sufficient two-ply toilet paper.</p>	<p>Good quality paper towelling system but possibly thin, small paper (disintegrates easily when wet). Large and loud hot-air hand dryer. Adequate quality liquid, hand-washing soap. Neutral aroma. Adequate quantities of one-ply toilet paper.</p>	<p>Loose paper towels that are thin and disintegrate easily. No dispenser. Slight unpleasant aroma. Liquid soap in poor dispenser. Adequate quantities of one-ply toilet paper.</p>	<p>Towels that are very thin, small, scratchy, old, fraying, some holes, stained, faded. Low absorbency. Not replaced after each use. No hand drying facilities. No soap. Poor, unacceptable aroma. No toilet paper.</p>
<p>3.4 Lighting <u>Comment:</u></p>		<p>Lighting effective for all purposes particularly at washbasins and mirrors. Excellent lighting in all cubicles (even when door is closed). Excellent quality fittings. Recessed lights.</p>	<p>High standard of light fittings centre, main light plus adequate light at washbasins and mirrors. Possibly supplementary lights.</p>	<p>Centre light well positioned providing adequate light, even in closed cubicles.</p>	<p>Dim centre light. Stark fluorescent tube on ageing fittings.</p>	<p>Gloomy, badly placed, ageing, damaged light fittings.</p>
<p>4. Menu and wine list</p>						

