



# **SANPARKS THESENS ISLAND RESTAURANT PPP AGREEMENT**

**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

**FOR THE**

**SANPARKS THESENS ISLAND RESTAURANT CONCESSION**

**IN THE**

**KNYSNA NATIONAL LAKE AREA**

**OF THE**

**GARDEN ROUTE NATIONAL PARK**

**APRIL 2009**

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**MEMORANDUM OF AGREEMENT ENTERED INTO BY AND**

**BETWEEN**

**SOUTH AFRICAN NATIONAL PARKS (“SANParks”) ; and**

**[                      ] (“*the Private Party*”).**

**PREAMBLE :**

**WHEREAS**

- (A) SANParks wishes to generate income through the commercialisation of certain operations pertaining to South Africa’s National Parks and protected environments under its management;
- (B) SANParks has the object of, inter alia, protecting, conserving and controlling all protected areas under its management, including all biodiversity found therein;
- (C) SANParks wishes to expand the tourist and income generating potential of the protected areas under its management by making various Public Private Partnership (“PPP”) Opportunities available to appropriate and reputable eco-tourism Operators;
- (D) A PPP opportunity has arisen in the Knysna National Lake Area of the Garden Route National Park in connection with the SANParks Thesens Island Restaurant;
- (E) The Private Party has expertise in the provision of accommodation and related services suitable for visitors to protected areas, and facilities in connection therewith;
- (F) The Private Party is desirous and SANParks is prepared to enter into a PPP Agreement for the commercial utilisation of the PPP opportunity that has arisen in connection with the SANParks Thesens Island Restaurant, by the Private Party, whilst allowing SANParks to conserve the Knysna National Lake Area of the Garden Route National Park, as it is enjoined to do;

**NOW THEREFORE** the Parties agree as follows -

**1. DEFINITIONS AND INTERPRETATION**

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

- 1.1 The headings of clauses in this PPP Agreement, the Annexures and the Schedules are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof.
- 1.2 Words importing the singular only, also include the plural and vice versa where the context requires.
- 1.3 Any reference to any agreement, Schedule or Annexure shall be construed as including a reference to any agreement, Schedule or Annexure amending or substituting that agreement, Schedule or Annexure.
- 1.4 If any definition in this Clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it were a substantive provision in the body of this PPP Agreement.
- 1.5 A reference in this PPP Agreement to an amount means that such amount shall, for the purposes of this PPP Agreement, be escalated on the Effective Date and annually thereafter in accordance with the Consumer Price Index in order that its value as at 1 July 2009 will be maintained relative to the percentage increase in the Consumer Price Index for such period.
- 1.6 In this PPP Agreement, the Annexures and the Schedules the following words and expressions shall, unless inconsistent with the context in which they appear, have the meanings hereby assigned to them and expressions derived from those words and expressions shall bear corresponding meanings :
  - 1.6.1 **“Act”**
    - the National Environmental Management: Protected Areas Act, No 57 of 2003;

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|-------|--|---|
| 1.6.2 | <b>“Agent”</b>                                   | - has the meaning described in the Loan Agreement;  |
| 1.6.3 | <b>“Annual PPP Fee Payment</b>                   | - has the meaning described in Clauses 8.3 and 8.4;   |
| 1.6.4 | <b>“Annexure”</b>                                | - annexures hereto;   |
| 1.6.5 | <b>“Architectural Design Guidelines”</b>         | - the Architectural Design Guidelines prescribed for the SANParks Thesens Island Development as detailed in Annexure III;   |
| 1.6.6 | <b>“Associated Agreements”</b>                   | - the contracts related to the design, alterations to construction, fitting, equipping, installation, financing, operation, maintenance and management in respect of the SANParks Thesens Island Restaurant and the Project Site, including the Municipal Services Agreement, or otherwise entered into by the Private Party in connection with the Project, including, but not limited to, those contracts listed in Annexure I; |
| 1.6.7 | <b>“BBBEE Act”</b>                               | - the Broad Based Black Economic Empowerment Act, No. 53 of 2003;   |
| 1.6.8 | <b>“BEE obligations/Empowerment obligations”</b> | - the Private Party's BEE obligations as detailed in Annexure XI;   |
| 1.6.9 | <b>“Best Industry Practice”</b>                  | - the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional seeking in good faith to comply with his contractual obligations,   |

complying with all applicable legislation and laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement, the intention being that an acceptable balance shall be maintained between tourism and conservation;

1.6.10 **“Bid and Development Bond”**

- a bid and development bond of the nature specified in Clause 3.12 and having the characteristics set out in Part C of Annexure VI;

1.6.11 **“Bid Submission**

- the bid for the Project submitted by the Private Party and accepted by SANParks, which forms an integral part of and extracts whereof are annexed to this Agreement;

1.6.12 **“Black Economic Empowerment/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 BBBEE Act;

1.6.13 **“Bulk Services Facilities”**

- facilities for rendering or the making available of services, including Utilities, in bulk to Thesens Island State Land;

1.6.14 **“Business Day”**

- a normal business day excluding weekends and statutory public holidays;

1.6.15 **“Change in control”**

- any change whatsoever in control, whether effected directly or indirectly;

- 1.6.16 **“Compliance Events”** - the events referred to in Clause 24 and detailed in Annexure VIII;
- 1.6.17 **“Confidential information”** - has the meaning set forth in Clause 21.2;
- 1.6.18 **“Consents”** - all consents, permits, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences and certificates required to be issued by or made with any Responsible Authority in connection with the performance of any of the Project Deliverables;
- 1.6.19 **“Conservation Management”** - the management of biodiversity in all its facets and fluxes in a manner that is consistent with the provisions, principles and objectives of the Management Plan of the protected area in question;
- 1.6.20 **“Constitutional Documents”** - the Private Party’s memorandum and articles of association, certificate of incorporation and certificate to commence business, as well as the Shareholders Agreement, all of which are attached to this agreement as Annexure VII and the terms of which are to be to the satisfaction of the Institution;
- 1.6.21 **“Construction Contracts”** - the contracts entered into or to be entered into, for purposes of the design, alterations to construction, fitting, installation, equipping and/or commissioning in respect of the SANParks Thesens Island Restaurant and relevant Project Assets at the Project Site, and submitted to SANParks;
- 1.6.22 **“Construction Phase”** - the phase during which Construction Works are carried out;



- 1.6.23 **“Construction Works”**
- the design, alterations to construction, fitting, installation, equipping and commissioning in respect of the SANParks Thesens Island Restaurant and relevant Project Assets at the Project Site in accordance with this PPP Agreement and the Construction Contracts;
- 1.6.24 **“Consumer Price Index/CPIX”**
- the Consumer Price Index excluding interest on mortgage bonds, for metropolitan and other urban areas as published from time to time by Statistics SA;
- 1.6.25 **“Contractor”**
- the party or parties designated as Contractor under the relevant Construction Contract;
- 1.6.26 **“Control”**
- in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);
- 1.6.27 **“DEAT”**
- Department of Environmental Affairs and Tourism;
- 1.6.28 **“Delivery Date”**
- the date of delivery of the Project Site to the Private Party, as referred to in Clause 6.2.1;
- 1.6.29 **“Detailed Design”**
- the detailed design for the Construction Works as well as the furniture, fittings and equipment for the SANParks Thesens Island Restaurant, to be prepared in accordance with the

- prescripts of the Architectural Design Guidelines;
- 1.6.30 **“Detailed Site Development Plan”** - the detailed site development plan for Thesens Island State Land as annexed in Annexure II;
- 1.6.31 **“DWAF”** - Department of Water Affairs and Forestry;
- 1.6.32 **“Effective Date”** - the effective date will be 1 September 2009, or the Operation Commencement Date, whichever comes earlier;
- 1.6.33 **“EIA” or “Environmental Impact Assessment”** - the process of assessing the environmental effects of a development and its subsequent operation, carried out in accordance with applicable Regulatory Provisions and guidelines;
- 1.6.34 **“EMP”** - Environmental Management Plan;
- 1.6.35 **“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 water, groundwater and water in drains and sewers) and land;
- 1.6.36 **“Environmental Guidelines”** - the environmental guidelines for Private Parties operating within the protected areas under the management control of SANParks set forth in Annexure V, as same may be revised and updated by SANParks from time to time;

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| 1.6.37 <b>“Environmental Representative”</b>                   | - the Private Party's representative on all matters relating to the environment, including all its environmental obligations;  |
| 1.6.38 <b>“Equity Subscription Agreements”</b>                 | - the agreements to be entered into between the Shareholders and the Private Party setting out the terms on which the Shareholders are to subscribe for Equity in the Private Equity;  |
| 1.6.39 <b>“Equity”</b>   | <ul style="list-style-type: none"><li>- (i) any issued ordinary and/or preferential shares in the Private Party for which the Shareholders have subscribed; and/or</li><br/><li>(ii) any loans provided by the Shareholders to the Private Party, but does not include any funds or facilities provided by any Lender;</li></ul>                           |
| 1.6.40 <b>“Financial Year”</b>                                 | - the financial year of the Private Party;   |
| 1.6.41 <b>“Force Majeure”</b>                                  | - has the meaning set forth in Clause 16;  |
| 1.6.42 <b>“Garden Route National Park/GRNP”</b>                | - the national park proclaimed as such in terms of the Act on 6 March 2009 and including the Tsitsikamma and Wilderness national parks, the Knysna National Lake Area, Southern Cape indigenous forest and associated fynbos areas previously under the management of DWAF, mountain catchments areas and plantation exit areas of MTO Forestry (Pty) Ltd; |
| 1.6.43 <b>“Generally Accepted Accounting Principles/ GAAP”</b> | - the generally accepted accounting principles in the Republic of South Africa as approved from time to time by the South African Accounting Standards Board or its successor;   |
| 1.6.44 <b>“Gross Revenue”</b>                                  | - has the meaning ascribed to it in Clause 8;  |

- 1.6.45 **“Head Ranger”** - the Section or Area Ranger under whose jurisdiction the SANParks Thesens Island Restaurant and Project Site fall;
- 1.6.46 **“Hygiene Control Officer”** - the independent hygiene expert, proficient and qualified at assessing hygiene at the kind of business conducted by the Private Party by means of the Project;
- 1.6.47 **“IEM”** - Integrated Environmental Management;
- 1.6.48 **“Institution”** - SANParks;
- 1.6.49 **“Institution Assets”** - any assets and rights made available by SANParks to the Private Party for use in the Project in accordance with the terms of this Agreement;
- 1.6.50 **“Intellectual Property”** - all registered or unregistered trade marks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed 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;
- 1.6.51 **“Knysna National Lake Area”** - The area, approximately 15 000 hectares in size, originally proclaimed a lake area in terms of the Lake Areas Development Act No. 39 of 1975, classified and identified as a protected environment under the management of SANParks with effect from 1 November 2005,

and proclaimed as part of the GRNP on 6 March 2009, in terms of the provisions of the Act;

1.6.52 **“KOC”**

- Knysna Oyster Company (Pty) Ltd, registration number 1989/003176/07;

1.6.53 **“KOC Business”**

- the business run by KOC at the Project Site prior to 1 August 2009, namely a restaurant, retail shop and support functions for the land based operations of Oyster farming, such as the storage, grading, stacking, packing of oysters and other related functions;

1.6.54 **“KOC Concession Agreement”**

- the agreement concluded between SANParks and KOC on 31 May 2006 and providing for the construction of buildings at the Project Site in accordance with the KOC Plans;

1.6.55 **“KOC Fixtures”**

- the fixtures KOC affixed to the Project Site in accordance with the provisions of the KOC Concession Agreement, a list whereof is annexed as part of Annexure II;

1.6.56 **“KOC Payment”**

- the payment to be made to KOC by the Private Party, for the costs of the buildings and other structures constructed at the Project Site as well as the KOC Fixtures, in accordance with the provisions of the KOC Concession Agreement;

1.6.57 **“KOC Payment Date”**

- 31 July 2009;

1.6.58 **“KOC Plans”**

- the plans for the construction of the buildings on the Project Site, utilised for the KOC Business, prepared in accordance with the provisions of the KOC Concession Agreement

and annexed in Annexure II;

1.6.59 **“Lender” or “Lenders”**

- any or all Persons providing loan facilities, credit facilities or guarantee facilities to the Private Party for financing the Project (specifically excluding any provider of Equity) in terms of the Loan Agreements, provided that for the purposes of this PPP Agreement, where the Lenders are required to take action, are to be given notice or are otherwise to be in receipt of something, the Agent (as defined in the Loan Agreement) shall be authorised to take such action and to receive such notice or other receipt, on behalf of the Lenders;

1.6.60 **“Loan Agreement”**

- such agreement or agreements as may be entered into by the Private Party and the Lenders in respect of loan facilities, credit facilities or guarantee facilities provided to the Private Party for financing of the Private Party's obligations under this PPP Agreement, excluding Equity;

1.6.61 **“Material Damage”**

- used in the context of the environment means any change in the environment caused by the Private Party or any person with whom it has contracted to fulfil any of its obligations in terms of this PPP Agreement, where the change results in a material adverse effect on the ecological integrity of the environment or on the ability of the ecosystem within the Knysna National Lake Area or the wider GRNP to recover or which will have a material effect in the future, all of which shall be measured against the EIA or any subsequent EIA;

- 1.6.62 **“Minimum PPP Fee”** - has the meaning described in Clause 8.2.1;
- 1.6.63 **“Municipal Services Agreement”** - the services agreement concluded between SANParks and the Knysna Municipality in connection with the provision and maintenance of engineering services, including Utilities, supplied to Thesens Island State Land, and listed as one of the Associated Agreements in Annexure I;
- 1.6.64 **“New Project Assets”** - collectively the movable and immovable assets required to be obtained by the Private Party for purposes of the Project, but excluding the Institution Assets and cash, and including the SANParks Thesens Island Restaurant, the KOC Fixtures, any books and records, any spare parts and tools, and the Intellectual Property, or if the context is appropriate, any one of the New project assets;
- 1.6.65 **“Operational Phase”** - the phase commencing on the Operation Commencement Date and terminating upon termination of the Project Term;
- 1.6.66 **“Operation Commencement Date”** - the date of actual commencement of the Operation, Management and Maintenance of the SANParks Thesens Island Restaurant and the Project Assets, subsequent to the issue of a completion certificate by an architect approved by SANParks in accordance with Clause 7.3;
- 1.6.67 **“Operation, Management and Maintenance” or “Operate, Manage and Maintain”** - all activities necessary for the operation, management and maintenance of the SANParks Thesens Island Restaurant and the Project Assets in Accordance with this PPP

Agreement;

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| 1.6.68 <b>“Other Thesens Island Projects”</b>        | - projects other than the Project, undertaken or to be undertaken on Thesens Island State Land, in respect of commercial opportunities identified in the Detailed Site Development Plan or any amendment thereof, by way of PPP Agreement; |
| 1.6.69 <b>“Other Thesens Island Counter-Parties”</b> | - the counter-parties to SANParks in terms of PPP Agreements concluded in respect of the Other Thesens Island Projects;  |
| 1.6.70 <b>“Park/Protected Area”</b>                  | - the Garden Route National Park;  |
| 1.6.71 <b>“Park Manager”</b>                         | - the manager of the GRNP;   |
| 1.6.72 <b>“Park Plan/Park Management Plan”</b>       | - the management plan for the GRNP or any management plan compiled by SANParks in respect of the Knysna National Lake Area;  |
| 1.6.73 <b>“Park Regulations”</b>                     | - the statutory regulations applicable to the GRNP and/or the Knysna National Lake Area;   |
| 1.6.74 <b>“Park Rules”</b>                           | - the park rules regulating the GRNP and/or the Knysna National Lake Area;   |
| 1.6.75 <b>“Parties”</b>                              | - collectively, SANParks and the Private Party;  |
| 1.6.76 <b>“Party”</b>                                | - SANParks or the Private Party, as the case may be;   |
| 1.6.77 <b>“Performance Bond</b>                      | - a performance bond of the nature specified in Cause 3.12;  |
| 1.6.78 <b>“Person”</b>                               | - any individual, partnership, close corporation, company, business trust, governmental  |



- agency, parastatal, Relevant Authority or other entity;
- 1.6.79 **“PFMA”** - the Public Finance Management Act, No. 1 of 1999;
- 1.6.80 **“PPP”** - Public Private Partnership;
- 1.6.81 **“ the PPP Agreement/this Agreement”** - this PPP Agreement between SANParks and the Private Party including the Annexures and Schedules hereto;
- 1.6.82 **“PPP Fee”** - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 8;
- 1.6.83 **“PPP Offer”** - the Private Party's financial offer included in the Bid Submission;
- 1.6.84 **“PPP Rights”** - all the rights conferred on the Private Party pursuant to this PPP Agreement, for the purposes of the Project;
- 1.6.85 **“Pre-Construction Phase”** - the phase preceding the Construction Phase;
- 1.6.86 **“Private Party”** - the person concluding this PPP Agreement with SANParks;
- 1.6.87 **“Private Party Default”** - has the meaning assigned to it in Clause 17.1;
- 1.6.88 **“Project”** - the design, construction, fitting, installation, equipping, commissioning, Operation, Management and Maintenance of the SANParks Thesens Island Restaurant, under the terms of this agreement, to provide food, beverages and related goods and services to visitors to the GRNP;

- 1.6.89 **“Project Assets”**
- collectively the Institution Assets and the New Project Assets or, if the context is appropriate, any one of them, including both movable and immovable assets;
- 1.6.90 **“Project Deliverables”**
- means:
    - (i) the meeting of the BEE Obligations;
    - (ii) the installation, commissioning, operation, management and maintenance of the Project Assets, including the repair, renewal or replacement thereof; and
    - (iii) the exercise and performance of all other rights and obligations of the Private Party under this agreement from time to time;
- 1.6.91 **“Project Schedule”**
- the details for commencement and completion and carrying out of Construction Works (including all relevant milestone dates for completion and commissioning) set forth in the Bid Submission or as otherwise agreed with SANParks in writing;
- 1.6.92 **“Project Site”**
- the site identified for the Operation, Management and Maintenance of the SANParks Thesens Island Restaurant in the Detailed Site Development Plan, including the service area, described in Schedule B and illustrated in Annexure II, and prior to 1 August 2009 utilised by KOC to run the KOC business, as provided for in the KOC Concession Agreement;
- 1.6.93 **“Project Term”**
- the period specified in Clause 2.2;

- 1.6.94 **“Project Year”** - has the meaning described in Clause 8.2;
- 1.6.95 **“Protected Names”** - has the meaning ascribed to it in Clause 3.8.6;
- 1.6.96 **“Regulations”** - regulations issued under the Act;
- 1.6.97 **“Regulatory Provisions”** - (i) the Environmental Guidelines set forth in Annexure V; and  
(ii) collectively the prevailing laws, regulations, ordinances, policy directives and standards of the State and any Relevant Authority which in any way affect or apply to the Project and/or the activities of the Private Party and/or this PPP Agreement from time to time or, if the context is appropriate, any one of them and where appropriate include the Park Regulations, Park rules, Park Management Plan and any statutory provisions applicable to the Protected Area;
- 1.6.98 **“Related Party Transaction”** - any transaction relating in any way directly or indirectly to the Project in which the Private Party, or the Contractor leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or entered into any contract, agreement, understanding. Loan, advance or guarantee with, or for the benefit of, a Related Party (other than the Private Party);
- 1.6.99 **“Related Party”** - a Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, a Person who holds at least 25% Equity interest in the Private Party, or is under common control with any Person who holds at

least a 25% Equity interest in the Private Party, and any Person who holds at least 25% Equity interest in the Private Party, where “**control**” with respect to any Person means the power to direct the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the term “**controlled**” has the meaning commensurate with the foregoing;

1.6.100 “**Relevant Authority**”

- a ministry, department, provincial or local agency, authority or any other organ of State and any other public authority, body, entity or Person having jurisdiction under the laws of the State with respect to the Private Party or the Project and/or from whom consents are required for this Project;

1.6.101 “**Remedy Period**”

- the period granted by either party to the other, during which the one party must take action to make good the damage or rectify the notified default;

1.6.102 “**Residual Value**”

- the depreciated value of the immovable Project Assets, revalued for changes in the Consumer Price Index during the period that runs from the date they were first accounted for in the Private Party's books until the date of termination of the PPP Agreement. Depreciation will be calculated in accordance with depreciation presented for income tax purposes, taking into consideration the unexpired portion of the period specified in Clause 2.2, provided that the minimum rates of depreciation shall not be less than normal custom and practice;

- 1.6.103 **“Responsible Person”** - for the purposes of Clause 13, any Contractor, sub contractor at any level, agent, servant, officer or employee of the Private Party;
- 1.6.104 **“the ROD”** - the Record of Decision issued by DEAT under Reference Number: A24/16/3/110 on 26 November 1999;
- 1.6.105 **“SAHRA”** - South African Heritage Resource Agency;
- 1.6.106 **“SANParks”** - South African National Parks and its lawfully designated representatives from time to time;
- 1.6.107 **“SANParks’ ECO”** - SANParks’ Environmental Control Officer;
- 1.6.108 **“SANParks Requirements”** - the requirements set out in Annexure V hereto;
- 1.6.109 **“SANParks Review Panel/SANParks Design Review Panel”** - the Review Panel appointed by SANParks to approve all building plans and the Detailed Design;
- 1.6.110 **“SANParks Thesens Island Common Area”** - the public area on Thesens Island State land, including the lagoon edge retaining structures, gardens, planter boxes, parking areas, roads, traffic islands, kerbing, paving, side-walks and walkways, public ablutions, accessible to and/or intended to be used by or for the benefit of customers, guests, invitees and patrons of the Private Party and Other Thesens Island Counter-Parties as well as other visitors to the Thesens Island State Land;
- 1.6.111 **“SANParks Thesens Island Development”** - the development undertaken on Thesens Island State Land in accordance with the Detailed Site Development Plan or any amendment thereof;

- 1.6.112 **“SANParks Thesens Island Restaurant”** - the land, buildings, fixtures and related facilities utilised for, as well as, the restaurant and related business, conducted at the Project Site in accordance with the provisions of this PPP Agreement;
- 1.6.113 **“Schedule”** - a schedule hereto;
- 1.6.114 **“Service Area”** - that portion of the Project Site designated as such, adjacent to and utilised for servicing the buildings on the Project Site;
- 1.6.115 **“Shareholder Distributions”** - at any date, all payments by the Private Party to the Shareholders in respect of the Equity, after the deduction of all applicable taxes, including, without limitation, by way of dividends or other return of capital;
- 1.6.116 **“Shareholders’ Agreement”** - the contract made between the Shareholders and the Private Party relating to the formation of the Private Party, the conduct of its business, and the relationship between the Shareholders, as amended from time to time;
- 1.6.117 **“Shareholders”** - the Persons listed in Annexure VII;
- 1.6.118 **“Signature Date”** - the date stated in Schedule A, being the date on which SANParks signs the PPP Agreement and with effect from which date the PPP Agreement becomes legally binding on both SANParks and the Private Party;
- 1.6.119 **“State”** - the Government of the Republic of South Africa, acting directly or through its lawfully designated representatives;

- 1.6.120 **“Subcontractors”** - any subcontractor of the Private Party and/or a third party, who has contracted directly with the Private Party in respect of the Project;
- 1.6.121 **“Substitute Entity”** - any Person nominated to replace the Private Party in this PPP Agreement and who has entered into the requisite agreements, all in accordance with the procedures set out in Clause 18 hereof;
- 1.6.122 **“Termination Date”** - the date of termination of this PPP Agreement other than on expiry of the Project Term;
- 1.6.123 **“TGCSA”** - Tourism Grading Council of South Africa;
- 1.6.124 **“Thesens Island”** - such land constituting part of the Knysna National Lake Area commonly known as Thesens Island, connected to the town of Knysna by a causeway, approximately 420 metres in length, and upon which land Thesens Island State Land is situated;
- 1.6.125 **“Thesens Island State Land”** - the unregistered state land section of Thesens Island, Long Street, Knysna, approximately 1,3 hectares in size;
- 1.6.126 **“TOMSA”** - Tourism Marketing Levy for South Africa (Association incorporated under section 21);
- 1.6.127 **“Tourism Charter”** - the Transformation Charter prepared in accordance with the provisions of the BBBEE Act and applicable to the Tourism Sector;
- 1.6.128 **“Tourism Code”** - the Code issued under the provisions of Section 9 of the BBBEE Act and applicable to the Tourism sector;

- 1.6.129 **“Utilities”** - all facilities serving the public, such as water, electricity, sewage, gas and telecommunications and where appropriate includes the relevant provider thereof;
- 1.6.130 **“Variable PPP Fee”** - has the meaning described in Clause 8.2.

## 2. **FRAMEWORK**

### 2.1 **Private Party Statements**

- 2.1.1 The Private Party shall undertake the Project at its own cost and risk in accordance with the provisions of this PPP Agreement, including the provisions of the Bid Submission. Neither SANParks, the State nor any Relevant Authority shall provide any guarantee or support to the Private Party except as otherwise specifically provided herein or as provided in law. This PPP Agreement shall not be deemed to grant the Private Party any right or impose any obligations on SANParks, the State or any Relevant Authority except as specifically stated in this PPP Agreement.
- 2.1.2 No instructions or approvals given by SANParks in accordance with the law and the provisions of this PPP Agreement will affect the Private Party's responsibility to undertake the Project. Notwithstanding that this PPP Agreement permits or requires the Private Party to engage third parties to perform part of the Project, such engagements shall not release the Private Party from any of its obligations and responsibilities to SANParks hereunder, and the Private Party shall be fully responsible for the acts and omissions of such third parties.

### 2.2 **Project Term**

The Project Term shall be for 15 (fifteen) years from the Effective Date, subject to termination in accordance with this PPP Agreement.



### **2.3 PPP Agreement Legally Binding at Signature Date**

Notwithstanding the representations and warranties provided in Clause 22 or the Compliance Events, each Party hereto hereby represents and warrants that this PPP Agreement is legally valid and binding upon it from the Signature Date.

### **2.4 Project Site**

The location, dimensions and physical boundaries of the Project Site shall be that area defined in Schedule B and illustrated in Annexure II. The KOC Plans are attached as part of Annexure II.

### **2.5 Payments**

2.5.1 Save as expressly provided in this PPP Agreement, SANParks shall not require payment by the Private Party for or in respect of the PPP Rights or otherwise for or in connection with the Project.

2.5.2 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 SANParks Thesens Island Restaurant and Project Site, or in respect of activities conducted within the SANParks Thesens Island Restaurant and Project Site or activities undertaken by SANParks relating to the regulation of this PPP Agreement. These taxes will include municipal property rates, if any, but exclude any capital gains tax, income tax, VAT or other taxation on income which is earned by SANParks or, notwithstanding this PPP Agreement, any other tax payable by SANParks.

2.5.3 The Private Party shall be responsible for payment of the KOC Payment to KOC on the KOC Payment Date, as follows:

2.5.3.1 In accordance with the provisions of the KOC Concession Agreement the Private Party is obliged to make payment of the amount of R5 371 744-01 (Five million three hundred and seventy one thousand seven hundred and forty four rand and one cent) as well as interest on the

said amount at the rate of interest paid by KOC, as referred to in the KOC Concession Agreement, to be determined in respect of each drawdown making up the KOC Payment, from the date of each drawdown until date of final payment, both dates inclusive.

2.5.3.2 The amount of R5 371 744-01 (Five million three hundred and seventy one thousand seven hundred and forty four rand and one cent) is subject to an audit to be conducted, the results of which audit are to be agreed upon by KOC and SANParks. Depending on the results of such audit the amount thus payable may increase or decrease. In accordance with the provisions of the KOC Concession Agreement, such audit shall take into consideration any audited depreciation benefit claimed by KOC.

2.5.4 Neither SANParks, the State nor any Relevant Authority shall be liable for any payments except as expressly specified in this PPP Agreement or in any applicable law.

### **3. PRIVATE PARTY COVENANTS**

#### **3.1 Registration**

3.1.1 The Private Party shall be an incorporated juristic person or an unincorporated joint venture or trust recognised in terms of the laws of the Republic of South Africa and shall remain as such for the entire Project Term.

3.1.2 The Private Party shall not amend, restate, supplement or otherwise modify its Certificate of Incorporation, Memorandum of Association, Articles of Association, founding statutes, Joint Venture Agreement or Trust Deed, unless otherwise agreed to in writing by SANParks.

#### **3.2 Environmental Compliance and Compliance with Laws, Regulations and Standards**

3.2.1 During the Project Term, the Private Party shall, and shall take all reasonable steps to ensure that its officers, employees, Contractors, sub-

contractors at all levels, sub-agents, assignees, customers, invitees and patrons adhere to, abide by and comply with the Regulatory Provisions, all applicable health and safety standards, the Environmental Guidelines generally in respect of the Knysna National Lake Area and the Park as set out in Annexure V and specifically in respect of the SANParks Thesens Island Restaurant and Project Site, the EIA and any valid and enforceable directives or rules issued by the Park Manager or Head Ranger from time to time. To be valid and enforceable in terms of this PPP Agreement, directives or rules issued by the Park Manager or Head Ranger must not conflict with the letter or the spirit of the Regulatory Provisions, or the Environmental Guidelines set in Annexure V, or the Park Management plan, or the provisions of the EIA. In those instances where the Private Party believes that either the Head Ranger or 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 of appeal within SANParks to the PPP Management Office, established by SANParks to regulate and administer this PPP and others like it in Protected Areas. The PPP Management Office will verify whether the directive or rule in question was valid, and consistent with practice elsewhere in protected areas. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule. This internal process of appeal does not prejudice the rights of the Private Party to pursue its rights pursuant to Clause 19.

- 3.2.2 SANParks shall use all reasonable endeavours in assisting the Private Party to acquire the appropriate environmental permits, provided, however that SANParks shall bear no liability for any failure of the Private Party to obtain such permits.
- 3.2.3 Subject to Clause 3.2.1, the Private Party shall obtain all necessary environmental and other permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any environmental or other permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the Regulatory Provisions for the implementation and the operation, management and maintenance of the Project for the Project Term.

- 3.2.4 Action which is prohibited in terms of the Regulatory Provisions, or non-compliance with any duty or obligation which is imposed by the Regulatory Provisions, shall be deemed to be a breach of this PPP Agreement. SANParks shall be entitled to give the Private Party notice to rectify any such breach, if such breach is capable of rectification, but in any event, SANParks shall be entitled to act on any such breach to protect its rights and interests. The Private Party shall and hereby does indemnify SANParks for any costs, losses and expenses suffered or incurred by SANParks as a result of SANParks so acting to protect its rights and interests.
- 3.2.5 Based on the ROD already issued no further EIA is required for the Project. Should it for any reason, however, turn out that a further EIA is required, the Private Party shall undertake same in respect of the Project, to be prepared by an independent environmental consultant in accordance with applicable Regulatory Provisions and guideline documents published by the DEAT and in accordance with the principles of IEM adopted from time to time by DEAT and the provisions of the Environmental Guidelines.
- 3.2.6 The Private Party shall bear all risks and costs with respect to Material Damage to the natural environment caused by the implementation of the Project during the Project Term arising from any act or omission of the Private Party or any person with whom it has contracted to fulfil any of its obligations in terms of this PPP Agreement, save where such Material Damage is an unavoidable result of the Project as permitted in terms of this PPP Agreement. Should the Private Party fail to fulfil any obligations in respect of the fitting, installation, equipping, commissioning, construction, operation, management and/or maintenance of the SANParks Thesens Island Restaurant and Project Site or permit behaviour which, in the reasonable opinion of SANParks, may result in Material Damage to the environment, then, without derogating from the Private Party's obligations hereunder and at law, SANParks shall be entitled to give written notice to the Private Party to immediately cease and desist from such conduct or behaviour, and in such notice shall set out in full its reasons therefore and SANParks shall be entitled forthwith to exercise any authority granted to it in terms of the Regulatory Provisions in respect of the Conservation Management of the SANParks Thesens Island Restaurant and Project Site

and the Private Party shall promptly make payment to SANParks for its costs, expenses and other damages suffered or incurred or reasonably expected to be suffered to incurred in connection with the execution of such authority.

- 3.2.7 The Private Party shall deliver those reports as detailed in Clauses 15.4, 15.5, 15.6, 15.7, 15.8 and 15.9. 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 Protected Area.
- 3.2.8 The Private Party shall appoint, at no cost to SANParks, an independent Environmental Representative, who shall be responsible for ensuring that the Operation, Management and Maintenance is performed in accordance with SANParks' Requirements and relevant environmental Regulatory Provisions and for monitoring and ensuring implementation and effectiveness of mitigation measures and other requirements and targets set forth in the EIA.
- 3.2.9 Notwithstanding the provisions of Clause 3.2, the Private Party will remain accountable and liable to SANParks for the performance of the Environmental Representative's obligations in terms of this Agreement.
- 3.2.10 During the Pre-Construction & Construction Phases the Environmental Representative shall submit monthly reports, and during the Operational Phase the Environmental Representative shall submit twice-yearly reports. Reports will be submitted to both SANParks and the Private Party. The Environmental Representative will report on an ad hoc basis to the SANParks' ECO and will also be the contact person for all environmental matters that need to be dealt with. Duties of the Environmental Representative during the construction phase will include the following:
- 3.2.10.1 Ensuring that the construction phase is completed without significant adverse impacts on the habitat on and around Thesens Island;
- 3.2.10.2 Ensuring that the construction phase is completed without significant adverse impacts on the birdlife on and around Thesens Island;
- 3.2.10.3 Ensuring that the construction phase is completed without significant adverse impacts on the water quality, inter-tidal and sub-tidal fauna

- and flora, and in particular Red Data Species of the Thesens Island and surrounding area; and
- 3.2.10.4 Ensuring that the Environmental Guidelines are effectively implemented.
- 3.2.11 The Private Party's Environmental obligations during the Operational Phase will include the following:
- 3.2.11.1 Ensuring that the Project has a positive effect on the ecological functionality of Thesens Island and the surrounding area;
- 3.2.11.2 Ensuring the ongoing effective implementation of the EMP;
- 3.2.11.3 Using environmental appropriate facilities and activities to enhance environmental awareness and education; and
- 3.2.11.4 Optimising the recreation and tourism potential of Thesens Island without compromising the ecological objectives.
- 3.2.12 All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest or burial sites discovered within the SANParks Thesens Island Restaurant and Project Site shall (as between the Parties) be the property of SANParks and the Private Party herewith cedes, transfers and waives in favour of SANParks any and all rights it may have regarding the said matter. The Private Party shall take reasonable precautions to prevent its staff, labour, Contractors or other Persons from removing or damaging any such article or thing. The Private Party shall, immediately upon discovery of such article or thing, advise SANParks which shall issue instructions for dealing with it.
- 3.2.13 Subject to complying with its obligations under Clause 3.2.12, the Private Party shall be required to minimise and mitigate, and to take reasonable steps to procure that its Contractors minimise and mitigate, to the maximum extent possible, the consequences of any such discovery as is referred to in Clause 3.2.12 and shall deal with the discovery in terms of the Environmental Guidelines and the EIA. If need be a revised EIA specific to the discovery can be called for by SANParks.
- 3.2.14 The Private Party shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any

environmental health hazards and to ensure the health and safety of staff, customers, invitees and patrons.