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
4.1 Menu and wine list appearance <u>Comment:</u>		Excellent presentation appropriate to the market (maybe verbal, temporary i.e. blackboard or permanent). Attention to detail in all aspects of print, layout and descriptions. Clear, informative layout. Wines should be listed per cultivar. Attractive design in excellent condition. No grease, thumbprints, wine stains, written corrections, etc. Wine set out in clear sections and all available. All menus and wine lists clearly legible, given the lighting in the restaurant. No incorrect spelling. Words appropriately used to describe dishes and wines. All verbal descriptions clearly, accurately and eloquently presented.	High standard of presentation. May show a little wear, although not dirty. Where wines are not available – they should be clearly marked. No written corrections. Good, clear and accurate verbal descriptions.	Clear layout but not top quality production. Clean, not worn or grubby. Large majority of wines available and those that are not, clearly marked as such. Concise, “rattled off” but clear verbal descriptions.	Basic but legible. Scrappy appearance, over-used, stained. Many wines out of stock and not marked. Vintages wrong. Verbal descriptions not totally clear.	Dirty, dog-eared. Difficult to read. Wine list out of date, bears little relation to what is available. Unintelligible verbal descriptions.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
4.2 Menu content <u>Comment:</u>		Well-balanced menu. Excellent range of dish options catering for different tastes and requirements (i.e. vegetarian dishes should be available). Variety of cooking styles available. Excellent use of seasonal ingredients. Complimentary range of starters, entrees and desserts available. All dishes to be appropriately described. Charges for dishes to be clearly detailed and legible. Minimum charges, services charges, payment terms, etc to be clearly detailed and legible.	Good range and variety of dishes, covering at least starters, mains and desserts (but not considered to be excellent). Vegetarians considered. Perhaps menu not quite as discerning as above. Good description of dishes. All charges clearly described and legible.	Variety in dishes and cooking styles available – but not extensive options. Some dishes with appropriate descriptions. Charges are clearly depicted.	Limited range of dishes available and limited options in terms of cooking style. Charges listed but not that clear.	No variety. Only one cooking style available. Menu illegible and unclear.
4.3 Wine and beverage list content <u>Comment:</u>		Sommelier or qualified, trained wine advisor to assist diners with their wine choice. Knowledge of in-stock and out-of-stock wines by year. Excellent variety of wines and beverages available. Wines from a variety of different cultivars available. Excellent description of wines available, (verbal or	Good range of wines from a variety of cultivars. Good variety of appropriate beverages but perhaps only one brand per option. Possibly only local beverages (with limited international brands) available. Good description of wines (verbal or written).	Wines from a number of different cultivars available but limited choices within each. Alternatively good number of different brands within limited cultivar range. Good, standard range of beverages.	Limited range of standard wines and beverages available.	No variety and choice in beverages. Only unbranded products available.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		written) including year. A variety of good quality wines available by the glass. Excellent variety of beverages, liqueurs, liquor, etc. Variety of different brands per type of beverage.				
5. Food and beverage						
5.1 Meal presentation <u>Comment:</u>		Well laid out on appropriately sized plate with attractive and complementary garnish or display. Pleasing combination of colours, textures, and shapes. Extremely imaginative and exclusive in concept and outstanding execution. Extreme attention to care with attention on visual appeal. Ingredients meticulously integrated with plate design. Highest skill applied to meal presentation.	Obvious care and attention to detail with visual effect but perhaps not with the highest degree of skill. Tendency to standardise garnish or display. Attention to food placement and design. Creative and artistic use of garnishes. Selection provides variety in texture, colour, substance, theme and temperature.	Attractive. Neat arrangement on plate. Complimentary garnishes to enhance overall appeal.	Unadorned and straightforward. No attempt to enhance appearance. Limited variety of colours and textures. No careful arrangement.	Badly presented. Inappropriate garnish. Dull combination. Lukewarm. Some drying out of food, wrinkled skin on sauce. Incorrect temperature.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
5.2 Beverage presentation <u>Comment:</u>		Appropriate glasses for all beverages. Beverages presented, poured and displayed according to internationally accepted etiquette and the guest's specific request. Wide variety in beverage presentation. Wide variety of different glass types available. Guest's asked how they would like their beverage presented. Cognisance should be taken of changing styles in the F&B industry.	Some variety in different presentation styles for beverages, but overall presentation technique - standard. Presentation good, in appropriate glasses. Wines stored and poured appropriately.	Beverage presentation standard, unexciting. Overall good use of different glasses.	Limited range of different glass types. Some attempt at basic etiquette.	Beverages presented in inappropriate glasses, tins, etc. No knowledge of basic beverage presentation etiquette.
5.3 Quality of ingredients <u>Comment:</u>		Skilful use of finest, fresh ingredients. Wide variety of different ingredients used. Preferably all dishes made fresh, on-site (pre-prepared ingredients and dishes are acceptable but quality is important and it should be indiscernible from freshly prepared). Could be simple style but with great attention to detail and quality. Everything prepared to the right degree.	High quality, fresh ingredients. No evidence of the use of artificial enhancers and discernable convenience items (i.e. pre-prepared in some manner, canned, frozen, pre-baked, pre-proportioned, individually wrapped, etc).	Mixture of fresh ingredients and high quality pre-prepared ingredients for meal components. Limited evidence of convenience items. Food quality in line with expectations of brand.	Basic ingredients, including use of convenience items. Low quality food. Food quality not as good as that delivered by similar brands outside the park.	Poor quality ingredients, poorly prepared. Dried out. Quality questionable and brand reputation damaged.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>5.4 Texture and flavour <u>Comment:</u></p>		<p>Interesting textures with layers and depth of flavour. Perfect flavour of different ingredients discernable. Perfect balance of a complex range of different flavours and textures. Texture and flavour according to menu specifications and guest's specific requests. Correct and appropriate textures. Pleasant aroma.</p>	<p>Correct texture of main ingredients. Well-balanced flavours. Appropriate flavours are discernable. Pleasing aroma.</p>	<p>Good and appropriate flavour. Correct texture of main ingredients.</p>	<p>Basic blend of flavours. Imbalance of flavours.</p>	<p>Inedible. Unacceptable flavour and or texture. Bland, no flavour. Incorrectly cooked. Badly flavoured too much salt, burnt, etc. Unpleasant aroma.</p>
<p>5.5 Culinary skills and temperature <u>Comment:</u></p>		<p>Flawless and meticulous execution of all cooking methods. On a par with international culinary trends. Variety of cooking techniques applied to dishes. All menu items are prepared from scratch and in-house (pre-prepared ingredients or dishes should not be discernable from fresh, in-house preparation). With the exception of classic dishes, food is prepared in a manner that is highly imaginative and adventurous. Classic dishes correctly and expertly executed. Food served at the appropriate</p>	<p>Advanced degree of culinary skill evident throughout. Variety of cooking techniques efficiently executed. Food correctly cooked. Food served at the appropriate temperature.</p>	<p>Adequate culinary skill. Correct cooking techniques applied. Food served at the appropriate temperature.</p>	<p>Average to limited degree of culinary skill evident. Incorporates limited variety of cooking techniques. Incorrect temperature, slightly too hot or too cold.</p>	<p>No culinary skill evident. Food at incorrect temperature, too hot or cold. Cooking techniques incorrectly applied.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		temperature. All dishes cooked correctly.				
5.6 Sundries <u>Comment:</u>		Appropriate range of sundries e.g. breads, condiments, sugars, butters, herbs, spices, etc as per the character of the establishment. Clean, easy to dispense cruets, at least half full. Excellent quality. Covered after-dinner sweets and toothpicks of excellent quality.	Good quality and appropriate range of sundries. Clean, easy to dispense cruets. Good quality (covered) after dinner mints, sweets and toothpicks.	Limited range of good quality sundries. Alternatively good range of standard quality sundries. Clean cruets.	Inappropriate sundries, but quality acceptable. Limited range of sundries as would typically be expected. Some standard sundries absent. Difficult to dispense cruets	No sundries. Dirty, sticky condiment, salt and pepper dispensers, etc. Empty cruets. Stale bread. Uncovered sweets and toothpicks.
6. Services and service						
6.1 Reservations <u>Comment:</u>		Efficient and helpful telephone reservation. All details taken down and checked and all necessary information about the establishment given (i.e. booking policy, licensed, minimum charges, corkage, smoking, children, dress code, etc). May call to confirm or provide written or SMS confirmation. Overall personalised approach to reservation. Prompt service.	Reservation dealt with promptly and all necessary information taken and provided. High degree of telephone etiquette evident. Guest information confirmed for accuracy. Thanks patron for calling.	Reservation dealt with fairly well and all necessary information taken and provided.	Name taken. Minimal information given. Casual approach to bookings.	Name not taken. Surly, off-hand phone manner. Failure to properly record booking. Failure to answer telephone or return messages. Information not available.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
6.2 Welcome, attitude and seating <u>Comment:</u>		<p>Courteous greeting from senior representative / mgr at the restaurant. Patrons addressed by name. Warm friendly smile. Helpful attitude. Help with provision of information about the establishment. Orientation provided. Attempt to establish a good rapport and show willingness to please. Patrons offered use of pre-dining area. Patrons shown to table and seated. Table preset per reservation. Management of queue efficiently and effectively handled (time provided is adhered to, list kept up-to-date, friendly and pleasant attitude). Charges from lounge or bar are transferred to dining room. Menus and wine lists presented promptly.</p>	<p>Courteous greeting by host or hostess. Personal assistance provided as appropriate. Cheerful demeanour and attitude. Patrons shown to table and given necessary information. Encouraged to ask if anything else required. Menus provided promptly. Extra place settings removed.</p>	<p>Greeting from host or hostess. Offers a seat in waiting area if seating is delayed. Pleasant appearance. Willingness to help when asked. Casual guidance to table or self-seating. Menu and wine list presented at appropriate time.</p>	<p>Unenthusiastic welcome, just doing the job. Limited assistance from staff. Menu not presented promptly. Queue not managed efficiently – time taken is significantly longer than indicated.</p>	<p>Off-hand behaviour. Clear indifference to patrons, irritation at being asked for anything. No greeting. Menus not presented or presented at the door. Queue poorly managed, not kept up-to-date, name left off the list, time not adhered to, etc.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>6.3 Management efficiency <u>Comment:</u></p>		<p>Prompt, thorough acknowledgement of guest comments or complaints. Management confirmation of guest experience. Patron needs anticipated. All guest comments, complaints handled at management level. Complaints handled promptly and courteously. Management identification of problems that may arise. An excellent dining experience would be an evidence of management efficiency (often behind the scene).</p>	<p>Good responses to any requests, but patron needs aren't anticipated.</p>	<p>All requests dealt with pleasantly.</p>	<p>Rather unwilling response to any requests.</p>	<p>Off-hand manner. Marked reluctance to give any help. No manager present.</p>
<p>6.4 Meal service <u>Comment:</u></p>		<p>Cheerful, friendly, polite, well-trained staff. Well-informed about food and wine. Extensive menu knowledge, including how dishes are prepared. Thorough knowledge of specials. Appropriate description of menu and specials provided. All descriptions presented in a clear tone and at an appropriate pace. High standard of personal cleanliness. Prompt and efficient service. Correct</p>	<p>Well-motivated, willing, helpful, attentive staff that shows evidence of aspiring to an excellent standard, but may fall a little short. Could benefit from more training. All food should be presented simultaneously to correct guest specifications.</p>	<p>Willingness to be helpful and attentive. More enthusiastic than polished, but trying to do their best. Would benefit from further training. Staff always present and respond helpfully when asked.</p>	<p>Low skills but basically pleasant. Informality bordering on inefficiency. Not really interested, but respond in reasonably helpful way to requests. Conversely well skilled and trained but lacking social skills, arrogant, insensitive. Staff difficult to locate at times. Do what they are asked without enthusiasm. No rapport. Little interest.</p>	<p>Off-hand, indifferent, unskilled staff. Slow service. Disinterest. Inefficient staff missing for long periods of time. No willingness to be helpful. Ignoring customers they are serving. Little product knowledge.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		cutlery and glasses supplied for each meal. Good judgement on timing of courses and drinks. Any further needs responded to. Guest needs anticipated. Polished, professional manner. All food should be presented simultaneously to correct guest specifications. Internationally accepted high standard of serving etiquette and protocol to be observed.			Stacking of plates at the table. Stretching across the table to access plates, etc.	
6.5 Wine and beverage service <u>Comment:</u>		Trained advisor present. Drinks correctly served and presented. All bottles opened correctly at table and service etiquette followed. Top ups offered. Beverages served from left and cleared from right. If necessary partially full bottles to be stored in ice-bucket. Remove all empty bottles and ice-buckets. Canned drinks opened at the table, request if guest would like their drink poured. Attention to detail, patrons' glasses kept half full at all times. No need	Some slight lapses in beverage etiquette. Attempt at excellent standard.	Overall good service, but lapses in serving etiquette. Patron needs not anticipated. Service slightly slow.	Patron needs not anticipated. Patrons fill own wine glasses. Wine offered for tasting but no knowledge of wine or other standard serving etiquette evident.	Server with no wine training or knowledge. No taste poured for the patron. Beverages not presented to table.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		for patrons to request for top-ups or help themselves. Efficient, courteous service.				
6.6 Payment and departure <u>Comment:</u>		Waiter/waitress anticipates when patron wants the bill. Clear, legible, correct and well-itemised bill presented in a folder (consistent with theme). Bill typically accompanied by some form of complement such as mint or speciality candy. Server quickly, efficiently and discreetly handles settlement. Waiter/Waitress and Manager willingly acknowledge patron's departure. Use of patron's name in all acknowledgements. All payments handled at the	Server anticipates when patron wants the bill or reacts quickly to patron request. Clear, legible, correct and itemised bill presented in a folder (consistent with theme). Bill typically accompanied by some form of complement such as mint. Server quickly and efficiently handles settlement. Server and greeter willingly acknowledge patron's departure.	Bill presented on a plate, in a folder or on a tray upon request from patron. Server and greeter willingly acknowledge patron's departure.	Bill presented after meal or upon request. Pay at cashier. Server handles payment with limited enthusiasm. Server briefly thanks patrons or says farewell.	Bill not presented after meal or upon request. Repeated request for bill. Incorrect charges or items on bill. No farewell on departure. Unacceptably slow processing of bill and payment. Bill presented in a dirty, unacceptable folder.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
7. Housekeeping		Includes all general public areas visible to patrons such as open kitchens and work areas, pre-dinner areas, patios, gardens, pavements, etc but excluding the eating/dining areas.				
7.1 Public areas <u>Comment:</u>		All well cleaned and vacuumed. All surfaces, high and low, dust free, no cobwebs. Table surfaces well-polished, no smears. Ashtrays clean. No fingerprints or smudges on windows or glass doors. No fingerprints on door plates, light switches, etc. Flowers fresh and well arranged. Newspapers, books, etc up to date and tidy. Overall excellent standard of cleanliness evident and neat appearance.	Generally very good level of vacuuming and dusting. All surfaces, high and low, dust free, no cobwebs. Table surfaces well-polished, no smears. Ashtrays clean. Everything tidy and well arranged.	High level of cleanliness. Pre-dinner area may have "lived-in" feel.	Clean but with some dust on high and low surfaces. Personal clutter. Dying plants, flowers. Smears on surfaces.	Generally neglected housekeeping – carpet badly vacuumed, floors dirty. All surfaces dusty. Cobwebs, dead insects. Evidence of pests. Dead/wilting plants or flowers. Ashtrays full and dirty. Dirty glasses, cups on tables.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
<p>7.2 Dining and eating rooms <u>Comment:</u></p>		<p>Excellent standard of cleanliness in all areas no evidence of previous meal. Efficient cleaning and vacuuming. Tables always set to highest standard. Waiter station neat and orderly. Restaurant fully set when not in use complete with flowers, crockery and cutlery. During meal times vacated tables are cleared, cleaned, provided with fresh linen (neat and tidy). Crumbing of tables executed flawlessly.</p>	<p>Generally high standard of cleanliness no dust, etc. May be some clutter.</p>	<p>Always tidy and clean in time for beginning of meal service. Generally good standards of dusting, tidiness. Some tables remain unset during meal service but have been cleared and cleaned.</p>	<p>Not always at it's tidiest. Bottles, glasses, menus on surfaces. Generally clean but may be some dust on high or low surfaces. Pot plants and flowers neglected. Crumbing of tables poor, crumbs dropped onto the floor.</p>	<p>Dusty, crumbs on carpet, surfaces smeared, ring marked, dead or dying flowers. Untidy piles of menus etc scattered around. Marks, stains on tablecloths, dirty ashtrays. Dirty cutlery and crockery on tables.</p>
<p>7.3 Public toilets <u>Comment:</u></p>		<p>Fastidious attention to hygiene. All surfaces gleaming. Clean, fresh smell. High level of efficiency. Toilets, including access area to toilets are kept clean throughout use of restaurant. Lots of toilet paper available.</p>	<p>Generally very high standard, but perhaps one or two slight lapses.</p>	<p>No evidence of dust, hairs or grime. Surfaces all clean. Floor clean, vacuumed and free from dust.</p>	<p>Generally clean but lacking attention to detail. Dust on low and high surfaces and in inaccessible places.</p>	<p>Low standard of housekeeping dust on all surfaces. Long term encrusted grime in inaccessible places, dirt and hairs on floor, in corners. Flooring around toilet stained, smelly. No toilet paper. Toilet paper on floor, blocked toilets, leaking toilets, etc.</p>