- 3.2.15 During the Project Term, the Private Party shall operate at all times in an environmentally responsible way by adopting appropriate operating methods and practices for conducting business in a proclaimed nature area and shall adhere to the guidelines set out in the Regulatory Provisions, the Environmental Guidelines and the EIA. The Private Party shall comply with the undertakings made in its development and environmental proposal, which is attached as Annexure IX and is part of its Bid Submission. The Private Party shall have due regard for the under mentioned matters, and shall take them into account in conducting its business. The matters to be taken into account are all ecological aspects, including garbage disposal, human waste treatment, advertising standards, use of environmentally friendly cleaning and other materials, fauna and flora protection, water conservation, minimising noise levels, visual impacts, the removal of aquatic life, plants, insects, rocks and the like, removal of souvenirs, social aspects, including local customs and traditions, dress code, language, privacy, response to begging, use of technological equipment, bartering and bargaining, indigenous rights, local officials and off-limits areas. It shall be the Private Party's responsibility to bring any matter which may have a detrimental impact on the environment to the attention of SANParks before implementation by the Private Party.
- 3.2.16 Without limiting the generality of the responsibility of the Private Party described in Clause 3.2.15, the Private Party has a statutory duty in terms of existing acts to take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring, or, in so far as any 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.
- 3.2.17 The Private Party shall be responsible for:
- 3.2.17.1 obtaining and keeping current all consents which may be required for the performance of its obligations under this PPP Agreement;
  - 3.2.17.2 implementing each consent within the period of its validity in

accordance with its terms;

3.2.17.3 undertaking, according to the terms of this PPP Agreement, all of its obligations within the time periods specified; and

3.2.17.4 maintaining and keeping the SANParks Thesens Island Restaurant and the Project Site clean.

### **3.3 Single Purpose Private Party - No Subsidiaries**

3.3.1 The Private Party shall be a single purpose incorporated juristic person or unincorporated joint venture or trust, with the sole purpose of implementing this Project or this Project and Other Thesens Island Projects and the Private Party shall not assume any liability other than in connection with this Project, and in the event of also undertaking Other Thesens Island Projects, also in respect of these. The Memorandum and Articles of Association or founding statutes or Joint Venture Agreement or Trust Deed of the Private Party shall include a provision to such effect.

3.3.2 The Private Party shall have no subsidiaries or sub-trusts throughout the Project Term except with the prior written consent of SANParks.

### **3.4 Related Party Transactions**

3.4.1 Unless otherwise agreed to in writing by SANParks, the Private Party will enter into no material Related Party Transactions, other than Related Party Transactions which are no less favourable to the Private Party than those that could have been obtained in a comparable arm's-length transaction by the Private Party with an unrelated person.

3.4.2 SANParks shall have the right to review the basis for all costs charged, directly or indirectly, to the Private Party by a Related Party. The Private Party shall give prior written notice to SANParks of any Related Party Transaction prior to entry therein together with all relevant details relating thereto.

3.4.3 SANParks reserves the right to conduct a particularly thorough examination of the cost basis of Related Party Transactions involving the



Private Party and any companies providing travel agent, tourism operating or management services for a fee or commission. Such fees and commissions will be required to conform to normal industry practice.

### **3.5 Limitation on Financial Indebtedness**

The Private Party shall not incur, assume or permit to exist any indebtedness, including guarantees issued to third parties and the creation of charges, pledges or other encumbrances over its assets, otherwise than in accordance with the Associated Agreements or in the ordinary course of business in furtherance of the Project or by operation of law, without the prior written consent of SANParks.

### **3.6 The Private Party to Make Documents Available to SANParks**

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 the Project, or which the Private Party is required to prepare in terms of this PPP Agreement.

### **3.7 Conflicts**

Unless otherwise agreed to 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 Project except as provided for in the PPP Agreement or the Associated Agreements. Subject to the proper enforcement of rights under the Associated Agreements, the Private Party shall not, and shall take all reasonable steps to ensure that other parties, including parties to the Associated Agreements, do not engage in any activity which might conflict with the interests of SANParks, unless such activity is carried out pursuant to the rights granted to the Private Party in terms of this PPP Agreement.

### **3.8 Intellectual Property**

#### **3.8.1** It is specifically recorded that all intellectual property rights whatsoever,

whether capable of registration or not, regarding SANParks' name, logo, image and all other intellectual property matters relating to SANParks, its name, logo and/or image shall remain the sole property of SANParks.

- 3.8.2 Subject to existing rights and obligations and the provisions of this PPP Agreement, SANParks shall, on application by the Private Party, grant a non-exclusive right and licence to the Private Party to use SANParks' trademarks in connection with the Project. 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' retail facilities.
- 3.8.3 In order to establish and maintain high standards of style, quality and proprietary associated with SANParks, in the event, the Private Party desires to use SANParks' trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to SANParks for approval. Under no circumstances shall any use of SANParks' trademarks or logos or the image or likeness of any trademark, logo or employee, which SANParks in good faith believes reflects unfavourably upon or disparages SANParks, 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 from it in any material respect without SANParks' further written approval.
- 3.8.4 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 such SANParks trademark or logo and shall remove from public sale or distribution, any previously approved product in respect of which SANParks has rescinded approval.
- 3.8.5 SANParks may withdraw its approval for the specified use of any trademark or logo 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.

- 3.8.6 The Private Party acknowledges that the names of the Park, the Knysna National Lake Area, the Project Site and SANParks Thesens Island Restaurant (the "**Protected Names**") are associated with and peculiar to the Park, the Knysna National Lake Area, the Project Site and SANParks Thesens Island Restaurant and are the intellectual property of SANParks. Consequently, the Private Party agrees that the sole and exclusive ownership of the Protected Names shall vest in SANParks and should the Private Party utilise any of the Protected Names, it does so only in terms of this PPP Agreement and provided the prior written approval of SANParks is obtained for any specific use of the Protected Names. Any other name used for trading purposes or to market the SANParks Thesens Island Restaurant will also form part of the Protected Names and ownership of such name/s will be transferred to SANParks at the end of the Project Term or at Termination Date (whichever comes first).
- 3.8.7 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 any of the Protected Names in combination or association with any other name.
- 3.8.8 Within 30 (thirty) Business Days after the termination of this PPP Agreement and where the Private Party has operated a company or close corporation utilising any of the Protected Names with the permission of SANParks, the Private Party shall either:
- 3.8.8.1 de-register the company or close corporation bearing any of the Protected Names; or
- 3.8.8.2 change the name to a name not substantially similar to any of the Protected Names.

3.8.9 The naming of the Private Party's business operation shall be done in consultation with SANParks and subject to SANParks' approval.

3.8.10 The Parties record that SANParks is not the owner of the intellectual property rights utilised by KOC to conduct the KOC Business, these being the property of KOC.

### 3.9 **Branding**

3.9.1 The Private Party shall not, in the operation, promotion or marketing of the SANParks Thesens Island Restaurant, be entitled to use, directly or indirectly, any commercial branding similar to any branding used outside of the Protected Area by the Private Party, or any of its associated companies or competitors, without the prior written consent of SANParks.

3.9.2 Any commercial branding developed by the Private Party in respect of the SANParks Thesens Island Restaurant may not be used outside the Protected Area without SANParks' prior written consent.

### 3.10 **Transfer of Project Site, SANParks Thesens Island Restaurant and Project Assets**

At the end of the Project Term or at such earlier time as may be provided herein, and without derogating from the generality of the foregoing, upon termination of this PPP Agreement, the Private Party shall hand over the Project Site, the SANParks Thesens Island Restaurant, all Project Assets (excluding all movable New Project Assets) and its rights or interest in the Project 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' Requirements (as certified by SANParks). The Private Party shall not, other than as provided for in this PPP Agreement in respect of the Residual Value consequent upon termination prior to expiry of the Project Term, be entitled to payment of any compensation in connection therewith. Without derogating from the generality of the foregoing, the following shall not be considered to be movable: buildings and all fixtures and fittings of a permanent nature.

### 3.11 Approvals

The Private Party warrants and shall ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by SANParks required in terms of this PPP Agreement, the Construction Contracts or other Associated Agreements shall be so applied for or requested promptly.

### 3.12 Bid and Development Bond and Performance Bond

- 3.12.1 The Private Party shall provide to SANParks an on demand guarantee (the “Bid and Development Bond”), as provided for in the Bid Submission which shall be operative from the Bid Date as defined in the Bid Submission in favour of SANParks, issued by a bank or financial institution acceptable to SANParks, substantially in the format specified in Annexure VI, Part C, on signing this Agreement. The amount of the Bid and Development Bond is set out in Annexure VI. The Private Party shall maintain a valid Bid and Development Bond (in accordance with the provisions hereof) in respect of the 12 (twelve) months’ period after the Signature Date.
- 3.12.2 Within 1 month from the Signature date 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 Annexure VI.
- 3.12.3 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 of the Project Term or earlier termination of this PPP Agreement.
- 3.12.4 Within 90 (ninety) Business Days of the expiry or the Project Term 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.

- 3.12.5 The amount to be guaranteed by the Performance Bond shall be an amount equivalent to 3 (three) months' payments of the Minimum PPP Fee, as determined in accordance with the provisions of Clause 8 and Annexure X.
- 3.12.6 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 determined in accordance with the provisions of Clause 3.12.5 as adjusted, to reflect changes in the Consumer Price Index since 1 July 2009.
- 3.12.7 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) or Environmental Guidelines (as set forth in Clause 3.2 and Annexure V) 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. It is furthermore expressly recorded that SANParks shall be entitled to call on the Performance Bond where the Private Party fails to comply with its obligations under Clause 3.10 and where SANParks is entitled to terminate this PPP Agreement in accordance with Clause 17.2.
- 3.12.8 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.
- 3.12.9 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.

#### **4. PPP RIGHTS**

##### **4.1 Grant of PPP Rights**

- 4.1.1 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 during the Project Term.
- 4.1.2 The Private Party is obliged to operate, manage and maintain the SANParks Thesens Island Restaurant and Project Assets as public facilities for visitors to the Knysna National Lake Area, open to paying customers, invitees and patrons. The private Party will not only cater for the foreign market, but also be aimed at national tourists.
- 4.1.3 Any activities offered by the Private Party are subject to the requirement that no portion of the Park will be reserved for exclusive use by customers, invitees or patrons to the SANParks Thesens Island Restaurant or Project Site and the requirements of the Park Management Plan.
- 4.1.4 The Private Party acknowledges that SANParks intends entering into or has entered into PPP Agreements in respect of the Other SANParks Thesens Island Projects. The Private Party undertakes in favour of SANParks and the Other Thesens Island Counter-Parties, that at no stage it, its officers, employees, contractors, sub-contractors, sub-agents, assignees, customers, invitees and patrons will infringe or negatively impact upon the rights and obligations of the Other Thesens Island Counter-Parties, due cognisance being taken of the rights and obligations of the Private Party and the Other Thesens Island Counter-Parties, flowing from their respective PPP Agreements, nor cause a nuisance for the Other Thesens Island Counter-Parties.
- 4.1.5 The exercise of the PPP Rights by the Private Party, its officers, employees, contractors, sub-contractors, sub-agents, assignees, customers, invitees and patrons, will at no time infringe upon the rights of other persons in the Park, including those of SANParks, its employees, any party with whom it has contracted in respect of facilities offered in the Park other than at the Project Site, its suppliers or Visitors to the Park.

4.1.6 The grant of the PPP Rights to the Private Party shall entitle and oblige the Private Party to Operate, Manage and Maintain for gain for the duration of the PPP Agreement:

4.1.6.1 the SANParks Thesens Island Restaurant and Project Assets in accordance with the provisions of this PPP Agreement, including the Bid Submission, and achieving the Project Deliverables; and

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

#### 4.2 **Service Delivery**

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

4.2.1.1 be in accordance with Best Industry Practice;

4.2.1.2 be delivered in a professional, courteous and friendly manner; and

4.2.1.3 be in accordance and compliance with the grading of the Tourism Grading Council, as specified in Clause 9.4.

#### 4.3 **Quality Audits**

SANParks will be entitled to conduct regular quality audits to ensure that the quality of the foodstuffs, goods and services provided by the Third Party consistently meet desired standards. Such quality audits shall be conducted by way of “mystery customers”, spot checks, customer questionnaires and SANParks quality control checks or other measures as deemed necessary by SANParks.

#### 4.4 **Appointment of a Hygiene Control Officer**

The Private Party shall be obliged to appoint a Hygiene Control Officer at its own costs, to assess the hygiene at the business being conducted by the Private Party by means of the Project on a quarterly basis, compile a report and forward a copy thereof to SANParks and the Private Party. The Hygiene Control Officer shall be obliged to prepare his report in the format and in respect of those matters requested by SANParks.



## **5. SANPARKS' UNDERTAKINGS**

### **5.1 SANParks Assistance**

5.1.1 Without being obligated in terms of outcome or consequences, SANParks shall give reasonable assistance in the form of advice, introductions and documentary support to the Private Party in its dealings with Relevant Authorities and otherwise in connection with implementing the Project in accordance with the terms and conditions set forth herein.

5.1.2 SANParks will operate, manage and promote the Protected Area in such a manner as to ensure the continued viability and sustainability of the GRNP, specifically the Knysna National Lake Area as part thereof, as a Protected Area and as a sustainable tourism and conservation undertaking.

### **5.2 Competing Products**

Nothing herein shall preclude or in any way limit the right of SANParks to grant such further or other PPPs or to enter into other agreements or to construct or procure the construction of other products outside of the Project Site as it in its sole discretion deems fit, and without derogating from the generality of the foregoing, in respect of the Other Thesens Island Projects, nor shall the Private Party have any claim arising from the grant of such further or other PPPs or from the construction of such other products: Provided that SANParks shall fulfil the obligations set out herein with due regard to the rights granted to the Private Party in terms of this PPP Agreement.

### **5.3 Visitor Levels**

SANParks shall have no liability to the Private Party for the number of visitors to the SANParks Thesens Island Restaurant and/or the Park and/or the Knysna National Lake Area or for any reduction or fluctuation thereof.

### **5.4 SANParks Competence**

5.4.1 SANParks hereby represents and warrants that it has been duly empowered and authorised to implement the Project and to enter into and

perform its obligations under the PPP Agreement.

- 5.4.2 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.

## **6. ACQUISITION AND DELIVERY OF PROJECT SITE AND OWNERSHIP AND RISK**

### **6.1 Project Site Acquisition**

SANParks will have possession of that land which constitutes the Project Site, on the Delivery Date. On request SANParks shall supply the Private Party with the required diagrams, and information regarding the same.

### **6.2 Delivery of Project Site**

- 6.2.1 SANParks shall, as far as practically possible, and as soon as the Compliance Events, referred to in Annexure VIII, have occurred, deliver vacant possession of the Project Site to the Private Party and shall thereafter ensure that the Private Party continues to be entitled to such access to the Project Site as is necessary for the Private Party to perform its obligations under this PPP Agreement, and to enjoy the PPP Rights, from the date of delivery to the termination or expiry of this PPP Agreement.
- 6.2.2 The Private Party acknowledges that delivery of the Project Site without vacant possession shall not be deemed a breach of SANParks' obligations in accordance with Clause 6.1 if it does not impinge on the ability of the Private Party to undertake the Construction Works as required or does not interfere with the construction programme for such works.
- 6.2.3 The rights of the Private Party under this Clause 6 are subject to the obligation of the Private Party to use all reasonable efforts to rearrange the Project Schedule in order to minimise, mitigate and/or otherwise avoid

delay and increased cost and to require the relevant Contractor to co-operate in that regard.

### **6.3 Private Party without Ownership Interest**

6.3.1 Subject to the terms of this PPP Agreement, the Private Party has, and will have, no title to, or ownership interest in, or liens, or leasehold rights or any other rights (save for the PPP Rights) in the Project Site or in the Project Assets (other than movable New Project Assets). Title to such land and assets will be held, directly or indirectly, by SANParks or the State.

6.3.2 The Private Party has no and will have no rights with respect to the airspace above, or the area below the surface of, the SANParks Thesens Island Restaurant and Project Site or the land on which any Project Assets are to be constructed, except the right to use such land for the sole purpose of the Project during the Project Term, all in accordance with the terms of this PPP Agreement. SANParks reserves unto itself the right to grant to third parties and/or to the Private Party such rights it has with respect to the airspace above and the area below the surface of the SANParks Thesens Island Restaurant and Project Site, provided that in exercising such right it shall have due regard to the rights granted to the Private Party in terms of this PPP Agreement.

### **6.4 Damage to or Destruction of the SANParks Thesens Island Restaurant and Project Site or Project Assets**

6.4.1 After delivery of the Project Site, the SANParks Thesens Island Restaurant or any portion thereof and any Institution Assets delivered to the Private Party, the Project Site and any New Project Assets, shall be at the sole risk of and under the care, custody and control of the Private Party.

6.4.2 Without derogating from the generality of Clause 6.4.1, the Private Party shall bear all risks and costs with regard to any weather conditions (subject to the provisions of Clause 16), including, without limitation, floods, and with regard to physical conditions or obstructions (both above-ground and subsurface and whether artificial or not), whether foreseen or unforeseen, which are encountered during the Construction Phase or at any time

during the Project Term.

6.4.3 Should the Project Site, the SANParks Thesens Island Restaurant or the Project Assets or any portion thereof be damaged or destroyed at any time during the Project Term, the Private Party shall, within a reasonable period of time, at its own cost and expense, repair, rebuild or replace the same so that after such repair, rebuilding or replacing, the Project Site, the SANParks Thesens Island Restaurant and such Project Assets shall be substantially in the same condition as prior to such damage or destruction. In the event that the extent or nature of such damage or destruction is such that it would be impossible or commercially undesirable to repair, rebuild or replace the relevant portion of the Project Site, the SANParks Thesens Island Restaurant and/or the relevant Project Assets, the Private Party shall be excused from the obligation to so repair, rebuild or replace and SANParks or the Private Party shall have the right to proceed pursuant to Clause 16 on the basis that an event of Force Majeure shall be deemed to have occurred.

6.4.4 Should SANParks and the Private Party disagree with respect to what is “commercially undesirable” in Clause 6.4.3, either Party may request the other Party to agree within 7 (seven) Business Days on an independent expert to make a determination in that regard. Should the Parties be unable to agree on the identity of such expert within 7 (seven) Business Days of the second party being so requested, such expert shall be chosen by the Chairman of the Association of Law Societies of South Africa to make such determination. The person thus chosen shall act as an expert and not as an arbitrator and the determination by such expert shall be final and binding on the Parties.

## **7. CONSTRUCTION WORKS**

### **7.1 Design and Construction**

7.1.1 The parties record that:

7.1.1.1 KOC has the right to conduct the KOC Business at the Project Site until 31 July 2009 and has constructed the buildings at the Project Site

and affixed the KOC Fixtures, utilising the KOC Plans, for the said purpose.

7.1.1.2 The Private Party shall conduct such business at the Project Site as provided for in the Bid Submission.

7.1.1.3 To the extent that SANParks has in writing requested an amendment of the business provided for in the Bid Submission prior to concluding this PPP Agreement, or to the extent that the necessary approval is not granted for any business provided for in the Bid Submission, and without derogating from the generality of the foregoing, to the extent that the necessary approval is not granted for any aspect of such business relating to oyster farming, the Private Party shall conduct a restaurant at the Project Site as well as such remaining business provided for in terms hereof.

7.1.2 The Private Party shall have the right and be obliged to make alterations and additions to the buildings constructed in accordance with the KOC Plans, in order to conduct the business as provided for in Clause 7.1, which alterations and additions shall be done in accordance with the Detailed Design submitted as part of its Bid Submission. The Detailed Design shall be subject to approval and amendments proposed by the SANParks Review Panel and shall take into account the requirements of the EIA, the Detailed Site Development Plan, the Architectural Design Guidelines, any applicable Conservation Framework, the Municipal Services Agreement, any applicable requirements of the Knysna Municipality and the Park Management Plan.

7.1.3 The Private Party shall undertake or procure the Construction Works in accordance with the Detailed Design and meet the requirements of the PPP Agreement, in so far as they relate to the Construction Works, and in accordance with the findings of the EIA. The Private Party bears sole responsibility for the procurement of all construction materials, the adequacy of the design in terms of construction quality and safety (including fire safety), SANParks' Requirements and compliance with the PPP Agreement and any Regulatory Provisions. The Private Party may submit to SANParks written proposals for modifications by the Private Party to the Detailed Design which in the Private Party's opinion would improve construction quality or safety. Any modifications will be subject to

the written approval of the SANParks Design Review Panel.

## **7.2 Consents for Construction Works**

- 7.2.1 The Private Party shall make the necessary applications to the Relevant Authorities for any and all consents required in respect of the Construction Works and for the relocation and diversion of any utilities or municipal services.

## **7.3 Project Schedule**

- 7.3.1 The Private Party shall undertake the Construction Works subject to a Project Schedule, incorporating the requirements of this PPP Agreement, prepared by the Private Party. The Construction Works will only be complete once an architect, appointed by the Private Party for purposes only of certifying completion of the Construction Works, which architect's appointment is subject to written approval by SANParks, has certified that the Construction Works are complete.
- 7.3.2 In the event that Construction Works are not complete as at the Effective Date, the Private Party shall cease such works, and provide to SANParks a detailed explanation of the reasons for such delay, and a new time table for completion. Construction Works shall not recommence unless given separate approval by SANParks.

## **7.4 Contracts**

- 7.4.1 The Private Party shall as soon as reasonably possible after the conclusion of this PPP Agreement enter into the Associated Agreements and such other contracts necessary to ensure the timely and proper completion of the Detailed Design, Construction Works, fitting, equipping, installation, financing, Operation, Management and Maintenance of the SANParks Thesens Island Restaurant, and such future design and construction as may be necessary to meet the Private Party's obligations in terms of the PPP Agreement. The Private Party must satisfy itself that the terms of such agreements fully describe the rights, obligations, risk allocation and

protection of the Private Party's rights. SANParks and its advisers, the State and Relevant Authorities shall have no liability whatsoever arising from any of the Associated Agreements, unless SANParks, the State or any Relevant Authority shall have become a signatory to any such Associated Agreement and to the extent indicated in such agreement.

- 7.4.2 The Private Party shall take all reasonable steps to ensure that the Contractors perform the Construction Works in accordance with the terms of the relevant Construction Contracts.

**7.5 SANParks Monitoring**

SANParks or any of its designated representatives may from time to time, enter any part of the Project Site to monitor progress with the Construction Works, provided that SANParks or its designated representative must comply with the reasonable safety requirements of the Private Party or Contractor which generally apply.

**7.6 Information Relating to the Construction Works**

- 7.6.1 The Private Party shall furnish to SANParks a copy of every Construction Contract upon conclusion thereof. The Private Party shall furthermore furnish to SANParks or any of its designated representatives all such reports and other information relating to the Construction Works as SANParks may reasonably request from time to time.

- 7.6.2 Upon Construction completion and upon any modifications effected pursuant to an amendment of the Detailed Design, the Private Party shall supply SANParks with copies of all as-built drawings and other technical and design information and completion records relating to the finished or altered Construction Works.

**7.7 Costs Recoverable from Contractors and Third Parties**

Where the Private Party is entitled under any Construction Contract or any contract for Operations, Management and Maintenance to recover costs which have been or are reasonably expected to be incurred by SANParks in

connection with the Project, the Private Party shall enforce its rights to recover such costs and shall pay any amounts so recovered promptly to SANParks.

## **7.8 Commencement**

Actual construction will only be permitted with effect from the Delivery Date.

## **7.9 Municipal Services Agreement**

The Private Party shall perform all obligations imposed on it in terms of the Municipal Services Agreement. Without derogating from the generality of the foregoing such obligations shall include the Private Party:

- 7.9.1 carrying out the Construction Works to ensure compliance with the provisions of the Municipal Services Agreement;
- 7.9.2 installing any ducts for Utilities and in accordance with the specifications of Relevant Authorities;
- 7.9.3 channelling any storm water collected on the Project Site into the storm water system for Thesens Island State Land; and
- 7.9.4 carrying out any maintenance obligations on the Project Site in respect of the engineering services, including the Utilities, provided for in the Municipal Services Agreement.

## **8. FINANCIAL PROVISIONS AND PAYMENT**

### **8.1 Gross Revenue**

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

- 8.1.1 any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of



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

- 8.1.1.1 bad debts (or provisions therefore);
- 8.1.1.2 commissions or similar consideration paid or payable;
- 8.1.1.3 cash, credit-card or similar discounts or commissions;
- 8.1.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a Related Party;

and gross revenue shall include;

- 8.1.1.5 commissions received or receivable;
- 8.1.1.6 rentals and other fees received or receivable;

but shall exclude;

- 8.1.1.7 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;
- 8.1.1.8 interest received or receivable;
- 8.1.1.9 the proceeds of, profit or surpluses on the disposal of non-current assets;
- 8.1.1.10 transfers from reserves; and
- 8.1.1.11 bad debts recovered.

8.2 For the purposes of this Clause 8,

- 8.2.1 **“Minimum PPP Fee”** means, in respect of the Project Year in question, the Minimum PPP Fee stipulated by SANParks and indicated in Annexure X, escalated annually to compensate for inflation in accordance with the Consumer Price Index, as indicated in Clause 8.7 below;

- 8.2.2        **“Variable PPP Fee”** means, in respect of the Project Year in question, the bidded percentage of actual Gross Revenue for that Project Year indicated in Annexure X;
- 8.2.3        **“Project Year”** means for the first Project Year a 1 (one) year period commencing on the Effective Date, and for subsequent Project Years, the equivalent period.
- 8.3        The Private Party agrees to pay SANParks a PPP Fee in respect of every Project Year (the “Annual PPP Fee Payment”) as indicated in this clause. No Annual PPP Fee Payment is payable before the Effective Date.
- 8.4        The Annual PPP Fee Payment payable by the Private Party to SANParks for any given Project Year shall be the higher of the following two figures:
- the Minimum PPP Fee for that Project Year; or
  - the Variable PPP Fee for that Project Year.
- 8.5        Irrespective of which these elements determine the final amount payable in any given Project Year, the payment schedule will be as follows:
- 8.5.1        The Minimum PPP Fee shall accrue and be payable by the Private Party to SANParks in 12 (twelve) equal monthly payments, the first payable before or on the 7<sup>th</sup> (seventh) Business Day of the month following on the month during which the Project Year in question commenced and subsequent payments to be made before or on the 7<sup>th</sup> Business Day of each subsequent month, free of deduction or set-off. Should any payment not be made on due date, the remainder of the Minimum PPP Fee for the Project Year in question shall immediately become due and payable.
- 8.5.2        The Variable PPP Fee, shall be calculated by the Private Party for the Project Year in question on the basis of the Private Party’s unaudited accounts within 30 (thirty) Business Days of the end of the Project Year. If this figure is higher than the Minimum PPP Fee, it shall be the total amount payable under this Clause 8 by the Private Party to SANParks for the Project Year in question. The difference between the Variable PPP Fee thus determined and the aggregate of amounts already paid under the

Minimum PPP Fee, will be payable 60 (sixty) Business Days after the end of the Project Year in question.

8.5.3 It is noted that the Gross Revenue which forms the basis for the Variable PPP Fee must be consistent with both the Private Party's tax statements and audited accounts and that there are bound to be differences in timing between the Private Party's financial year and the Project Years. In order to ensure that the Private Party's tax statements are consistent with the basis of the Actual Annual PPP Fee, the following verification and adjustment process will be followed. When the financial year commencing during a given Project Year comes to an end, the Private Party will make available its audited accounts to SANParks, which must clearly show Gross Revenue calculated in accordance with the provisions of Clause 8.1. The Gross Revenue indicated in these audited accounts, and those of the previous year, will be used, on a direct pro rata basis, to produce a revised calculation of the Variable PPP Fee for the Project Year in question. If this figure is different from the Variable PPP Fee which has already been paid for that Project Year, the difference will be paid by means of an adjustment to the next payment due by the Private Party to SANParks, unless no further payments are due in which case the difference will be paid by the Private Party to SANParks within 30 (thirty) Business Days from the end of the financial year in question or, as appropriate, refunded by SANParks to the Private Party within 30 days of making available the relevant audited financial statements. Such payments will be subject to the interest charges described in Clause 8.5.4 below.

8.5.4 Any overdue payment by either SANParks or the Private Party in terms of Clause 8 shall be subject to an interest charge equal to the prime rate of interest charged by SANParks' bankers from time to time, plus 2 (two) %. 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.

8.6 All fees or other amounts payable in terms of this PPP Agreement shall be exclusive of Valued Added Tax or any transactional tax.

- 8.7 Calculation of the Annual PPP Fee Payment requires certain financial data to be adjusted for inflation as measured by the Consumer Price Index, namely the Minimum PPP Fee. This adjustment for inflation will take place with effect from the first day of the Project Year in question, and the figures will then be applied for the entirety of the forthcoming Project Year. For all Project Years, except Project Year 1, the adjustment will take the published index for the Consumer Price Index effective in respect of the first day of the Project Year in question and compare it to the published index of the Consumer Price Index for exactly one year previously, and adjust the financial data accordingly. For Project Year 1, the adjustment will take the published index for the Consumer Price Index effective in respect of the Effective Date and compare it to the published index of the Consumer Price Index effective at 1 July 2009 and adjust the financial data accordingly.
- 8.8 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, 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.

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

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

- 9.1.1 The Private Party shall be obliged during the Project Term to undertake the Operation, Management and Maintenance of the SANParks Thesens Island Restaurant and of all related Construction Works undertaken by the Private Party according to Best Industry Practice.
- 9.1.2 The Private Party shall furnish SANParks with a report in the format and frequency required by SANParks, regarding the Operation, Management and Maintenance of the SANParks Thesens Island Restaurant.
- 9.1.3 The Private Party shall comply with its obligations in respect of Utilities set forth in this Agreement, its Annexures and the Municipal Services Agreement as well as conduct its operations in accordance with the EIA, any applicable Conservation Framework and the Park Management Plan.

- 9.1.4 The Private Party shall:
- 9.1.4.1 operate the SANParks Thesens Island Restaurant 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;
  - 9.1.4.2 use its best endeavours to maintain the highest standards in accordance with Best Industry Practice in all matters connected with the operation of the SANParks Thesens Island Restaurant 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 Best Industry Practice or any Regulatory Provisions with regard to the standard or quality of preparation, display or sale of any foodstuffs at the SANParks Thesens Island Restaurant;
  - 9.1.4.3 shall at all times maintain the kitchen and other associated equipment used in the SANParks Thesens Island Restaurant in a clean, orderly and sanitary condition;
  - 9.1.4.4 shall ensure that all personnel and staff employed by the Private Party at the SANParks Thesens Island Restaurant shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery; and
  - 9.1.4.5 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.
- 9.1.5 The Private Party shall be responsible to install a dedicated water meter to measure the consumption of water supplied to the SANParks Thesens Island Restaurant if requested to do so by SANParks. Under such circumstances SANParks will invoice the Private Party for the water consumed.
- 9.1.6 The Private Party shall be obliged to apply for and obtain a relevant liquor licence to enable it to trade in liquor with effect from the Operation Commencement Date. On the expiry or termination of this PPP Agreement

or upon the appointment of a Substitute Entity in accordance with the provisions of Clause 18, the Private Party shall effect the transfer of this licence into the name of SANParks or any person nominated by it, free of charge.

- 9.1.7 The Private Party is required to operate according to the hours specified by SANParks.
- 9.1.8 The Private Party shall be obliged to contribute to the costs of establishment, maintenance, upkeep as well as the operation of the SANParks Thesens Island Common Area, pro rata to the area of the Project Site relative to the areas of the Project Sites of all Thesens Island State Land Private Parties. Without derogating from the generality of the foregoing, such costs shall include all costs associated with establishing and keeping the SANParks Thesens Island Common Area fit for the purpose for which it is intended to be used, maintaining security, cleaning, establishing, replacing or maintaining gardening and landscaping, repairing electrical installations and other facilities providing the Utilities and repairing any other facilities for the benefit of customers, guests, invitees and patrons of the Private Party and Other Thesens Island Counter-Parties and other visitors to the Thesens Island Common Area, as well as all costs associated with any Utilities in respect of such area. Any payment of such costs shall be made on demand.
- 9.1.9 The Private Party shall be obliged to contribute to the costs of establishment, maintenance, upkeep as well as operation of all Bulk Services Facilities, pro rata to the area of the Project Site relative to the areas of the Project Sites of all Thesens Island State Land Private Parties. Such costs shall include any augmentation fees charged by the Knysna Municipality.
- 9.1.10 The Private Party shall not store, display or leave or permit the storage, display or leaving of motor vehicles, bicycles, packing cases or goods of any nature whatever on the area outside the SANParks Thesens Island Restaurant, including the SANParks Thesens Island Common Area, and will not obstruct any entrance, passage or other access area utilised by the Other Thesens Island Counter-Parties, their customers, guests, invitees

and patrons, nor shall it dump or store anything on such areas.

9.1.11 The Private Party is mutatis mutandis obliged to comply with and adhere to the following SANParks Policies and initiatives, namely its HIV/Aids policy and policy in respect of its Health and Safety Forum.

9.1.12 The Private Party shall be responsible to provide for its own standby electricity requirements. In doing so it shall ensure that it does not cause a nuisance to the Other Thesens Island Counter-Parties and comply with all environmental prescripts. To the extent that any standby electricity is provided by SANParks, the Private Party shall be responsible to compensate SANParks for same at the rate charged by SANParks.

## 9.2 **Third Party Contracts and Cession**

9.2.1 The Private Party may use a third party or third parties to carry out all or part of its Operation, Management and Maintenance obligations under this PPP Agreement. Any such sub-contract shall be an Associated Agreement and the terms of any such sub-contract shall in all material respects reflect the relevant provisions of this PPP Agreement and be subject to written notification, delivery of a copy of the relevant contract to SANParks, as well as prior written approval thereof by SANParks, provided that the engagement of a third party shall not release the Private Party from any of its obligations hereunder.

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

9.2.2.1 this PPP Agreement or any Associated Agreement;

9.2.2.2 any of its rights, interests or obligations there under; or

9.2.2.3 any of its assets;

save, in each case, to the extent required for the financing of the Project as envisaged in the Loan Agreements, and in terms of the provisions of Clause 9.2.3;

9.2.3 Subject to the provisions of Clause 9.2.1, the Private Party may either sub-let, cede, assign or transfer the operation of the whole or a part of the Project, provided that :

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

9.2.3.2 the Private Party shall continue to be liable for the payment to SANParks of all monies 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;

9.2.3.3 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.

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

### 9.3 **Modifications during Project Term**

Modifications to the SANParks Thesens Island Restaurant during the Project Term shall be preceded by an appropriate EIA and shall also be subject to the prior written consent of SANParks and subject to the provisions set forth in this PPP Agreement.