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
7.4 Appearance of staff <u>Comment:</u>		Clean, neat, appropriate clothes that fit properly. A general smart, well-groomed appearance. Sleeves and trousers the right length. Clothing fresh and well ironed. Hair clean and under control. Hands and fingernails clean. Standard of dress uniform throughout serving staff. Polished shoes. Uniform appearance, quality and type consistently applied across all staff	Approaching excellent, but lacking the final touch. Perhaps some items a little ill fitting. All clothing clean. Standard of dress uniform throughout serving staff. Excellent standard of personal cleanliness and grooming.	A noticeable attempt to be smart. No stains, tears, etc but dressed for comfort rather than smartness. All clothing clean. High standard of personal cleanliness and grooming.	Clothes starting to look worn, rumpled, lived in, but basically clean. Hair a bit uncontrolled.	Clothing dirty, stained, frayed, holed. Dirty shoes. Hands and fingernails grubby. Hair unwashed and out of control. Unshaven. Personal hygiene lacking.

Total achieved:	0
Maximum possible total:	340
Percentage obtained:	0.00%

56.2 Take Away / Fast Food Quality Assessment Criteria

56.2.1 In order to objectively measure and assess the services and/or products provided by the Private Party in the take away/fast food section of the Restaurant Facility of the Protected Area, SANParks has compiled and developed a table as described herein below, which contains areas that will be evaluated by the appointed independent assessor as well as expected outcomes of such an assessment. Some of the areas that will be evaluated are the following:

- Exterior
- Internal Fabric
- Toilets
- Menu
- Food and Beverage
- Housekeeping
- Services and service

56.2.2 The following are guidelines of the scores per area to be used to assess and evaluate the Private Party in providing the products and/ services at the Restaurant Facility in the Protected Area:

- 10:Excellent
- 9:Very good
- 8:Good
- 7:Standard / Acceptable
- 5-6:Below Standard
- 4:Poor
- 1-2-3:Unacceptable

56.2.3 The Private Party will be expected to achieve at least the following:

- Overall score of above 70%;
- Items to score 7 or above;
- No more than 2 items to score below 7 and none items to score below 4;
and
- All service items to score above 6

56.2.4 Should the Private Party not achieve the score as described in Clause 56.2.3

above, for two (2) consecutive assessments, Private Party Default will be implied and actions taken accordingly which could ultimately result in termination of this PPP Agreement.

DRAFT

TAKE AWAYS / FAST FOODS SCORE SHEET

Restaurant		
Date and meal taken:		
Name and company of assessor:		

1. Exterior	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
Guidelines						
1.1 Appearance of buildings <u>Comment:</u>		New buildings, absence of weathering, fresh well-maintained paintwork, an overall clean and “new” look. Older buildings – no unsightly staining and well-maintained paintwork. Visible outbuildings or annexes to be of a similar standard. Addition of attractive architectural features, etc	High quality maintenance of paint, stone or brickwork although a certain natural weathering may be present. All areas of paintwork to be in sound condition. Some additional external features to enhance appearance.	Windows, drains, etc in good state of repair, though not necessarily recent. Small structural defects or damage. “Plain” architectural features.	Paint areas ageing and rather weathered. Large defects, damage, cracks, etc. No evidence of recent repairs, paintwork, etc	Generally neglected buildings. Obvious structural defects or damage. Flaking paint, illegible signs, rotting wood.
2. Internal Fabric		All reception rooms, bars, dining rooms and eating areas accessible to patrons will be evaluated under this section. Where different standards are present, an average score will be applied, unless there is significant				