### 9.4 **Tourism Grading**

9.4.1 The TGCSA formalised the Food and Beverage Grading Scheme that recognises four levels of excellence, by awarding the Bronze, Silver, Gold or Platinum Star insignia to the Food and Beverage Sector. International best practice has been taken into consideration and enhanced to provide a grading system to benefit and promote the development of tourism in



South Africa.

9.4.2 The Private Party shall at a minimum obtain:

9.4.2.1 a Silver Star Grading from TGCSA before the ending of Project Year 2 (two); and

9.4.2.2 a Gold Star Grading before the ending of Project Year 4 (four).

9.4.3 In the event of the Private Party failing to comply with the grading provisions in Clause 9.4.2 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 17 by written notice to the Private Party.

9.5 The Private Party shall ensure that the requisite furniture, fittings and equipment required for the SANParks Thesens Island Restaurant, in accordance with the Detailed Design and in order to establish and maintain the grading referred to in Clause 9.4, be supplied and maintained.

9.6 The Private Party will ensure that in employing personnel other than senior management staff or strategically important personnel, operational staff will be sourced from the area of jurisdiction of the Knysna Municipality.

9.7 The Private Party will ensure that preference be granted to suppliers situated within a 50 kilometre radius from the SANParks Thesens Island Restaurant.

9.8 **Unauthorised Payments**

The Private Party shall not:

9.8.1 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.

9.8.2 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.

#### **9.9 Signs And Name Boards**

The Private Party shall be entitled to have its name and trading name placed on SANParks Thesens Island Restaurant and the Project Site, and if required by SANParks upon the termination or expiry of this Project, shall remove the same and make good any damage caused thereby, failing which SANParks will be entitled to do so and recover its costs from the Private Party. The nature and the size of the words depicting the name and trading name of the Private Party will be subject to the written approval of the SANParks Design Review panel and comply with commercial signage restrictions prescribed for Thesens Island. No sign writing, painting or frosting of the windows nor display of any sign on the external faces of SANParks Thesens Island Restaurant will be permitted without the consent of SANParks, which shall not be unreasonably withheld.

#### **10. SANPARKS THESENS ISLAND RESTAURANT LANDSCAPING AND GARDENS**

The Private Party is responsible for the landscaping at the Project Site in accordance with the Detailed Design. Any gardening at the Project Site will take into account the Conservation Management of the Park and the Knysna National Lake Area, the Environmental Guidelines and EIA. Any gardening at the Project Site will be established and/or maintained entirely at the costs and risk of the Private Party and in accordance with the Detailed Design. Any changes to the landscaping at the Project Site in conflict with the Detailed Design are subject to SANParks' written approval. Should SANParks at any stage require that changes be effected to any garden to take into consideration the Conservation Management of the Park and the Knysna National Lake Area or any changes to it, these must be effected as soon as possible.

## **11. CHANGES IN CONTROL AND BLACK EQUITY AND MANDATORY COMMUNITY TRUST EQUITY**

11.1 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.

11.2 The Private Party shall procure that for the duration of the Project Term:

11.2.1 there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal (at any time) of the whole or any part of the Equity and/or the Shareholder Loans of:

11.2.1.1 any Black Shareholder other than to another Black Shareholder, Black Person or Black Enterprise; or

11.2.1.2 the Mandatory Community Trust other than to another Mandatory Community Trust.

11.2.2 there is no dilution in the aggregate Equity holdings of the Black Shareholders below the Minimum Black Equity or of the Mandatory Community Trust below the Minimum Mandatory Community Trust Equity as defined in Annexure XI; and

11.2.3 there is no Change in Control (at any time) in any Shareholder that is a Black Enterprise, which will result in that Shareholder no longer being a Black Enterprise.

11.3 For the purpose of this clause 11 , the term “subsidiary” shall have the meaning as defined in the Companies Act, 1973.

## **12. EMPLOYMENT ISSUES**

### **12.1 Labour Laws**

The Private Party agrees to abide by the laws in force, as amended from time to time, relating to the employment of employees employed in relation to the SANParks Thesens Island Restaurant and Project Site 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.

## **12.2 Breach Caused by Employees and Penalty**

12.2.1 During the Project Term, the Private Party shall take all the necessary appropriate measures to ensure that its staff adhere to, abide by and comply with the Regulatory Provisions and sound conservation and commercial principles. Without derogating from the generality of the foregoing, sound conservation principles include the Conservation Management of the Park and sound commercial principles include such practices that enhance the Private Party's ability to conduct business in accordance with the provisions of the PPP Agreement.

12.2.2 In the event of any employee of the Private Party causing the Private Party to breach a provision of this PPP Agreement the following shall apply:

12.2.2.1 Subject to Clause 12.1, such employee shall be charged forthwith by the Private Party with committing a mandatory serious offence in terms of the Private Party's disciplinary code and failing the existence of the Private Party's disciplinary code, SANParks' disciplinary code, and shall be liable to dismissal in terms thereof.

12.2.2.2 The Private Party shall without delay furnish SANParks with a copy of the written record of such disciplinary proceedings, finding and sentence.

12.2.2.3 Without prejudice to SANParks' right to claim damages or otherwise in respect of any failure or breach of the Private Party, the Private Party shall be liable to pay a penalty in the amount stated in Schedule A for each and every occurrence of such misconduct.

12.2.2.4 Any penalty imposed by SANParks under this Clause 12 shall be paid within 5 (five) Business Days of the Private Party's receipt of written notice from SANParks of the imposition thereof.

12.2.3 The Private Party shall in any event be liable to remedy at its sole cost any environmental or other damage caused by such employee, in such manner

and within 30 (thirty) Business Days or such longer period as may be agreed by SANParks.

### 13. INDEMNIFICATION

#### 13.1 Private Party Indemnification

13.1.1 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 Signature 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), flowing from or in consequence of any act or omission within the SANParks Thesens Island Restaurant and Project Site, 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.

13.1.2 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:

13.1.2.1 death or injury to any Person; or

13.1.2.2 loss of or damage to any property; or

13.1.2.3 any economic loss,

arising out of any such act or omission by the Private Party or any Responsible Person.

13.1.3 The provisions of this Clause 13.1 do not apply to any amount incurred by SANParks in discharging its obligations under this PPP Agreement for which the Private Party is not otherwise liable, except to the extent that such amount is lost or incurred or arises from any gross negligence or material default or breach of statutory duty on the part of the Private Party

or any Responsible Person;

### **13.2 Other Indemnification**

The Private Party shall obtain an indemnification and waiver from all guests, visitors, invitees, employees, contractors, patrons and the like in the format approved by SANParks from time to time. The requirements of this clause shall not effect, in any way, the indemnity provided under Clause 13.1.

### **13.3 Legal Action**

If any legal action is brought or claim is made against SANParks in respect of which SANParks is entitled to be indemnified under Clause 13.1, the Private Party shall, if required to do so by SANParks, defend any such action or claim at its own expense or provide SANParks with full co-operation in defending such action. If the Private Party defends such action or claim, SANParks shall be entitled to specify which legal counsel shall be appointed and shall have the final say as to the manner in which the defence shall be conducted. SANParks may settle such action or claim without the consent of the Private Party or take over the conduct of the action from the Private Party at any time without relieving the Private Party of the obligation to indemnify SANParks under Clause 13.1.

## **14. INSURANCE**

### **14.1 Construction**

During the period of any Construction Works, the Private Party shall, to the reasonable satisfaction of SANParks, maintain and/or shall procure that the relevant Contractor maintains adequate insurance on the SANParks Thesens Island Restaurant and Project Assets and its other insurable properties, which insurance shall include Contractor's all risks insurance, third party liability insurance, employer's liability insurance and, where appropriate, consequential loss/completion delay insurance. Adequate insurance cover means sufficient insurance cover to place SANParks in the position it would have been had SANParks itself insured in similar circumstances.

## **14.2 Operation**

During the period starting from Signature Date of the PPP Agreement and ending on the date of the termination or expiry of this PPP Agreement, the Private Party shall, to the reasonable satisfaction of SANParks, maintain or procure maintenance of adequate insurance on the SANParks Thesens Island Restaurant, the Project Assets and other insurable properties, including property and casualty insurance, as well as business interruption insurance, third party liability insurance and employer's liability insurance.

## **14.3 Covenants Relating to Insurance**

- 14.3.1 The Private Party shall provide the insurance policies set forth in Clauses 14.1 and 14.2 for the benefit of the Private Party and all relevant Contractors and consultants engaged in the Construction Works and Operation, Management and Maintenance.
- 14.3.2 The Private Party will maintain the insurance at commercially reasonable levels.
- 14.3.3 The interest of SANParks and Lenders shall be noted on the policies set forth in Clauses 14.1 and 14.2. The Private Party shall provide SANParks with certified copies of the certificates of all such insurance and shall periodically review the extent and adequacy of the coverage provided by such insurance in the context of this Clause 14 and the prevailing conditions in the Republic of South Africa.
- 14.3.4 The proceeds of any claims under the all risks insurance policies referred to in Clause 14.1 and under the property and casualty insurance policies referred to in Clause 14.2 hereof shall be applied to the repair or restoration of the SANParks Thesens Island Restaurant and/or other insured Project Assets.
- 14.3.5 Should SANParks and the Private Party disagree with respect to what is "commercially reasonable" in Clause 14.3.2, either Party may request the other Party to agree within 7 (seven) Business Days on an independent insurance expert to make a determination in that regard. Should the

Parties be unable to agree on the identity of such expert within 7 (seven) Business Days of the second Party being so requested, such expert shall be chosen by the President of the Institute of Chartered Accountants or any body that has replaced it from among those leading international insurance brokers that are, at that time, active in the South African market to make such determination. The person so decided upon shall act as an expert and not as an arbitrator and the determination by such expert shall be final and binding on the Parties.

#### **14.4 Terms of Insurance**

14.4.1 The Private Party shall maintain the aforementioned insurances on the best terms available in the domestic insurance market which are authorised by the relevant State authorities to provide the respective coverage.

14.4.2 Unless SANParks agrees otherwise such terms shall include:

14.4.2.1 waiver of subrogation against SANParks, its agents, servants, officers, employees and contractors;

14.4.2.2 a provision whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit or indemnity;

14.4.2.3 a breach of a condition or warranty/severability/non-vitiation provisions acceptable to SANParks or if such provisions are not generally available in equivalent policies written in the South African insurance market, each of the Private Party and the Contractor(s) (if any) shall covenant, for the duration of such non-availability, with SANParks in writing that it will not make any misrepresentations to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail;

14.4.2.4 a provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to SANParks;

14.4.2.5 a provision whereby the policy shall only be cancelled subject to 90 (ninety) Business Days' notice, or 30 (thirty) Business Days' notice in



respect of non-payment of premium;

14.4.2.6 a provision that a notice of claim given to the insurer by SANParks in respect of the Private Party or any other insured under the policy, shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties, a copy of which must be given to the other of them and any other insured; and

14.4.2.7 a provision that such insurance shall be primary and no other policy shall be called into contribution.

## **15. FINANCIAL ACCOUNTS AND REPORTS, MANAGEMENT**

### **15.1 Appointment of Auditors**

The Private Party shall arrange at its own expense for an accounting and cost control system consistent with Generally Accepted Accounting Principles and for the appointment as auditors of a firm of nationally recognised independent accountants. The accounts of the Private Party will be kept in Rand. The Private Party shall keep all such books and records for 6 (six) years and at all times within the Republic of South Africa. Such accounts and the reports of such accountants shall be provided to SANParks. SANParks may meet with the Private Party's auditors, together with the Private Party, regarding the Private Party's accounts and operations from time to time. SANParks may also conduct or require that a firm of independent accountants conduct reasonable additional audits of the Private Party, at SANParks' expense.

### **15.2 Right of Inspection**

The Private Party shall furnish to SANParks, on a confidential basis, any information SANParks may reasonably request. The Private Party shall further permit representatives of SANParks to visit, at reasonable times and with minimum disruption to the Private Party, the Construction Works, the SANParks Thesens Island Restaurant, any other part of the Project Site and any of the other offices where the business of the Private Party is conducted and to have access to its books of accounts, working papers and records, and all other data assembled in connection with the Project available to SANParks. The kind of information that SANParks may request, shall include, but not be limited to the

following:

- 15.2.1 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;
- 15.2.2 an annual report by the auditors reporting that, based on its said financial accounting and other systems, management and accounts, the Private Party was in compliance with all its financial obligations under this PPP Agreement, including the computation of the PPP Fee, as of the end of the relevant fiscal year or, as the case may be detailing any non-compliance therewith;
- 15.2.3 a projected profit and loss account and the budget for the following year, together with an analysis thereof.
- 15.3 The Private Party shall immediately report to SANParks, on a confidential basis, details of the following events:
  - 15.3.1 any charge, lien or attachment imposed on any of the Private Party's property and any seizure thereof which charge, lien, attachment or seizure will have a material adverse effect on the ability of the Private Party to perform its obligations under this PPP Agreement;
  - 15.3.2 any matter which might influence the validity of this PPP Agreement or any matter that constitutes a material breach, including without limitation, any possible termination event, the circumstances thereof, and possible results as viewed by the Private Party.
- 15.4 The Private Party shall provide a half-yearly written report to SANParks, on a confidential basis, with respect to significant and new operational matters, which shall include a section on environmental matters.
- 15.5 From the Operation Commencement Date and 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 :

- 15.5.1 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 the relevant calendar month, together with the details of any firearms registered to such employees;
- 15.5.2 its compliance with the Environmental Specifications as detailed in Annexure V and any environmental Regulatory Provision, including the measures (if any) taken regarding the foregoing;
- 15.5.3 the Insurance provisions of Clause 14;
- 15.5.4 its BEE Obligations contained in Annexure XI, including its furnishing of a verification certificate in respect of its BEE status as determined by a reputable external verification agency; and
- 15.5.5 any other matter as required by SANParks.

**15.6 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 financial year with:

- 15.6.1 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;
- 15.6.2 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;

15.6.3 an annual report by its 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; and

15.6.4 a reconciliation of the current year's profit and loss account and the budget for the year, and an analysis thereof.

**15.7 Delivery of Records**

For a period of not more than 120 (one hundred and twenty) Business Days following the termination of this PPP Agreement for whatever reason, the Private Party shall retain in safe storage all such records as are referred to in Clause 15.2, and all records relating to Operation and Maintenance, which were in existence at the date of termination. Upon expiry of such 120 (one hundred and twenty) day period or such earlier date as may be requested by SANParks, the Private Party shall deliver at its costs, all such records (or where such records are required by legislation to remain with the Private Party or the Private Party's shareholders, copies thereof) to SANParks or to its order in such manner and at such location as SANParks shall specify. The costs of retaining such records in safe storage shall be borne by SANParks.

**15.8 Reporting of Changes**

15.8.1 The Private Party shall report to SANParks 35 (thirty five) Business Days prior to its entering into effect:

15.8.1.1 any material change in its corporate documents or Shareholders' Agreement or in its fiscal year;

15.8.1.2 any material change in the Private Party's organisational structure, or any other material change which might affect the fulfilment of the Private Party's obligations under this PPP Agreement;

15.8.1.3 subject to Clause 3.4, any contract to be executed by the Private Party with a Related Party;

15.8.1.4 subject to Clause 3.5, any contract or liability entered into or incurred

not in the ordinary course of business;

15.8.1.5 any material change in the insurance policies contemplated in Clause 14; and

15.8.1.6 any claim brought or threatened, or any circumstance or event (including pertaining to the environment) which is reasonably likely to have a material adverse effect on the Private Party or an adverse impact on the environment or on the Private Party's ability to perform its obligations hereunder.

15.8.2 The Private Party shall notify SANParks as soon as practically possible before any significant change in the constitution of its board of directors, joint venture managers or trustees or its key personnel, namely the financial, general and conservation managers.

#### 15.9 **Other Reporting**

The Private Party shall ensure that within 15 (fifteen) days after the expiration of each quarter of each Project Year a certificate of its auditors, confirming the monthly turnover of each month of the quarter of the SANParks Thesens Island Restaurant, is delivered to SANParks.

### 16. **FORCE MAJEURE**

#### 16.1 **Force Majeure Defined**

"Force Majeure" shall mean any material event beyond the control of the Party claiming the occurrence of Force Majeure:

16.1.1 whose occurrence could not have been reasonably foreseen at the date of execution of this PPP Agreement;

16.1.2 which, despite the exercise of diligent efforts, such Party was unable to prevent, limit or minimise, including, but not limited to, war whether declared or not, revolution, riot, strikes (except strikes by or affecting employees of (i) the Private Party, (ii) any Contractor or any other Person undertaking any part of the Construction Works and (iii) any Contractor or any other Person undertaking any part of the operation, maintenance

and/or management of the SANParks Thesens Island Restaurant, which strike(s) are not part of or directly related to any more widespread or general strike or other industrial action), insurrection, protest and/or boycott action, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; and

16.1.3 which:

16.1.3.1 causes material physical damage or destruction to all or any material portion of the SANParks Thesens Island Restaurant, and/or the Project Assets; or

16.1.3.2 materially interrupts the full and regular operation of all or any material portion of the SANParks Thesens Island Restaurant.

**16.2 Notice of Force Majeure**

16.2.1 Each Party shall promptly notify the other of the occurrence of a perceived event of Force Majeure and when such event has ceased.

**16.3 Continuation of Construction or Operation**

16.3.1 Decisions concerning Force Majeure and the application of this Clause 16 shall be directed toward the completion of Construction Works and the continued Operation, Management and Maintenance of the SANParks Thesens Island Restaurant for the full duration of the Project Term. In this regard the Private Party shall, to the maximum extent possible, continue to construct or operate (as the case may be) the SANParks Thesens Island Restaurant during the occurrence of any event of Force Majeure, and shall notify SANParks of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of SANParks.