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		difference between the highest and the lowest score, in which case the lowest score will apply.				
2.1 Decoration <u>Comment:</u>		High quality wall covering (paint, tiles, wallpaper, etc). Attention to detail. Thoughtful co-ordination of patterns, colours and textures. If the décor is “plain” then the addition of high quality pictures, objects d’art, etc. Although some “minimalist” styles require less. All work should look professional and be well executed.	High quality wall covering, but need not be in excellent condition. Slight signs of wear and tear (i.e. scratches, water splashes, finger marks, etc). Room décor may range from excellent to good.	Competent, average quality wall coverings. Some pictures in good frames. Attempt to co-ordinate patterns and colours. No jarring mismatch of colours and styles. Décor may be some years old but not obviously damaged, scratched, torn or stained.	Ageing looking décor, of average quality to begin with. Amateur application of paint or wall paper. Little attention to detail. Plain style with no adornment. Some wear and tear, stains, marks, etc.	Low-grade materials poorly executed. Uncoordinated styles and colours. Noticeable wear and tear, stains, splashes, scratches, tears, marks, etc. Few pictures, graphics, wall hangings or works of art (if any). Unsightly pipe work, exposed wiring. Signs of damp.
2.2 Furniture and furnishings (where take away seating area is created) <u>Comment:</u>		Excellent intrinsic quality and condition. Furniture of sound construction, attractive professional finish and detailing. Little or no sign of ageing, wear and tear or ill-use. Chairs of appropriate height for tables. Co-ordinated themed design.	High intrinsic quality of materials may show some signs of use. Alternatively new, good (instead of excellent) quality furniture and furnishings. Some contract furniture even when brand new will only be “very good”.	Furniture which may have been “excellent” or “very good”, but through ageing, showing signs of wear and tear. Alternatively, a medium quality range of materials and construction in sound and useable condition. There should be no damage, stains or fraying on furniture. No jarringly uncoordinated styles – all	Furniture of average quality and in well-used condition. Little co-ordination of styles, some slight damage may be apparent, but all items capable of use. Surfaces not well-maintained. Chairs not very comfortable. Tables too close together. Wobbles in tables and or chairs.	Furniture of a low quality material, poor construction, damaged, marked or scratched. Uncoordinated styles. Inadequate table size – cluttered and inconvenient. Table cracked. Tables or chairs very wobbly. Cramped, uncomfortable layout

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
				furniture to be of a similar standard. Design may take precedence over comfort.		
2.3 Flooring and ceiling <u>Comment:</u>		High quality wooden or tiled flooring. Ceilings to be of an excellent quality, no sagging or evidence of water leakage or seeping, marks or stains. All of the above should be professionally fitted, painted and in pristine condition.	Wooden or tiled flooring in good condition but might be in need of buffing.. Ceiling of good quality, no sagging, and evidence of water leakage or seeping. Professionally fitted and painted.	Wooden or tiled floors a little scratched in places. Ceiling of average quality, competent job of application. Paintwork competently applied, although not necessarily of a professional standard.	Vinyl or low quality flooring. Chipped wooden or tiled floors. Poor quality ceiling, amateurishly fitted, but no evidence of sagging. Ceilings slightly stained paintwork of a poor standard.	Wooden or tiled floors that have aged – now in need of a new coat of varnish or sement. Missing tiles and obvious chips. Poor quality sagging ceilings and evidence of water seepage. Stained paintwork, old and amateurishly done.
NB: In all levels there may be a high quality natural alternative to tiles or wooden floors. In these cases the intrinsic quality and condition would be assessed, taking the style of the property into consideration (especially in relation to National Parks and product offered in National Parks).						
2.4 Temperature control <u>Comment:</u>		Thermostatically controlled heating and or cooling system capable of maintaining a comfortable room temperature of between 18°C and 25°C. Appropriate to size and location of outlet. Appliance in excellent condition and quiet. New domestic, excellent quality heating or cooling appliances with are free standing, wall or ceiling mounted (fan, heater or air-conditioner) are	Some ageing of excellent appliances. Good quality and quiet wall mounted (visible) air-conditioners could receive an 8 rating. New domestic, excellent quality heating or cooling appliances with are free standing, wall or ceiling mounted (fan, heater or air-conditioner) are acceptable. In moderate climate, an adequate natural ventilation system i.e. large opening doors and windows may suffice.	Effective heating and or cooling provided. Not necessarily the most up to date system. Large, slightly noisy, wall mounted air-conditioners apply here. Good quality, not necessarily new heating or cooling, freestanding appliance is acceptable. Adequate free airflow in a moderate climate. Appliances are clean and no dust build up is visible.	Free standing apparatus able of maintaining a reasonably comfortable temperature in room. Ageing appliances. Limited free airflow in moderate climate. Room slightly warm in summer and or cold in winter. Dust build up and general lack of maintenance is visible.	Old low quality appliances. Hot or cold only available close to appliance i.e. unable to maintain a comfortable temperature throughout the room. No heating or cooling system in extreme temperature environment. Very limited free airflow. No free airflow in moderate climate. Very cold in winter and very hot in summer. Dust build up and general lack of

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		acceptable. In moderate climate, an adequate natural ventilation system i.e. large opening doors and windows may suffice. Appliances are clean and no dust build up is visible.	Appliances are clean and no dust build up is visible.			maintenance is visible.
<u>2.5 Lighting Comment:</u>		Overall high standard of lighting providing sufficient light for all appropriate purposes. Also designed for good effect, showing off features, rooms, corridors, etc. Lighting appropriate to create the required mood. All lights and shades of high quality manufacture and in excellent order. No wobbly connections, burnt shades, flimsy bases that fall over, etc. No harsh fluorescent tubes. Picture lights. Recessed spot lamps. Lighting appropriate for the ambience.	Provision of more sources of light than is strictly necessary i.e. more than just central lights. Able to create an appealing experience. High quality fittings. Lighting appropriate for the ambience.	More than adequate room light. Good blend of natural and electric light during day. Medium quality fittings in sound condition. No burnt shades, ageing lamps, etc. No extra lights for effect.	Minimum lighting in room. Restricted natural light. Fittings ageing, beginning to look scruffy. Enough light for practical use, but nothing more. No lighting provided for effect. Fittings dated, ageing, discolouration. Stark, unattractive, harsh lighting.	Low quality fittings in poor condition. Exposed, fraying wires, wobbly fittings, loose plugs. Dim, gloomy effect with dark areas. Glaring, irritating, harsh fluorescent lights with no diffuser. Light in inappropriate places. Poor natural light. Shades burnt, scruffy, stained, etc.
<u>2.6 Take away Counter appointments Comment:</u>		An emphasis on style and high quality. Counter top, menu displays and point of sale area forms a professional picture with flowing forms and colours complementing National	An emphasis on style and good quality. Counter top, menu displays and point of sale area forms a professional picture with flowing forms and colours	Ordering area in good condition but might look a bit aged and outdated. Despite this there is a distinct effort to make the take away area inviting and appetising. Menu	Poor quality counter and point of sale fittings. Stained paintwork of a poor standard. Menu display not appetising.	Very poor quality counter, point of sale and style. Stained paintwork, old and amateurishly done. Mismatched patterns and design.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		Parks product. All of the above should be professionally fitted, painted and in pristine condition.	complementing National Parks product. All of the above should be professionally fitted, painted and in good condition.	displays looks striking. Paintwork competently applied, although not necessarily of a professional standard.		Environment does not entice you to eat.
2.6 Take away appointments <u>Comment:</u>		An emphasis on style and quality. All cutlery and crockery of a high quality, matching and co-ordinated. No wear, damage, cracks, chips, etc. Good quality napkins. All unclothed tables or surfaces to be in pristine condition. Equally high quality accessories i.e. ice buckets, sauce boats, etc. Provision of appropriate styles of cutlery and crockery for different dishes. Biodegradable / compostable take away packaging, knives and forks.	Items of similar style and quality as for very good to excellent but perhaps not as stylish. Limited wear but no damage (chips, imperfections, etc). Biodegradable / compostable take away packaging, knives and forks.	Good condition crockery and matching. Accessories of different style but good quality. Sufficient quantities of 1-ply serviettes. Biodegradable / compostable take away packaging, knives and forks.	Cutlery and crockery of varying of styles and quality (not intentional). Wear and tear (fading of pattern or glaze) but no chips or cracks. Thin (1-ply) paper napkins. No accessories. Sauces in bottles or packets. Take away packaging, knives and forks not biodegradable or compostable.	Mismatched patterns. Cracks, chips, well-used appearance. Low quality functional crockery. Small, thin (one-ply) napkins. Sticky sauce bottles on table. Cutlery, crockery, glassware obviously dirty. Take away packaging, knives and forks not biodegradable or compostable