16.3.2 Subject to Clauses 16.2 and 16.4, the Party claiming the occurrence of the Force Majeure shall be excused from performance of its obligations under this PPP Agreement to the extent that it is unable to perform those

obligations as a result of such Force Majeure and neither Party shall be entitled to:

- 16.3.2.1 terminate this PPP Agreement on account of such occurrence other than in accordance with the terms and conditions of Clause 16.5; and/or
- 16.3.2.2 claim damages, penalties or other compensation as a result of such failure to perform except in accordance with Clause 16.5.

#### **16.4 Insured Events of Force Majeure**

To the extent that the consequences of an event of Force Majeure fall within the terms of the insurance cover required by Clauses 14.1 and 14.2, the Private Party shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required by Clause 14.3.4.

#### **16.5 Consequences of Force Majeure**

- 16.5.1 If the Parties agree or it is determined under Clause 16.2 that an event of Force Majeure has occurred, SANParks and the Private Party shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.
- 16.5.2 If an event of Force Majeure (or its consequences) continues for 180 (one hundred and eighty) or more consecutive days and the Parties do not reach a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure continues, this PPP Agreement may, upon 25 (twenty five) Business Days prior notice, be terminated by SANParks or, where the event of Force Majeure is an uninsurable event or, if insured, there is a material shortfall in the proceeds of such insurance as contemplated in Clause 14, by the Private Party.
- 16.5.3 If the PPP Agreement is terminated pursuant to Clause 16.5 as a result of a Force Majeure event, SANParks shall not be obliged to pay to the Private Party any compensation other than the Residual Value.
- 16.5.4 The foregoing provisions of Clause 16 shall not excuse or release the

Party claiming Force Majeure from obligations due or performable, or compliance required, under this PPP Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure or obligations not affected by the event of Force Majeure. A Party excused from performance by the occurrence of Force Majeure shall continue its performance under the PPP Agreement when the effects of the event of Force Majeure are removed.

- 16.6 In the event that the eco-tourism industry in the Republic of South Africa suffers a calamitous and wide ranging disaster, on a regional or national scale, which has a substantial negative impact on some or all Private Parties, SANParks will enter into a process of renegotiation with the affected Private Parties, on an equal basis, in an attempt to arrive at equitable new PPP Fee structures and related issues.

## 17. TERMINATION

### 17.1 Termination by SANParks for Fault of Private Party

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

- 17.1.1 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 1973) being entered into by or in relation to the Private Party;
- 17.1.2 a liquidator, judicial manager, trustee 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);
- 17.1.3 the Private Party ceasing to carry on business;
- 17.1.4 a resolution being passed or an order being made for the administration or



the judicial management, winding-up, liquidation, sequestration or dissolution of the Private Party (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory) or the granting of any judgment in excess of the amount stated in Schedule A (which is not subject to review or appeal or, if it is, such review or appeal is not diligently pursued) which remains unpaid for a period of 6 (six) calendar months or is not set aside or rescinded within such period;

- 17.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, and without derogating from the generality of the foregoing, a failure to comply with any of the obligations imposed on the Private Party as set out in the Annexures to this PPP Agreement shall be deemed to be a breach of a material obligation;
- 17.1.6 the Private Party breaches any of the provisions of Annexure XI or Clause 11;
- 17.1.7 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;
- 17.1.8 the Private Party breaches the provisions of Clause 9.4;
- 17.1.9 the Private Party or any of its directors or officers is found guilty of an offence by a court of law, unless such finding of the relevant court is the subject of an appeal that is being diligently pursued by the Private Party or its relevant director or officer (as the case may be);
- 17.1.10 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;
- 17.1.11 any breach of any provision of this PPP Agreement has occurred more than once and;
  - 17.1.11.1 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

17.1.11.2 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;

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

17.1.13 the Private Party fails to report material Related Party Transactions in accordance with this PPP Agreement or if any material Related Party Transaction is in breach of a term of this PPP Agreement and results in material damage to SANParks.

## 17.2 **SANParks' Options**

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

17.2.1.1 in the case of the Private Party Default referred to in Clauses 17.1.1, 17.1.2, 17.1.3, 17.1.4, 17.1.6, 17.1.7, 17.1.8, 17.1.9, 17.1.10, 17.1.11 and 17.1.13 terminate this PPP Agreement in its entirety by notice in writing having immediate effect;

17.2.1.2 in the case of any other Private Party Default referred to in Clauses 17.1.5 and 17.1.11, 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.

17.2.2 If the Private Party Default is conveyed to the Private Party in a notice of Default in terms of Clause 17.2.1.2 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.

- 17.3 Upon any termination pursuant to Clause 17.2 above, the following provisions shall apply:
- 17.3.1 if termination is effected before the Effective Date, SANParks shall be entitled to pursue all available remedies, including the recovery of any damages suffered by SANParks as a result of the default of the Private Party that gave rise to such termination which may be available to SANParks at law;
- 17.3.2 if termination is effected after the Effective Date, the Private Party shall be entitled to claim an amount equal to the Residual Value, less the following:
- 17.3.2.1 the cost and expense incurred or to be incurred in the reinstatement of the SANParks Thesens Island Restaurant to the standards required by SANParks as at the date of termination; and
- 17.3.2.2 an amount equal to all damages recoverable by SANParks; and
- 17.3.2.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying Material Damage to the environment caused by the Private Party and/or any Person for whom it is legally responsible; and
- 17.3.2.4 all costs and expenses incurred and/or reasonably expected to be incurred in re-launching the bid process; and
- 17.3.2.5 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 17.2.
- 17.3.3 Should SANParks not exercise its rights to terminate pursuant to Clause 17.2, the Private Party shall compensate SANParks for all damages suffered and costs and expenses incurred by SANParks as a result of the events set forth in Clause 17.1 including all costs and expenses incurred by SANParks in seeking or obtaining the appointment of a Substitute Entity pursuant to Clause 18.2.

#### **17.4 SANParks' Costs**

- 17.4.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 17 (including, without limitation, any relevant increased administrative expenses).
- 17.4.2 SANParks shall not exercise, or purport to exercise, any right to terminate this PPP Agreement except as expressly set out in this PPP Agreement. The rights of SANParks (to terminate or otherwise) under this Clause, are in addition (and without prejudice) to any other right which SANParks may have in law to claim the amount of loss or damages suffered by SANParks on account of the acts or omissions of the Private Party (or to take any action other than termination of this PPP Agreement).

#### **17.5 Termination by Private Party**

- 17.5.1 The Private Party shall have the right to terminate this PPP Agreement if:
- 17.5.1.1 SANParks commits a material breach in respect of the performance of any of its obligations hereunder; or
  - 17.5.1.2 the Private Party or any part(s) of the Project Site, the SANParks Thesens Island Restaurant and/or the Project Assets are nationalised, compulsorily acquired or expropriated from the Private Party by the State, to the extent that it results in a material impairment of the PPP Rights; or
  - 17.5.1.3 any action by any Relevant Authority renders the performance by the Private Party or SANParks of all or substantially all of its obligations hereunder illegal; or
  - 17.5.1.4 the Knysna National Lake Area no longer operates as part of a Protected Area.
- 17.5.2 The Private Party shall, before exercising its rights to terminate this PPP Agreement pursuant to Clause 17.5.1, give written notice to SANParks requiring SANParks to remedy the event referred to in Clause 17.5.1. If said event is not remedied before the expiry of the Remedy Period of 30

(thirty) Business Days or any agreed longer period, the Private Party may, upon expiry of the Remedy Period, terminate this PPP Agreement upon written notice to SANParks.

- 17.5.3 If the PPP Agreement is terminated pursuant to this Clause 17.5 after the Effective Date, SANParks shall pay to the Private Party an amount equal to the Residual Value.

## 17.6 **TERMINATION BY NOTICE**

At any stage during the Project Term, SANParks may 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 17.6 SANParks shall pay the Private Party an amount equal to the Residual Value.

## 17.7 **CORRUPT GIFTS AND FRAUD**

- 17.7.1 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 pursuant to the provisions of Clause 17.1.5.

- 17.7.2 "Corrupt Act" means:

- 17.7.2.1 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;
- 17.7.2.2 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
- 17.7.2.3 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;
- 17.7.2.4 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;

17.7.2.5 committing any offence:

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

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

17.7.2.5.3 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

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

## 17.8 **Effect of Termination**

17.8.1 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):

17.8.1.1 this PPP Agreement (other than Clauses 3.6, 3.7, 3.8, 13, 17, 18, 19 and 21) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;

17.8.1.2 such rights as the Private Party may have over the Project Site, the SANParks Thesens Island Restaurant and the Project Assets (other than movable New Project Assets) and all other immovable property thereon shall terminate;

17.8.1.3 the Private Party shall forthwith relinquish any interest in any immovable property within the Project Site or constituting part of the SANParks Thesens Island Restaurant and Project Assets in favour of SANParks and shall convey such immovable property free of all liens,

charges, claims or encumbrances of any kind to SANParks;

17.8.1.4 the Private Party shall deliver all Project documentation to SANParks.

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

17.8.2.1 enter and take immediate operational control of the SANParks Thesens Island Restaurant, the Project Site, all Project Assets (other than movable New Project Assets) and all Construction Works; and

17.8.2.2 select and appoint a new Private Party.

## 17.9 **Payment Procedure**

17.9.1 Subject to what is otherwise expressly provided for 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.

17.9.2 Subject to what is otherwise expressly provided for in this PPP Agreement and without prejudice to any other right or remedy, each Party shall be entitled to receive interest on an amount overdue under this PPP Agreement, at the rate referred to in Clause 17.9.3. Interest, which has accrued on an amount due under this PPP Agreement, shall be paid on the same date as payment of such amount.

17.9.3 For the purposes of Clause 17.9.2, interest shall accrue at a rate equal to the prime rate of interest charged by SANParks' bankers from time to time. 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.

17.9.4 All payments to be made under this PPP Agreement shall be made in South African Rand.

**17.10 Other Rights and Remedies**

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.

**17.11 Calculations**

17.11.1 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 or an actuary appointed by the Parties. In the absence of agreement on the appointment of an expert, each party shall nominate an independent expert, each of whom will produce its forecast or calculation. The experts thus appointed will be actuaries, if the calculation is primarily actuarial, or accountants, if the calculation is primarily of an accounting nature. If the difference between the results of both forecasts or calculations is 10% or less, then the amount payable shall be based on the average of both results. Should the difference exceed 10%, then both independent experts shall, by agreement, appoint a third independent expert who 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, or the nature of the calculation to be made, the appointment of the third independent expert or the nature of the calculation shall be determined by the President for the time being of the South African Institute of Chartered Accountants.

17.11.2 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.



## 17.12 EXIT PROVISIONS

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

- 17.12.1 to use its best efforts to assist SANParks to effect the orderly and uninterrupted transition of conducting the Project;
- 17.12.2 to assist SANParks and to provide advice to SANParks in respect of specific service management issues;
- 17.12.3 to commit available resources to effect the transition;
- 17.12.4 for the purpose of this Clause 17.12, 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;
- 17.12.5 to allow SANParks, the nominee or a new Private Party, 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;
- 17.12.6 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;
- 17.12.7 to make appropriate training available to the employees and/or agents of SANParks or the new Private Party;
- 17.12.8 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 17.12; and

- 17.12.9 in the event that the Parties shall fail to come to an agreement in respect of any of the provisions of this Clause 17.12, the failure of the Parties shall be deemed to be a dispute, and shall be dealt with in accordance with Clause 19.2.

## **18. TRANSFER AND SUBSTITUTED ENTITY**

### **18.1 Transfer by the Private Party**

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

- 18.1.1 this PPP Agreement or any Associated Agreement;
- 18.1.2 any of its rights, interests or obligations there under; or
- 18.1.3 any of its assets, save, in each case, to the extent required for the financing of the Project as envisaged in the Loan Agreements.

### **18.2 Substitute Entity**

- 18.2.1 Upon the occurrence of an event in Clause 17.1 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 -
  - 18.2.1.1 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;
  - 18.2.1.2 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 as demonstrated by its ability to meet the criteria set out in Annexure VII; and
  - 18.2.1.3 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.

18.2.2 If SANParks does not wish or is not able to nominate a Substitute Entity pursuant to Clause 18.2.1 or if there has been an event of default under the Loan Agreements and an acceleration of all amounts outstanding under the Loan Agreements, the Lenders shall have the right to appoint a Substitute Entity subject to agreement by SANParks that the Substitute Entity nominated by the Lenders:

18.2.2.1 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;

18.2.2.2 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 as demonstrated by its ability to meet the criteria set out in Part A of Annexure VII; and

18.2.2.3 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.

### 18.3 **Cession and Delegation to a Substituted Entity**

Immediately following the agreement by the Lenders pursuant to Clause 18.2.2 or by SANParks pursuant to Clause 18.2.1 in respect of the nomination of the Substitute Entity, this PPP Agreement shall be ceded and delegated to such Substitute Entity and the Lenders shall procure that the Substitute Entity assumes all the obligations of the Private Party under the Loan Agreements as at the date of substitution.

### 18.4 **Dissolution of SANParks**

SANParks may not at any time, cede, delegate, assign, sub-contract or otherwise dispose of, in whole or in part, its rights and obligations under this PPP Agreement except to an assignee which has the legal capacity, power and authority to become a party to and perform the obligations of SANParks under this PPP Agreement.

## **18.5 Disposal of Shares**

18.5.1 SANParks will, notwithstanding the provisions of Clause 18 and subject to the provisions of Clause 11, 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 provided that:

18.5.1.1 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;

18.5.1.2 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 under the PPP Agreement and the Loan Agreements, as demonstrated by the Private Party's ability to meet the criteria set out in Annexure VII.

18.5.2 SANParks shall 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 environmental regulations in the Republic of South Africa or elsewhere.

## **19. GOVERNING LAW AND RESOLUTION OF DISPUTES**

### **19.1 Governing Law**

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

### **19.2 Referable Disputes**

The provisions of these Clauses 19.2, 19.3, 19.4 and 19.5 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.

### **19.3 Internal Referral**

19.3.1 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:

19.3.1.1 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

19.3.1.2 if the Parties have been unable to resolve the dispute within 30 days of referral to the persons specified in Clause 19.3.1.1, either Party may refer the dispute for resolution by the Accounting Officer or Accounting Authority of SANParks and the Chief Executive Officer or equivalent officer of the Private Party.

19.3.2 In attempting to resolve the dispute in accordance with the provisions of this Clause 19.3.2 the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

19.3.3 Any dispute which has not been resolved by the representatives contemplated in Clause 19.3.1.2 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.

### **19.4 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.

## **19.5 Litigation**

19.5.1 Save where any dispute has been expressly referred for determination, if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the courts by either Party.

19.5.2 Neither Party is limited in any proceedings before the court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

## **20. SUPPORT**

The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this PPP Agreement.

## **21. MISCELLANEOUS PROVISIONS**

### **21.1 Primacy of this PPP Agreement**

21.1.1 This PPP Agreement shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. In the event of conflict between this PPP Agreement and any Associated Agreement on a matter affecting the Parties, including all questions of interpretation, this PPP Agreement shall prevail.

21.1.2 The Schedules and Annexures attached hereto shall be deemed a part of this PPP Agreement and shall have binding effect. If the content of any of the Annexures is in conflict with the content of this PPP Agreement, the content of this PPP Agreement shall prevail.

### **21.2 Confidentiality**

21.2.1 **Confidential Information Defined:** As used in this PPP Agreement, the

term “**Confidential Information**” shall mean information, including trade secrets, technical or non-technical data, a formula, pattern, strategy, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, which:

- (a) derives economic value, actual or potential, from not being generally known to other Persons who can obtain economic value from its disclosure or use;
- (b) is the subject of efforts which are reasonable under the circumstances to maintain its secrecy; or
- (c) is identified as Confidential Information.

21.2.2      **Exclusions:** Confidential Information shall not include any information which:

- (a) is or becomes generally known to the public through no fault of the Receiving Party;
- (b) is received without restriction from a third party not bound by any duty of confidentiality with respect to such Confidential Information;
- (c) the Receiving Party subsequently developed through its own efforts and which can be documented as having been developed without the use of any Confidential Information;
- (d) is required to be disclosed in terms of any Regulatory Provision;
- (e) a Party uses or discloses in order to pursue any legal remedies available to it.

21.2.3      **Importance of Non-Disclosure:** Each Party recognises and acknowledges that:

21.2.3.1      Confidential Information of the other Parties may be commercially valuable proprietary property of such Party, the design and development of which may have involved the expenditure of substantial amounts of money and the use of skilled development experts over a long period of time and which afford such Party a commercial advantage over its competitors;

- 21.2.3.2 the loss of this competitive advantage due to unauthorised disclosure or use of Confidential Information may cause great injury and harm to such Party; and
- 21.2.3.3 the restrictions imposed upon the Parties under this PPP Agreement are necessary to protect the confidentiality of Confidential Information and to prevent the occurrence of such injury and harm.
- 21.2.4 **Identification of Confidential Information:** Each Party shall take appropriate steps to enable the other Party to identify information provided by it, which should be protected as Confidential Information. Accordingly, each Party shall use its best efforts to legend or otherwise designate any Confidential Information provided to any other Party. In addition, any information involving Confidential Information, which is communicated orally, shall be identified as Confidential Information or proprietary in such communication.
- 21.2.5 **Protection of Confidential Information:** To protect the Confidential Information of the Parties, each Party shall adopt and maintain basic security measures of the kind commonly observed in industries which rely extensively on proprietary information. Such security measures shall include, to the extent appropriate, physical security measures, restrictions on access by unauthorised personnel, use of confidentiality agreements with personnel, legending, systematic segregation and appropriate record retention systems.
- 21.2.6 **Prohibitions and Indemnities:** Each Party receiving Confidential Information (the “**Receiving Party**”) shall not, without the prior written consent of the Party from whom such Confidential Information was obtained (the “**Disclosing Party**”), disclose or divulge to or permit any Person not authorised to receive such Confidential Information to obtain any Confidential Information disclosed to the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party by the Disclosing Party (whether or not such Confidential Information is in tangible or intangible form) for as long as the Confidential Information remains Confidential Information. Each Receiving Party shall use any Confidential Information disclosed by the Disclosing Party hereunder (whether or not such Confidential Information is in tangible or



intangible form) only for purposes of this PPP Agreement. Each Receiving Party hereby indemnifies and holds harmless the Disclosing Party and its affiliates from and against all claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable expenses of investigation and reasonable legal fees on an attorney and client scale, and pre- and post-judgement interest and penalties) arising from any such unauthorised disclosure or use by the Receiving Party or any of its employees, agents, advisors or other third parties acting on behalf of the Receiving Party.