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
2.7 Atmosphere and ambience <u>Comment:</u>		Harmonious combination of décor and lighting. Appetising and inviting.	High standard of décor and lighting. Appetising and inviting.	Ambience sufficient to not result in walk-outs and to ensure that customer will order at outlet.	Set-up could result in some people deciding to not order food from the specific outlet. General feeling that food coming from the outlet will not be good.	People would most likely not place an order due to several aspects not sending the right message. General feeling that food coming from the outlet will not be good.
3. Menu						
3.1 Menu appearance <u>Comment:</u>		Excellent presentation appropriate to the market (maybe verbal, temporary i.e. blackboard or permanent). Attention to detail in all aspects of print, layout and descriptions. Clear, informative layout. Attractive design in excellent condition. No grease, thumbprints, stains, written corrections, etc. All menus lists clearly legible. No incorrect spelling. Words appropriately used to describe dishes.	High standard of presentation. May show a little wear, although not dirty. No written corrections.	Clear layout but not top quality production. Clean, not worn or grubby.	Basic but legible. Scrappy appearance, over-used, stained.	Dirty, dog-eared. Difficult to read.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
3.2 Menu content <u>Comment:</u>		Well-balanced menu. Excellent range of dish options catering for different tastes and requirements (i.e. vegetarian dishes should be available). Variety of cooking styles available. Excellent use of seasonal ingredients. All dishes to be appropriately described. Charges for dishes to be clearly detailed and legible. Minimum charges, services charges, payment terms, etc to be clearly detailed and legible.	Good range and variety of dishes (but not considered to be excellent). Vegetarians considered. Perhaps menu not quite as discerning as above. Good description of dishes. All charges clearly described and legible.	Variety in dishes and cooking styles available – but not extensive options. Some dishes with appropriate descriptions. Charges are clearly depicted.	Limited range of dishes available and limited options in terms of cooking style. Charges listed but not that clear.	No variety. Only one cooking style available. Menu illegible and unclear.
4. Food and beverage						
4.1 Meal presentation <u>Comment:</u>		Well laid out on appropriately sized plate with attractive and complementary garnish or display (as expected from a fast food outlet). Pleasing combination of colours, textures, and shapes. Attention to care with attention on visual appeal. Ingredients meticulously integrated with plate design. Highest skill applied to meal	Obvious care and attention to detail with visual effect but perhaps not with the highest degree of skill. Tendency to standardise garnish or display. Attention to food placement and design. Creative and artistic use of garnishes. Selection provides variety in texture, colour, substance, theme and temperature.	Attractive. Neat arrangement on plate. Complimentary garnishes to enhance overall appeal.	Unadorned and straightforward. No attempt to enhance appearance. Limited variety of colours and textures. No careful arrangement.	Badly presented. Inappropriate garnish. Dull combination. Lukewarm. Some drying out of food, wrinkled skin on sauce. Incorrect temperature.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		presentation.				
4.2 Beverage presentation <u>Comment:</u>		Appropriate glasses for all beverages.	Presentation good, in appropriate glasses.	Beverage presentation standard, unexciting. Overall good use of different glasses.	Limited range of different glass types.	Beverages presented in inappropriate glasses, tins, etc. .
4.3 Quality of ingredients <u>Comment:</u>		Skilful use of finest, fresh ingredients. Wide variety of different ingredients used. Preferably all dishes made fresh, on-site (pre-prepared ingredients and dishes are acceptable but quality is important and it should be indiscernible from freshly prepared). Could be simple style but with great attention to detail and quality. Everything prepared to the right degree.	High quality, fresh ingredients. No evidence of the use of artificial enhancers and discernable convenience items (i.e. pre-prepared in some manner, canned, frozen, pre-baked, pre-proportioned, individually wrapped, etc).	Mixture of fresh ingredients and high quality pre-prepared ingredients for meal components. Limited evidence of convenience items. Food quality in line with expectations of brand.	Basic ingredients, including use of convenience items. Low quality food. Food quality not as good as that delivered by similar brands outside the park.	Poor quality ingredients, poorly prepared. Dried out. Quality questionable and brand reputation damaged.
4.4 Texture and flavour <u>Comment:</u>		Interesting textures with layers and depth of flavour. Perfect flavour of different ingredients discernable. Perfect balance of a complex range of different flavours and textures. Texture and flavour according to menu specifications and guest's specific requests. Correct	Correct texture of main ingredients. Well-balanced flavours. Appropriate flavours are discernable. Pleasing aroma.	Good and appropriate flavour. Correct texture of main ingredients.	Basic blend of flavours. Imbalance of flavours.	Inedible. Unacceptable flavour and or texture. Bland, no flavour. Incorrectly cooked. Badly flavoured too much salt, burnt, etc. Unpleasant aroma.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
		and appropriate textures. Pleasant aroma.				
4.5 Culinary skills and temperature <u>Comment:</u>		Flawless and meticulous execution of all cooking methods. Variety of cooking techniques applied to dishes. All menu items are prepared from scratch and in-house (pre-prepared ingredients or dishes should not be discernable from fresh, in-house preparation). With the exception of classic dishes, food is prepared in a manner that is highly imaginative and adventurous. Classic dishes correctly and expertly executed. Food served at the appropriate temperature. All dishes cooked correctly.	Advanced degree of culinary skill evident throughout. Variety of cooking techniques efficiently executed. Food correctly cooked. Food served at the appropriate temperature.	Adequate culinary skill. Correct cooking techniques applied. Food served at the appropriate temperature.	Average to limited degree of culinary skill evident. Incorporates limited variety of cooking techniques. Incorrect temperature, slightly too hot or too cold.	No culinary skill evident. Food at incorrect temperature, too hot or cold. Cooking techniques incorrectly applied.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
4.6 Sundries <u>Comment:</u>		Appropriate range of sundries e.g. breads, condiments, sugars, butters, herbs, spices, etc as per the character of the establishment. Clean, easy to dispense cruets, at least half full. Excellent quality.	Good quality and appropriate range of sundries. Clean, easy to dispense cruets	Limited range of good quality sundries. Alternatively good range of standard quality sundries. Clean cruets.	Inappropriate sundries, but quality acceptable. Limited range of sundries as would typically be expected. Some standard sundries absent. Difficult to dispense cruets	No sundries. Dirty, sticky condiment, salt and pepper dispensers, etc. Empty cruets. Stale bread.
5. Services and service						
5.1 Welcome, attitude and seating <u>Comment:</u>		Courteous greeting. Warm friendly smile. Helpful attitude. Help with provision of information about the meal options. Management of queue efficiently and effectively handled. Order correctly allocated.	Courteous greeting. Personal assistance provided as appropriate. Order correctly allocated Cheerful demeanour and attitude.	Courteous greeting and order correctly allocated	Unenthusiastic welcome, just doing the job. Limited assistance. Queue not managed efficiently – time taken is significantly longer than indicated.	No greeting. Queue poorly managed.
5.4 Meal service <u>Comment:</u>		Quick delivery of food. Food brought to the right table and order correct. Up-selling of additional food items, i.e. additional drinks. Check on guests to see if they are happy. Specific requests honoured. Additional requirements anticipated.	Well-motivated, willing, helpful, attentive staff that shows evidence of aspiring to an excellent standard, but may fall a little short. Could benefit from more training. All food should be presented simultaneously to correct guest specifications.	Willingness to be helpful and attentive. More enthusiastic than polished, but trying to do their best. Would benefit from further training. Staff always present and respond helpfully when asked.	Low skills but basically pleasant. Food takes too long for fast food outlet (acceptable timeframes to be determined). Informality bordering on inefficiency. Not really interested, but respond in reasonably helpful way to requests. Conversely well skilled and trained but lacking social skills, arrogant,	Off-hand, indifferent, unskilled staff. Slow service. Disinterest. Inefficient staff missing for long periods of time. No willingness to be helpful. Ignoring customers they are serving. Little product knowledge. No up-selling

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
					insensitive. Staff difficult to locate at times. Do what they are asked without enthusiasm. Food takes too long for fast food outlet.	
6. Housekeeping		Includes all general public areas visible to patrons such as open kitchens and work areas, pre-dinner areas, patios, gardens, pavements, etc but excluding the eating/dining areas.				
6.1 Public areas <u>Comment:</u>		All well cleaned and vacuumed. All surfaces, high and low, dust free, no cobwebs. Table surfaces well-polished, no smears. No fingerprints or smudges on windows or glass doors. No fingerprints on door plates, light switches, etc. Overall excellent standard of cleanliness evident and neat appearance.	Generally very good level of vacuuming and dusting. All surfaces, high and low, dust free, no cobwebs. Table surfaces well-polished, no smears. Ashtrays clean. Everything tidy and well arranged.	High level of cleanliness.	Clean but with some dust on high and low surfaces. Personal clutter. Smears on surfaces.	Generally neglected housekeeping – floors dirty. All surfaces dusty. Cobwebs, dead insects. Evidence of pests. Dirty glasses, cups on tables.

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
6.2 Dining area at take away section <u>Comment:</u>		Excellent standard of cleanliness in all areas no evidence of previous meal. Efficient cleaning. Waiter station neat and orderly. During meal times vacated tables are cleared, cleaned, provided with fresh linen (neat and tidy). Crumbing of tables executed flawlessly.	Generally high standard of cleanliness no dust, etc. May be some clutter.	Always tidy and clean between guests. Generally good standards of dusting, tidiness. Some tables remain unset during meal service but have been cleared and cleaned.	Not always at its tidiest. Bottles, glasses, menus on surfaces. Generally clean but may be some dust on high or low surfaces. Crumbing of tables poor, crumbs dropped onto the floor.	Dusty, crumbs on carpet, surfaces smeared. Untidy piles of menus etc scattered around. Marks, stains on tablecloths. Dirty cutlery and crockery on tables.
6.4 Appearance of staff <u>Comment:</u>		Clean, neat, appropriate clothes that fit properly. A general smart, well-groomed appearance. Sleeves and trousers the right length. Clothing fresh and well ironed. Hair clean and under control. Hands and fingernails clean. Standard of dress uniform throughout serving staff. Polished shoes. Uniform appearance, quality and type consistently applied across all staff. Name badges worn.	Approaching excellent, but lacking the final touch. Perhaps some items a little ill fitting. All clothing clean. Standard of dress uniform throughout serving staff. Excellent standard of personal cleanliness and grooming. Name badges worn.	A noticeable attempt to be smart. No stains, tears, etc but dressed for comfort rather than smartness. All clothing clean. High standard of personal cleanliness and grooming. Name badges worn.	Clothes starting to look worn, rumpled, lived in, but basically clean. Hair a bit uncontrolled. Name badges not worn.	Clothing dirty, stained, frayed, holed. Dirty shoes. Hands and fingernails grubby. Hair unwashed and out of control. Unshaven. Personal hygiene lacking. Name badges not worn.

Total achieved:	0
Maximum possible total:	340
Percentage	0.00%

	Total	9-10 Very good to excellent	8 Good	7 Acceptable	4-5-6 Below Standard to Poor	1-2-3 Unacceptable
obtained:						

DRAFT

57. SCHEDULE 17 – ASSOCIATED AGREEMENTS

DRAFT

58. SCHEDULE 18 – CONSUMER PROTECTION ACT NO. 68 OF 2008 (CPA)

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

58.1 Purpose and Policy of CPA

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

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

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

58.2 Disclosure and Information

58.2.1 Information in plain and understandable language

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

58.2.2 Disclosure of price of products

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

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

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

58.2.3 Product labelling and trade descriptions

The Private Party shall not:

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

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

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

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

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

58.2.3.4 Private Party shall be required to display a notice that discloses the presence of any genetically modified ingredients in products to be sold at the Restaurant Facility, such notice shall be in a manner and form as described in CPA and related legislations.

58.2.4 Sales records

- 58.2.4.1 Private Party shall provide a written record of each transaction to the consumer to whom any products are sold.
- 58.2.4.2 The record must include at least the following information:
- 58.2.4.2.1 Private Party's full name, or registered business name, and VAT registration number;
 - 58.2.4.2.2 the address of the premises at which, or from which, the products were sold;
 - 58.2.4.2.3 the date on which the transaction occurred;
 - 58.2.4.2.4 a name or description of any products sold or to be sold;
 - 58.2.4.2.5 the unit price of any particular products sold or to be sold;
 - 58.2.4.2.6 the quantity of any particular products sold or to be sold;
 - 58.2.4.2.7 the total price of the transaction, before any applicable taxes;
 - 58.2.4.2.8 the amount of any applicable taxes; and
 - 58.2.4.2.9 the total price of transaction, including any applicable taxes.

58.3 Fair and Honest Dealing

58.3.1 Unconscionable conduct

Private Party or any of its representatives or employees during the course of conducting the Business in the Restaurant Facility shall not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any marketing and/or the offering for sale of any products.

58.3.2 False, misleading or deceptive representations

- 58.3.2.1 Private shall not, by words or conduct:
- 58.3.2.1.1 directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

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

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

58.4 **Quality Service**

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

58.4.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Restaurant Facility;

58.4.1.2 ensuring that the product items provided for sale in the Restaurant Facility are free of defects such as freshness, safe, not hazardous to health and are of quality that the consumers are generally entitled to expect.

58.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 58.4.1 above, the consumer is entitled to demand from the Private Party, to either:-

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

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

59. SCHEDULE 19 – PROHIBITED CHEMICAL SUBSTANCES

DRAFT

60. SCHEDULE 20 – PEST MANAGEMENT PLAN

DRAFT

61. SCHEDULE 21 – BAT MANAGEMENT GUIDELINES

DRAFT

62. SCHEDULE 22 – PREFERRED PEST CONTROL CHEMICALS

DRAFT

63. SCHEDULE 23 – SALE OF BUSINESS AGREEMENT

63.1 PREAMBLE

- 63.1.1 Current Operator has agreed to dispose of the Restaurant Business to the Private Party on the terms and conditions contained in this agreement.
- 63.1.2 Current Operator, as the Seller, and Private Party, as the Purchaser, wish to record their agreement in writing.