- 21.2.7      **Avoidance of Unnecessary Disclosure:** In providing information hereunder, each Party shall take care, and shall ensure that its respective representatives take care, to avoid the overboard disclosure of competitively sensitive financial, operating or similar data, if any, as to which disclosure would have adverse consequences to the other or both Parties.
- 21.2.8      **Procedures Prior to Disclosure:** The Parties acknowledge that each of them may be required to disclose Confidential Information to governmental agencies or authorities by operation of law, and each Party shall take advice of counsel and otherwise endeavour to limit disclosure of Confidential Information to that purpose. Each Party will give the other Parties prior written notice of any disclosure of Confidential Information, which notice shall specify so far as possible all material aspects of any such disclosure, so that the other Parties can seek a protective order or other action preventing such disclosure. The Receiving Party shall refrain for as long as reasonably possible from disclosing such Confidential Information so as to allow the other Party to seek such protective order or other action.
- 21.2.9      **Applicability to Contractors, Sub-Contractors and Shareholders:** The Private Party shall take all reasonable steps to ensure that its Contractors, sub-contractors and Shareholders comply with the provisions of this Clause 21.2.

**21.3 Variations in Writing**

All additions, amendments, variations and any consensual cancellation of this PPP Agreement shall be binding only if in writing and signed by duly authorised representatives of each of the Parties.

**21.4 Entire Agreement**

This PPP Agreement, including the Schedules and Annexures attached thereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any request for proposal or actual tender, and any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the Project, and the PPP Rights or the other contents of this PPP Agreement. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

**21.5 No Waiver**

No waiver by either Party of any default or variation by the other in the performance of any of the provisions of this PPP Agreement shall operate or be construed as a waiver of any other or further default or variation whether of a like or different character, or shall be effective, unless in writing duly executed by an authorised representative of such Party.

**21.6 Time and Indulgence**

Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder.

**21.7 No Third Party Beneficiaries**

This PPP Agreement is made exclusively for the benefit of SANParks and the Private Party and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof except as may be expressly provided herein.

**21.8 Language**

This PPP Agreement has been drawn up and shall be construed in the English language.

**21.9 Notices**

21.9.1 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 registered or certified mail, return receipt requested, or sent by fax followed by the original delivered by hand or sent by registered or certified mail, return receipt requested.

21.9.2 The addresses for Notices are as follows:

**SANParks:**

Marked for the attention of the CEO

Physical address

c/o SANParks Project Officer  
Groenkloof National Park  
643 Leyds Street  
Muckleneuk  
Pretoria

Telephone:  
(012) 426-5027

Facsimile:  
(012) 343-3849

Private Party:  
To the address stated in Schedule A.

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

21.9.4 Any notice of breach given by SANParks shall be copied by SANParks to the Lender.

**21.10 Severability**

If any one or more of the covenants, agreements, provisions or terms of the PPP Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of the PPP Agreement and shall in no way affect the validity, legality or enforceability of the PPP Agreement. The Parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that achieves as nearly as possible the objective of the PPP Agreement and produces an equivalent economic effect.

**21.11 Representatives**

21.11.1 The Private Party shall be represented by its Managing Director, or such other representative as shall from time to time be notified to SANParks.

21.11.2 The representative of SANParks shall be the CEO, or such other representative as shall from time to time be notified to the Private Party.

**21.12 SANParks' Remedial Rights**

Without prejudice to SANParks' rights hereunder and at law, and without derogating from the generality of the foregoing, without prejudice to SANParks' rights in terms of Clause 17, 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.

**21.13 Consent**

SANParks shall not unreasonably withhold or delay the giving of any consent,

approval or expression of satisfaction referred to in this PPP Agreement, and shall exercise its rights to consent, approve or express satisfaction reasonably and fairly. In any circumstance where consent or approval is required to be given by SANParks in terms of this PPP Agreement, such consent or approval shall not be unreasonably withheld.

## **22. REPRESENTATIONS AND WARRANTIES**

### **22.1 Representations and Warranties by the Private Party**

The Private Party hereby represents and warrants to SANParks as follows:

- 22.1.1 The Private Party is duly organised under the laws of the Republic of South Africa with all requisite juristic power to carry out its obligations under this PPP Agreement and to execute and deliver this PPP Agreement, and acknowledges that, except as SANParks may otherwise agree in writing, its sole purpose is to implement the Project.
- 22.1.2 The Private Party has as its shareholders or beneficiaries the Shareholders specified in Annexure VII.
- 22.1.3 This PPP Agreement has been duly authorised by all necessary legal and corporate action, is legally valid and binding upon itself and does not require approval in any form in order to give full effect thereto.
- 22.1.4 The Private Party is not prevented or restrained legally, commercially or otherwise from entering into and undertaking the provisions of this PPP Agreement in accordance with its terms.
- 22.1.5 The Private Party has fully familiarised itself with all aspects of the Project and has all the knowledge, experience, ability (particularly financial ability) to carry out the Project in accordance with the terms of this PPP Agreement.
- 22.1.6 The Private Party has reviewed and checked as an expert the Project Site and its surroundings, and the physical and geological condition of the Project Site and its surroundings and is fully familiar with the terms of all

relevant laws and regulations including without limitation all laws and regulations relating to the Knysna National Lake Area, the Park, the SANParks Thesens Island Restaurant and the Project Site and its rights and obligations there under and hereunder, and pursuant to such review the Private Party finds the Project Site suitable for the fulfilment of its obligations and undertakings under this PPP Agreement, including without limitation, the completion of the design and alterations to the construction of the SANParks Thesens Island Restaurant, the Project Assets and the Project. The Private Party further acknowledges its willingness to enter into this PPP Agreement with full awareness of, among other things, the rights and obligations derived from the physical position of the Project Site and the SANParks Thesens Island Restaurant, the provisions of this PPP Agreement and its ability to fulfil all of its obligations under this PPP Agreement adequately and in a timely manner.

- 22.1.7 The Private Party has conducted a full inquiry and has satisfied itself, and accordingly accepts responsibility for the fact that the execution of the Project or any part thereof shall not involve any infringement of any patent or trade secret or know how or copyright belonging to any third party.
- 22.1.8 The Private Party has evaluated all factors that may reasonably be deemed to affect the carrying out of its obligations under this PPP Agreement, including geological conditions, technical risks, tourism risks, and any other risk involved herein, and such other conditions that may reasonably be deemed to affect the progress or completion of the Project in accordance with the terms of this PPP Agreement.
- 22.1.9 All representations, warranties, information and data of the Private Party contained in any written statement (including financial statements), certificate, exhibit or schedule or any other document delivered pursuant to any pre-qualification questionnaire, request for proposals, or in connection with this PPP Agreement, shall be true and correct in all material respects as of the date hereof.

## **22.2 Representations and Warranties of SANParks**

SANParks hereby represents and warrants to the Private Party as follows:

- 22.2.1 In executing the PPP Agreement for the purposes of accepting the benefits hereof and the granting of the PPP Rights, the CEO of SANParks acts for and on behalf of SANParks and in accordance with law.
- 22.2.2 SANParks is duly established under the Act and the PPP Agreement is legally valid and binding upon SANParks and enforceable in accordance with its terms.
- 22.2.3 As at the Signature Date of this PPP Agreement, SANParks is not aware of any land claims in regard to the Project Site or the grant of the PPP Rights in regard thereto.
- 22.2.4 There are no servitudes or restrictions noted against the title to the Project Site, which will impede on the operating activities of the Private Party in the Project Site or prevent the Private Party from operating in the Project Site and the Project Site is not under threat of expropriation.

## **23. EFFECTIVENESS**

This PPP Agreement shall become of full legal force and effect with effect from the Signature Date, save where otherwise mentioned by the said provisions or required by the context.

## **24. COMPLIANCE EVENTS**

- 24.1 The continued existence of this PPP Agreement is dependent upon the happening of certain events detailed in Annexure VIII ("Compliance Events") and no construction and operational activities can commence until the fulfilment of the Compliance Events. The Private Party undertakes to use its best endeavours to ensure that the Compliance Events detailed in Annexure VIII are fulfilled to the satisfaction of SANParks as soon as is reasonably possible after the Signature Date.

- 24.2 If the Private Party fails to make payment of the KOC Payment by the KOC Payment Date or fail to deliver the Performance Bond in the form defined in Clause 3.12 to the satisfaction of SANParks within 1 (one) months of the Signature Date, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.3 shall apply.
- 24.3 If the remainder of the Compliance Events are not fulfilled to the satisfaction of SANParks within 3 (three) months from the Signature Date, but the Private Party has made payment of the KOC Payment and delivered the Performance Bond to SANParks, SANParks shall not, for lack of fulfilment of the Compliance Events, be entitled to terminate this PPP Agreement. If, however, after payment of the KOC Payment and delivery of the Performance Bond and after a period of 6 (six) months after the Signature Date, any of the remainder of the Compliance Events remain outstanding, SANParks shall be entitled to terminate this PPP Agreement and Clause 17.3 shall apply.

## **25. COUNTERPARTS**

This PPP Agreement may be executed in any number of counterparts, but all of such counterparts taken together shall be deemed to constitute one and the same instrument.

## **26. 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 that the Lenders may at any time accept such stipulations in their favour provided that they accept the obligations imposed upon them in terms of this PPP Agreement and provide the Parties with their addresses 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 unreasonably be withheld.



**Execution on behalf of SANParks:**

SIGNED AT PRETORIA ON ..... 2009.

For and on behalf of **SOUTH AFRICAN  
NATIONAL PARKS**

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who warrants his authority hereto

**Execution on behalf of the Private Party:**

SIGNED AT ..... ON ..... 2009.

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

---

who warrants his authority hereto

## 27. SCHEDULE A - SPECIFIC CONDITIONS

Clause Ref.	Specific Condition	Description
1.6	Signature Date	
1.6	Name of relevant Protected Area	Garden Route National Park
1.6	Name of relevant Project	SANParks Thesens Island Restaurant
1.6	Name of Private Party	<hr/> <hr/> <hr/> <hr/>
2.2	Project Term	15 (fifteen) years from Effective Date
12.2	Penalty for employee misconduct causing Private Party to breach PPP Agreement	R 12 500.00 (as at the Signature Date) for each and every occurrence.
15	Reporting threshold in respect of potential payment or aggregate payments under material contracts	R 125 000.00 (as at the Signature Date).
17	Judgment threshold	R 250 000.00 (as at the Signature Date).

Clause Ref.	Specific Condition	Description
21.9.2	Private Party's address for Notices	<div>For the attention of:</div> <div></div> <div>Physical address:</div> <div></div> <div></div> <div></div> <div></div> <div>Telephone:</div> <div></div> <div>Facsimile:</div> <div></div>

## **28. SCHEDULE B - SITE SPECIFIC DESCRIPTION AND CONDITIONS**

### **28.1 Detailed Site Development Plan**

The Detailed Site Development Plan appended as Annexure II indicates the following:

#### **28.1.1 Project Sites**

The Detailed Site Development Plan will indicate the exact location of each Project Site to be developed plus the size thereof. The Project Site will include the building footprint plus service areas immediately adjacent to the structure/s. The service area will provide for aspects like access paths etc.

For SP1, the Restaurant Facility and Retail Facility leased by Knysna Oyster Company (KOC) until 31 July 2009, the total Project Site size = 988 m<sup>2</sup> with the building footprint = 860 m<sup>2</sup> and the service area = 128 m<sup>2</sup>.

In addition to the Project Site, 29 parking bays will be available to the Restaurant Facility guests and staff.

#### **28.1.2 SANParks Thesens Island Common Area**

The SANParks Thesens Island Common Area will constitute the following:

##### **28.1.2.1 Gardens and Landscaping**

The gardens and landscaping should ensure a seamless landscape between various stands. The total Garden area landscape for Thesens Island State Land is 1 730 m<sup>2</sup> of which 830 m<sup>2</sup> has been completed by SANParks. Gardens/landscaping for the remaining area of approximately 900 m<sup>2</sup> needs to be established. This will be for the cost of the Private Parties.

##### **28.1.2.2 Other Open Areas**

Other open areas comprising of 6 413 m<sup>2</sup> includes the parking/paving, walkway, public ablutions and jetty (the latter not forming part of the

SANParks Thesens Island Common Area).

## **28.2 Restaurant Facility Opportunity**

The KOC lease expires on 31 July 2009 hence the facility will be available to the successful bidder earliest 1 August 2009.

The Private Party for the Thesens Island Restaurant will not be obliged to continue with an oyster restaurant facility but will have the ability to conduct a restaurant of its choice, subject to the conditions and approval of SANParks. The Private Party will have the right to make alterations and refurbishments to the existing building subject to the conditions and approval of SANParks. The KOC Plans are annexed as Annexure II.

Should the Private Party elect to continue with an oyster restaurant facility, it should be noted that no automatic rights will be granted for the farming of oysters in the lagoon. The current water lease held by KOC also expires on 31 July 2009. Furthermore, KOC has ownership of the KOC brand and intellectual property (i.e. name and logo etc) and any negotiations in this regard would be between KOC and the Private Party.

In the event of Knysna Oyster Company not being the successful bidder, the new operator will be required to reimburse KOC by making payment of the KOC Payment in accordance with the provisions of Clause 2.5.3.

The payment by the Private Party of the KOC Payment shall not constitute a Sale of Business but merely the reimbursement of the capital expenditure. Accordingly, it would not include a transfer of the existing restaurant staff in accordance with Section 197(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended).

## **28.3 Additional costs for the account of the Private Parties**

The additional costs for the account of the Private Parties include but are not limited to the following:

### **28.3.1 Municipal Charges**

All Municipal charges related to the PPP Opportunities, will be for the cost

of the Private Parties. User-related charges will be apportioned to the usage in respect of each Project whilst other municipal charges will be apportioned in direct relation to the Project Site size for each Project on Thesens Island State Land. The Services Agreement with the Knysna Municipality will be concluded and made available to Bidders. The Municipal Services Agreement does not include services for the Plinth and a separate agreement should be concluded for this facility. The augmentation levies in respect of the Municipal Services Agreement with the Knysna Municipality will also be proportioned for the account of the Private Parties.

**28.3.2 Landscaping**

The Private Parties will be responsible for the establishment cost as well as the maintenance cost for landscaping.

**28.3.3 Other Open/Public Areas**

The cost of establishment and maintenance of the areas within the service area is directly for the account of the Private Parties. However, for the maintenance of all open spaces i.e. parking, paving, walkway, public ablutions etc, a levy will be determined and charged to the Private Parties proportionally according to the total size of their Project Sites.

**28.3.4 Maintenance of the Jetty and Back-up Generator**

The maintenance cost of the jetty and the back-up generator will remain the responsibility of SANParks.

**28.3.5 Back-up Generator**

Electricity supply by the generator to the Private Operators will be charged to Private Parties on a cost-recovery basis.

**28.4 Description and Quality of Supporting Infrastructure<sup>1</sup>**

Thesens Island State Land is situated in the Knysna area with existing

municipal infrastructure within the immediate area, which can be utilised to serve the different PPP Projects.

#### 28.4.1 **Water**

28.4.1.1 Water for the PPP Projects can be supplied by the Municipality of Knysna from the water purification works in Knysna. The water supply on Thesens Island State Land will be connected to the existing reticulation on Thesens Island, which is supplied from the Thesens Hill reservoir.

28.4.1.2 The Sustained Peak Demand (m<sup>3</sup>/day) for usage by the Thesens Island State land is as follows:

	(m <sup>3</sup> /day)
Retail and offices 1110 m <sup>2</sup> - per 100 m <sup>2</sup> @ 0,7 m <sup>3</sup> /day	7,77
Hotel 27 suites (2 beds/suite) - 54 beds @ 0,35 m <sup>3</sup> /day/bed	18,90
Restaurant Facility 580 m <sup>2</sup> - 180 seats @ 0,05 m <sup>3</sup> /day/seat	9
<u>Sustained Peak Demand (m<sup>3</sup>/day)</u>	<u>35.67</u>

28.4.2 The capacity of the bulk water main from the water works to the reservoir for usage on Thesens Island State Land, based on the sustained daily peak demand as calculated above, is as follows:

Capacity of water main required (supply over 16 hours) = 0, 62 l/s (i.e. this is the capacity in the reservoir supply pipeline that will be taken up by usage on Thesens Island State Land).

28.4.3 The storage capacity required for usage on Thesens Island State Land, which must include an allowance for the storage capacity required for fire flows, is as follows:

Domestic Requirement:

Sustained Peak Demand = 35,67 m<sup>3</sup>/day.  
Storage required = 2 days x 35,67 m<sup>3</sup>/day = 71,34 m<sup>3</sup>.