63.2 SALE

- 63.2.1 Current Operator hereby sells the Restaurant Business to the Private Party as a going concern with effect from the Operation Commencement Date, on which date all risks in and benefits attaching to the Business shall pass to the Private Party.
- 63.2.2 None of the Liabilities of the Business incurred prior to the Operation Commencement Date will be transferred to the Private Party but all of them will remain those of Current Operator. Current Operator indemnifies the Private Party against any loss or damage that the Private Party may incur as a result of Current Operator failing to discharge any of the Liabilities.
- 63.2.3 It is recorded that as the Private Party and Current Operator agree that the Business is:-
- 63.2.3.1 an enterprise capable of separate operation;
 - 63.2.3.2 being sold as a going concern.
- 63.2.4 Current Operator and the Private Party agree that the Business will constitute an income-earning activity on the Operation Commencement Date; and
- 63.2.5 the Sale Assets necessary to carry on the Business are being disposed of by Current Operator to the Private Party in terms of this agreement;
- 63.2.6 the sale contained in this agreement falls within the ambit of Section 11(1)(e) of the VAT Act and therefore VAT is payable at the rate of zero percent.
- 63.2.7 Should the Commissioner for Inland Revenue rule that VAT is payable in respect of the Business or any of the assets sold at a rate exceeding zero percent, the Private Party shall pay that VAT.

63.2.8 Current Operator warrants to the Private Party that:

63.2.8.1 on Current Operator signature of this agreement and on the Operation Commencement Date it will be registered as a vendor in terms of the VAT Act; and

63.2.8.2 the total value of taxable supplies made by Current Operator from carrying on the Business in the preceding period of 12 (twelve) months shall have exceeded R20,000 (twenty thousand Rand).

63.3 **PURCHASE PRICE**

63.3.1 The Purchase Price payable by the Private Party to Current Operator for the Business and the Sale Assets is an amount of R..... (..... Rand), attributable as to R..... (..... Rand) in respect of the Sale Assets and R..... (..... Rand) for the Stock.

63.3.2 The amount attributable to the Stock represents the cost to Current Operator of all items, except curio items which are valued at 85% of cost, of the Stock following a physical stocktaking undertaken by Current Operator shortly before the Operation Commencement Date. Should the Private Party dispute the said valuations, it shall follow the procedure set out in Clause 8 hereof.

63.4 **PAYMENT**

The Private Party shall pay the purchase price for the Business to Current Operator in certified cheque, drawn on a bank acceptable to Current Operator, on the Operation Commencement Date.

63.5 **POSSESSION**

63.5.1 On the Operation Commencement Date -

63.5.1.1 Current Operator shall place the Private Party in possession of the Business, the Stock and the Sale Assets at the Restaurant Facility; and

63.5.1.2 the risk in and benefit attaching to the Business (including ownership of the Business and the Sale Assets) shall pass to the Private Party.

63.5.2 Signature by Current Operator and the Private Party of this agreement shall constitute, with effect from the Operation Commencement Date, delivery to the Private Party of all of Current Operator rights in the Business and no further

formalities shall be required to give effect to such delivery.

63.5.3 Current Operator undertakes that until the Operation Commencement Date it will -

63.5.3.1 not pledge or otherwise encumber nor alienate, sell or otherwise dispose of any of the Sale Assets except for the sale or use of the Stock in the ordinary course of Business;

63.5.3.2 not remove or permit the removal of any of the Sale Assets from the Restaurant Facility, other than in the normal course of Business;

63.5.3.3 continue to keep the Sale Assets in good order and condition; and

63.5.3.4 continue to insure the Stock and assets against the risk of loss or damage attributable to storm, fire, theft or riot and to also keep them insured under the equivalent of an "all risks" policy over them which covers them while they are not at the Restaurant Facility.

63.6 **DEBTORS**

The Parties hereby record that all debts owed to the Business as at the Operation Commencement Date shall be collected by and be for the account of Current Operator with effect from the Operation Commencement Date.

63.7 **STOCKTAKE**

63.7.1 Current Operator shall cause a stocktaking to be commenced at least 2 (two) days before the Operation Commencement Date, of all Stocks of Current Operator used in connection with the Restaurant Facility, and to be transferred to the Private Party on the Operation Commencement Date, in accordance with the following provisions:

63.7.1.1 each of the parties shall be entitled to be present personally or by a representative at the stocktaking;

63.7.1.2 after the stocktaking has been completed a schedule reflecting the stocktaking shall be prepared and initialled by the parties and attached hereto as Schedule 24;

63.7.1.3 any Stocks which are materially damaged or unusable as being incomplete, redundant or obsolete or out of normal commercially accepted standards shall be excluded for the purposes of valuing the stocks unless the parties agree in writing on the value thereof.

- 63.7.2 Should there be any dispute relating to the stocktaking, the dispute shall be determined by an independent expert appointed by Current Operator accounting officer:
- 63.7.2.1 whose decision shall be made within 21 (twenty one) days of this appointment; and
 - 63.7.2.2 who shall act as an expert and not as an arbitrator; and
 - 63.7.2.3 whose decision shall be final and binding on the parties; and
 - 63.7.2.4 who shall determine the liability for his/her charges which shall be paid accordingly.
- 63.7.3 Upon completion of the schedule referred to above the parties shall value the Stocks which are not excluded on the basis of net cost free of all rebates and failing agreement, the Stocks referred to shall be valued by an independent auditor agreed by the parties (or failing agreement, to be appointed by the President for the time being of the Gauteng Society of Chartered Accountants) on the aforesaid basis. The parties agree that the decision of the independent auditor will be final and binding.
- 63.7.4 In circumstances where the agreed or determined value is higher or lower than the amount attributable to all the Stocks by Current Operator then an adjustment in the purchase price will be made accordingly in terms of Clause 14.

63.8 **SALE ASSETS**

- 63.8.1 As part of this Sale of Business Agreement, Current Operator shall sell to the Private Party, those items of equipment, furnishings and fixtures as specified in Schedule 25, of this PPP Agreement. The procedure for determining the extent and value of the Sale Assets shall be as follows:
- 63.8.1.1 prior to the Bid Date, all Bidders were provided with lists of all such assets and equipment reported by Current Operator to be present at the Restaurant Facility;
 - 63.8.1.2 during the Handover Period, Current Operator and the Private Party shall, together and in good faith, ascertain which assets are physically present at the Facility;
 - 63.8.1.3 Current Operator shall appoint an Agent experienced in the valuation of Restaurant and Restaurant equipment to act on its behalf in negotiations with the Private Party;

- 63.8.1.4 during the Handover Period, the Private Party shall identify which items it wishes to retain, and negotiate with Current Operator Agent on the prices to be attached per item; and
- 63.8.1.5 at the end of the Handover Period, the Private Party and Current Operator shall agree on a specified list and prices of the Sale Assets, such list to be attached as Schedule 25.

63.8.2 Ownership in and to the Sale Assets included in Schedule 25 shall pass to the Private Party on the Operation Commencement Date.

63.8.3 Those items of equipment, furnishings and fixtures not purchased by the Private Party shall be removed from the Facility, over a three-month period commencing on the Operation Commencement Date, after discussions between the Parties to achieve an orderly transfer of operations.

63.9 **INSOLVENCY ACT PUBLICATION**

63.9.1 The Parties agree that notice of this transaction will not be published as contemplated in section 34 of the Insolvency Act, 1936 (Act No. 24 of 1936) (as amended) (the "Insolvency Act").

63.9.2 Current Operator indemnifies the Private Party against any loss or damage which the Private Party may suffer as a result of notice of this transaction not being published in terms of the Insolvency Act.

63.9.3 The Private Party shall have no duty to resist any proceedings to attach or take possession of any of the Sale Assets by any persons against whom this transaction is void in terms of the Insolvency Act as a consequence of notice of this transaction not being published ("unsatisfied creditors").

63.9.4 The Private Party shall be entitled to elect to satisfy any claim made by any unsatisfied creditor in which event Current Operator undertakes to reimburse the Private Party for the amount concerned.

63.9.5 If the Private Party elects not to pay the claim of any unsatisfied creditor, gives Current Operator written notice of that claim, and fails within 4 (four) Business Days after receipt by it of that notice to procure that the Sale Assets concerned are released from attachment or returned to the Private Party, as the case may be, then without prejudice to any other rights that the Private Party may have against Current

Operator, Current Operator indemnifies the Private Party for all loss that the Private Party may suffer as a result of such attachment.

63.10 **WARRANTIES**

- 63.10.1 Current Operator gives the Private Party the warranties in Clause 63.10.5 (in addition to those given by either or both of them elsewhere in this agreement), and no other warranties.
- 63.10.2 The warranties given by Current Operator are material and given as at the Operation Commencement Date unless the context clearly indicates a contrary intention.
- 63.10.3 To the extent that the warranties in this agreement become effective as of a date which results in the use of any tense being inappropriate, the warranties shall be read in the appropriate tense, changing the provisions as necessary.
- 63.10.4 Each warranty shall remain in force notwithstanding completion of other matters provided for in this agreement, and shall be a separate and independent warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty or by any other provision in this agreement.
- 63.10.5 Current Operator warrants, to the best of its knowledge and belief -
- 63.10.5.1 all provisions of the Occupational Health & Safety Act, 1993 (Act No. 85 of 1993), (as amended), have been adhered to by Current Operator in respect of the Business;
 - 63.10.5.2 the Business and its assets will be insured against the risks to which they are subject for amounts which accord with sound business practice for a period terminating not earlier than 40 (forty) Business Days after the Operation Commencement Date;
 - 63.10.5.3 Current Operator will not be in breach of any of its statutory or other legal obligations in respect of the Business;
 - 63.10.5.4 the Sale Assets will not be subject to any credit agreement, lease, rental agreement, instalment sale agreement, pledge, mortgage, lien, notarial bond or other right in favour of any third person;
 - 63.10.5.5 no person other than the Private Party will have any right (including any option or right of first refusal) to purchase any of the Sale Assets other than in the ordinary course of the Business;

- 63.10.5.6 all of the material tangible Sale Assets will be in good order and condition and fully operational apart from breakdowns in the ordinary course, and loss or damage to or destruction of assets beyond the control of Current Operator; provided that any such loss, damage or destruction are fully insured for the benefit of the Business;
- 63.10.5.7 no transaction will have been entered into in connection with the Business save in the ordinary and regular course of conduct of the Business;
- 63.10.5.8 all of the Sale Assets are beneficially owned by Current Operator, which is entitled and able to give free and unencumbered title to them to the Private Party on the Operation Commencement Date;
- 63.10.5.9 all of the material Sale Assets will be delivered to the Private Party on the Operation Commencement Date;
- 63.10.5.10 all VAT, duties and other levies due and payable as at the Operation Commencement Date to the State in respect of the Business will have been paid in full as at the Operation Commencement Date. Current Operator further indemnifies the Private Party in respect of any and all claims for VAT, duties and other levies which shall have accrued up to the Operation Commencement Date, but which are not due and payable as at the Operation Commencement Date;
- 63.10.5.11 Current Operator is not in default of any material obligations affecting the Business, whether under the Contracts or any of the Regulatory Provisions;
- 63.10.5.12 Current Operator has discharged all material obligations of any nature owing as at the Operation Commencement Date to the employees transferring to the Private Party pursuant to Section 197 of the Labour Relations Act;
- 63.10.5.13 the relevant books, accounts and records of Current Operator in respect of the Business do and will until the Operation Commencement Date continue to accurately reflect all of the material transactions entered into by Current Operator in respect of the Business;
- 63.10.5.14 no person who has any claim in connection with the Business, has instituted proceedings in a division of the High Court having jurisdiction in the district in which the Business is carried on or in the Magistrate's Court of the district nor is the Current Operator aware of any circumstances which may give rise thereto prior to the Operation Commencement Date and which would have the effect of prohibiting Current Operator from transferring the Business to the Private Party;

- 63.10.5.15 all contracts concerning the employees of the Business will be lawfully terminable, subject to the Labour Relations Act, 1995, on notice not exceeding one month;
- 63.10.5.16 all of the Contracts will be of full force and effect and according to their terms and Current Operator will not be in breach of any of those terms nor will such terms require any rectification to record an intention other than that expressly set out in the Contracts. Current Operator will have complied in all respects with its obligations under the Contracts;
- 63.10.5.17 nothing contained in this agreement will relieve Current Operator from its obligation to make those disclosures which it is in law obliged to make.
- 63.10.5.18 all instructions which have from time to time been issued by any inspector appointed in terms of the applicable law have been carried out in respect of the premises from which the Business is conducted.
- 63.10.5.19 this transaction does not constitute a breach of any of the contractual obligations of Current Operator in respect of the Business nor will it entitle any person to terminate any contract to which Current Operator is a party in respect of the Business.
- 63.10.5.20 that it complies with all applicable conditions, limitations, obligations, prohibitions and requirements contained in relevant environmental legislation and Current Operator is not aware of any facts or circumstances which may lead to any breach of any environmental legislation.

63.11 **EMPLOYEES**

- 63.11.1 With effect from the Operation Commencement Date, all employees of Current Operator specified in Schedule 8 of the PPP Agreement will automatically have their employment transferred to the Private Party in accordance with Section 197(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended).
- 63.11.2 The Private Party undertakes to assume and discharge all obligations of Current Operator to those of its employees who are transferred to the Private Party as envisaged in Clause 11.1.
- 63.11.3 The Private Party confirms that it will recognise all previous years of service of employees of Current Operator who become employed by the Private Party in the Business from the Operation Commencement Date.

63.11.4 It is recorded that certain of the employees so specified in Schedule 8 are entitled to post-retirement medical aid company contributions in accordance with Current Operator employment conditions. The Private Party shall assume and acknowledges that these employees will continue to enjoy the benefit of post-retirement medical aid contributions and that the financial and administrative aspects of executing this benefit will be the responsibility of the Private Party.

63.11.5 Current Operator undertakes to procure that the actuarially valued balance of all employees retirement fund entitlements (whether the pension, provident or other) including any surplus or accumulated benefits shall be transferred in the normal course to the Private Party's pension fund without delay after the Operation Commencement Date. The Private Party will have the right to appoint its own actuary for the purpose of verifying the value of each member's share of Current Operator retirement fund.

63.11.6 The Private Party will assume the obligations in respect of the existing housing subsidy scheme operated by Current Operator in respect of the employees specified in Schedule 8.

63.12 **BREACH AND DISPUTES**

For the avoidance of doubt, the termination clause and the resolution of dispute clause of the Restaurant Facility PPP Agreement apply to the Sale of Business Agreement.

SIGNED AT ON THE 2012.

For and on behalf of
CURRENT OPERATOR

who warrants his authority hereto

SIGNED AT ON THE 2012.

For and on behalf of
THE PRIVATE PARTY

who warrants his authority hereto

DRAFT

64. SCHEDULE 24 – STOCK

DRAFT

65. SCHEDULE 25 – SALE ASSETS

DRAFT