Fire Flow Requirement:

Fire-risk category = moderate risk.

Storage required = 2 hours @ 1500 l/minute = 180 m<sup>3</sup>.

As the fire flow storage requirement is shared among the users in the whole reservoir zone, a 25% contribution of this is considered to be adequate.

Therefore, total storage required = 71m<sup>3</sup> + (0,25 x 180m<sup>3</sup>)  
= 116 m<sup>3</sup>.

28.4.4 The gravity main from the reservoir serving Thesens Island State Land is to be large enough to cater for the sum of the instantaneous peak demand on Thesens Island State Land including the fire flow.

28.4.5 The size of the gravity main from the reservoir to Thesens Island State Land should therefore be sized for the following flows:

Domestic Requirement:

Sustained Peak Demand = 35, 67 m<sup>3</sup>/day.

Flow rate at instantaneous peak demand:

Peak flow = PF x Average Flow  
= 6 x 35,67 x  
(1000/(24x60x60))  
= 2,48 l/s.

Fire Flow Requirement:

Fire-risk category = moderate risk.

Flow rate required = 1500 l/minute or 25 l/s.

As the area is considered a mixture of Low-risk and Moderate-risk, a flow of 20 l/s is considered adequate.

Total flow rate required in trunk main = (2,48 + 20)l/s = 22,5 l/s.

Therefore, a 150mm diameter main is required.



## 28.5 Sewerage

28.5.1 Thesens Island is serviced by the Knysna Municipality's conventional Waterborne Sewerage System. The Town Engineer has confirmed that the sewage system will be able to accept the sewage from Thesens Island State Land. It is proposed that the sewage from Thesens Island State Land be pumped to a point where it can gravitate to the Municipal sewerage system.

28.5.2 The estimated sewage flow from Thesens Island State Land is as follows:  
(m<sup>3</sup>/day)

	(m <sup>3</sup> /day)
Retail and offices 1110 m <sup>2</sup> - per 100 m <sup>2</sup> @ 0,8 m <sup>3</sup> /day	8.9
Hotel 27 suites (2 beds/suite) - 54 beds @ 0,14 m <sup>3</sup> /day/bed	7.6
Restaurant Facility 580 m <sup>2</sup> - 180 seats @ 0,04 m <sup>3</sup> /day/seat	7.2
<u>Peak Season Sewage Flow (m<sup>3</sup>/day)</u>	<u>23.6</u>

Peak Season Sewage Flow = 0, 27 l/s.

28.5.3 The estimated instantaneous sewage peak flow which would gravitate away from Thesens island State Land, is as follows:

$23,6\text{m}^3/\text{day} \times 3.5 \text{ (PF)} \times 1000/3600 \text{ over 24 hours} = 0,96 \text{ l/s.}$

## 28.6 Electricity

### 28.6.1 Municipal Electrical Allowances

28.6.1.1 The electricity will be supplied from Knysna Substation through a Mini-Sub.

28.6.1.2 The following Municipal electrical allowances have been made on Thesens Island State Land :

- 7 x retail shops – no restaurants or heavy electricity usage i.e. factories – 15kW each (17kVA 400V 3 phase 50Hz). The supply would not be sufficient for a 8m double storey building but should

be adequate for a one and a half storey with a mezzanine floor level or loft;

- 1 x Boutique Hotel – including 1 x restaurant, air conditioning, small power and lighting – 255kW (300kVA 400V 3 phase 50Hz);
- SANParks Thesens Island Restaurant is equipped with municipal power.

28.6.1.3 Electricity supply to the Private Parties will be charged to them on a cost-recovery basis.

28.6.1.4 Electrical supply for the plinth development has not been catered for yet. The Private Party winning bidder shall be responsible for the necessary upgrade to meet the electricity needs for the Multi-use Conference Facility.

#### 28.6.2 **Standby 250kVA Generator Set**

28.6.2.1 Thesens Island State Land is equipped with a 250kVA generator set.

28.6.2.2 In event of a power outage, the generator will be able to supply power to:

28.6.2.2.1 the sewer pump station;

28.6.2.2.2 SANParks' offices

28.6.2.2.3 The 7 x retail facilities;

28.6.2.2.4 Area and street lighting, and

28.6.2.2.5 Approximately 30% of SANParks Thesens Island Restaurant's total load. The Private Party shall be responsible to provide for the balance of its standby power requirements.

28.6.2.3 Electricity supply by the generator to the Private Parties will be charged to them on a cost-recovery basis.

28.6.2.4 Thesens Island Hotel and the Multi-use Conference Facility will have to provide its own standby power.

#### 28.7 **Stormwater**

Where necessary, storm water will be directed into pipe culverts or channels and released into the lagoon.

**28.8 Solid Waste**

The estimated solid waste which would be generated on Thesens Island State Land is as follows:

	(m <sup>3</sup> /week)
Retail and offices 1110 m <sup>2</sup> - $(0,12 \times 0,7) = 0,085\text{m}^3/100 \text{ m}^2/\text{week}$	0,94
Hotel 27 suites (2 beds/suite) - $(0,12 \times 0,35) = 0,042\text{m}^3/\text{bed}/\text{week}$	2,27
Restaurant Facility 580 m <sup>2</sup> - 180 seats $(0,12 \times 0,05) = 0,006 \text{ m}^3/\text{seat}/\text{week}$	1,08
<u>Solid waste generated (m<sup>3</sup>/week)</u>	<u>4,29</u>

**28.9 Road Access**

The proposed access for Thesens Island State Land is on its eastern side. A new traffic circle has been constructed where Thesens Road ends. This will assist with the additional traffic load that the developments on Thesens Island State Land will generate. The roads Thesens Island State Land provide for one-way traffic with islands separating the traffic.

**28.10 Boardwalk**

The boardwalk is 1.7 meter wide with a railing of 1 meter high. The boardwalk is constructed with Balau wood, the balustrade is also constructed with balau wood and stainless steel cabling. An access gates is provided for authorised access to the lagoon. Paraplegic patrons have access to the boardwalk via ramps at three points on the boardwalk.

**28.11 Parking**

A total of 122 parking bays have been provided for on Thesens Island State Land with four paraplegic parking bays and 2 tourist bus bays.

**28.12 Public Ablution Block**

The Ablution block is provided for the public with male, female and paraplegic facilities. The sewer pump station, generator, service points for the navy and the MINI-Sub is housed at the Ablution Building.

**28.13 Sewer Pump Station**

- 28.13.1 The sewer pump station consists of two “Robot” submersible pumps with a duty of 5.6l/s against a total pumping head of 13m.
- 28.13.2 The two pumps are housed in two sumps under the ground, the sumps have a storage capacity of 36hrs.
- 28.13.3 From the pump station the sewer will be pumped to the municipal gravity sewer.

**28.14 Electricity Meters**

- 28.14.1 Dedicated electricity meters for the measurement of electricity consumption have been provided for SANParks Thesens Island Restaurant and the 7 x Retail Facilities.
- 28.14.2 The winning bidder of Thesens Island Hotel as well as the Multi-use Conference Facility shall be responsible to install electricity meters for the measurement of electricity consumption.
- 28.14.3 SANParks will invoice each individual Private Party according to its consumption measured.

**28.15 Water Meters**

- 28.15.1 Dedicated water meters for the measurement of water consumption have not been provided and Private Parties shall be responsible for the installation of such water meters.
- 28.15.2 SANParks shall invoice each individual operator on a cost-recovery basis for their measured water consumption.

## 29. ANNEXURE I - ASSOCIATED AGREEMENTS

Indicative list:

- 29.1 Any contracts in respect of the Preliminary Design and/or Detailed Design.
- 29.2 The Construction Contracts.
- 29.3 The Loan Agreements.
- 29.4 The policies to be subscribed by the Private Party pursuant to Clause 14.
- 29.5 The Municipal Services Agreement.

**30. ANNEXURE II - PLAN OF PROJECT SITE, KOC PLANS, LIST OF KOC  
FIXTURES AND DETAILED SITE DEVELOPMENT PLAN**

**30.1 Plan of Project Site**

## 30.2 **KOC Plans**

### 30.3 List of KOC Fixtures



#### 30.4 **Detailed Site Development Plan**

## **31. ANNEXURE III – ARCHITECTURAL DESIGN GUIDELINES**

### **31.1 Design Concept**

#### **31.1.1 Introduction**

The Architectural Design Guidelines are concerned with the external appearance and positioning of buildings and structures within the goals of this state land development. It should be read in conjunction with the Environmental Management Plan and zoning parameters.

#### **31.1.2 Development Philosophy**

The purpose of this development is to provide an organized commercial and residential component integrated and complementing the existing structures.

The design of streets and buildings emphasizes a safe environment adequately accessible but respecting pedestrian traffic and the spatial form of public space.

#### **31.1.3 Architectural Philosophy**

The architectural designs in form and bulk will be in line with the Thesens Island Urban Regulations allocating land use, bulk and building style to the different positions within the SANParks state land development area. The same style and finishes will not necessarily be used.

#### **31.1.4 Plan approval process**

All building plans must first be submitted by the Architect for approval to the SANParks Design Review Panel and then to the Knysna Municipality for its approval before construction work commences. Scrutiny fees are payable. Any alterations/amendments required after approval must be submitted to the SANParks Design Review Panel by the architect.

The following information is required when submitting plans for approval:

##### **31.1.4.1 Contour plan/ site plan with building footprint and building lines;**

- 31.1.4.2 Roof plan;
- 31.1.4.3 Architectural specification sheet showing coverage and floor areas, finishing schedules and information on registered owner;
- 31.1.4.4 Dimensioned floor plans to scale 1:100 or 1:50;
- 31.1.4.5 All elevations and sections with heights above MSL;
- 31.1.4.6 Storm water management detail;
- 31.1.4.7 Detail drawings for special features and finishes; and
- 31.1.4.8 Architect to sign all plans.

Note: No approvals will be given for “future” additions or future phases.

## 31.2 Town Planning Requirements

### 31.2.1 Coverage and Floor Areas

Coverage and floor area determined by the allocated bulk indicated in the Urban Regulations. Designs to comply with these requirements.

### 31.2.2 Building Envelope and Building Lines

Each property has a specified building area (the Building Envelope Plan) within which construction must take place. Refer to the regulation plan and urban regulations for designated uses and areas.

Verandas, balconies, patios, staircases, gazebos, pergolas, built-in braais and barbeques or any other structure more than 300 mm high are in general considered to be part of the building structures and must be within the building lines.

### 31.2.3 Beacon and Building Certificates

Prior to the start of construction the Building Contractor must obtain a Beacon Certificate from the appointed Land Surveyors.

### 31.2.4 Ground Floor Level

A minimum finished ground floor level of 3.0m MSL applies.

**31.2.5 Maximum Building Height**

Maximum height to comply with requirements on urban regulation plans.

Height on retail units SP2, SP3, SP5-SP9 limited to 9.0m MSL.

Height on commercial units SP1 and SP4 limited to 12.5m MSL.

**31.3 Design Requirements**

**31.3.1 Scale and Proportion**

The architecture is to be of human scale. Avoid large building forms. The size, proportion and placement of buildings must relate to the building form requirements below.

**31.3.2 Plan Form**

Plan form – Simple rectangular and composite rectangular. Buildings shall as far as is possible be parallel to the waterways and streets.

**31.3.3 Building Form**

Maximum permitted building width of a single storey gable (or equivalent) is 7.0 metres and of a double storey gable (or equivalent) is 6.5 metres. To qualify as a single storey the wall plate height may not exceed 3.0 metres measured from the floor level. Maximum width under a lean-to roof with parapets must not be more than 2/3 of the width of the adjacent gable. Outbuildings must be of the same form as the main building if they are free standing.

The traditional building form is the additive massing of simple rectangular shapes in line or at right angles to each other. Smaller additive components should be kept to a minimum. Notches, cuts and inserts in the simple building volumes are discouraged. Interpenetrated massing not permitted. A void cut into the mass will only be considered if restrained and balanced. Voids will not be permitted on a building corner facing the street, waterway or park.

**31.3.4      Roofs**

Predominately double pitched, 30 degrees as required in urban regulations, in traditional styles - simple symmetrical double-pitched gable, square pyramid, symmetrical hipped or half hipped. Roof pitches and styles must be consistent. Flat or lean-to roofs of 5 to 15 degrees are acceptable. A separate narrow cantilevered roof over windows or doors will be considered if it does not exceed 900 mm in depth. This will not be included in coverage and floor area calculations.

Flat or lean-to roofs abutting the wall of a double-pitched roof not to exceed the width of the adjacent gable or building form.

Roofs must coincide with plan elements. Overhangs are not to exceed 200 mm.

**31.3.5      Roof Windows and Roof Lights**

Roof windows/skylights are subject to approval

**31.3.6      Roof Materials**

Roof materials permitted are:

- Traditional pattern galvanised, aluminium or chromadek corrugated metal or fibre cement sheets, Big Six sheets not permitted;
- V-crimp or standing seam flat galvanised or chromadek metal sheets;
- Flat, square cut fibre cement tiles;
- Natural slate (grey colour only); and
- Natural shingles (grey colour only).

Roof material used on a particular property must be consistent.

**31.3.7      Walls**

Recommended finishes:

- Timber plank or half logs;
- Handiplank – horizontal or vertical. Shiplap style acceptable;

- Smooth plastered brick; and
- A traditional combination of plaster and planking finish would be permitted subject to approval.

### 31.3.8 **Windows**

#### 31.3.8.1 **Window Schedule**

Window Schedule Plan to be provided to a scale of 1:50 or 1:25.

#### 31.3.8.2 **Window Placement**

Windows should be:

- taller on the ground floor, shorter on the first floor;
- the same height at the same level throughout the same storey;
- of the same width in vertical succession, lined up above one another;
- not all equidistant from each other but arranged in twos and threes to create a rhythmic pattern;
- used in families, sharing the same proportions; and
- window combinations not allowed.

#### 31.3.8.3 **Window Types**

Window frames to be timber or aluminium- side hung casement, vertical (traditional sash) or horizontal sliding type. Mock sash and outward opening top or bottom-hung types permitted. The proportion and style of windows selected should be consistent throughout all buildings. Subject to approval.

### 31.3.9 **Shutters**

Shutters must be functional. May be internal or external, folding or sliding, louvre or solid, constructed in timber or aluminium. Shutter widths must be in harmony with the windows or doors they cover. Provide detail in window schedule.

**31.3.10 Doors**

All doors must have vertical proportions. Doors to be timber or aluminium. No ornate or carved doors. Glass door style to be consistent with window style. Excessively large glassed areas are to be avoided especially those facing the water in order to reduce reflection of the sun. Sandblasting on glass allowed in moderation.

**31.3.10.1 Door Schedule**

Door Schedule Plan to be provided to a scale of 1:50 or 1:25.

**31.3.10.2 Door Placement**

In general a door should not be placed closer than 600 mm. from an external corner of the building.

**31.3.11 Fanlights**

Rectangular fixed or opening will be allowed on doors and windows. Fanlights to have mullions or frames that line up with the door frames below. A fixed arched fanlight not exceeding 600 mm in height above a single or double front door will be permitted in the correct context. Subject to approval.

**31.3.12 Verandas, pergolas, balustrades, railings and external staircases**

These must all be timber construction or steel with the same size as timber in a simple, elegant style. with railings or balustrades at least 50% open. No ornate decoration (e.g. broekie lace or Victorian-type fretwork) permitted. Exception : Veranda or deck support posts may be square section timber, metal, pre-cast concrete or masonry piers but must not exceed 300 mm square overall size. Aluminium, steel or epoxy railings and balustrades are not permitted. Exception: Horizontal stainless steel wire may be used between timber balustrade/railing posts. Top rail to be timber.

A detailed, dimensioned elevation and plan of a section of all balustrades and railings to a scale of 1:25 with specified materials should be submitted to the SANParks Design Review Panel for approval.

**31.3.13 Bargeboards, Fascias, and Parapets.**

Bargeboards and fascias to be timber or fibre cement - 150 to 230 mm. wide, minimum 25 mm thick, with a maximum 500 mm. overhang, measured horizontally.

**31.3.14 Chimneys**

Chimneys to be moderate in size, smooth plastered masonry with a simple capping painted the wall colour.

**31.3.15 Cupolas, Turrets, Ventilators**

To be an appropriate size. Not to extend more than 1200 mm above the ridge line.

**31.3.16 Cantilevered Construction**

Cantilevered floor construction is at the discretion of the SANParks Design Review Panel. If permitted it may not exceed 1.2 metres measured from the main building structure and must be used in moderation.

**31.3.17 Canopies and Awnings**

Are acceptable if it is a plain design without scallops in fabric of a single approved colour. Aluminium or fibreglass awnings and canopies are not permitted. Plans must be submitted for approval.

**31.3.18 Utilities**

Aerials and satellite dishes to be below the roof line and unobtrusive in position and colour. Approved solar panels may only be placed in a position that cannot be seen from the street. No visible or obtrusively air conditioning units are allowed. Piping to be wall colour. External waste or water pipes are not allowed above one meter from ground level or in an unscreened area visible from the street, waterway or park. Stub vent stacks to be used. Gas bottles storage to be incorporated into design.



**31.3.19 Yards/ Refuse areas**

Yard walls to be plain, straight, plastered masonry, timber or Handiplank and positioned to conceal wash lines, dustbins, storage areas, etc. Each property to be provided with a refuse area or a central refuse area properly concealed to be provided. To be of approved material and finish.

**31.3.20 Colours**

Colour combinations are important and must be approved. Refer to the approved list.

**31.3.21 Paving**

Paving to blend with the street paving. Pavers to be of approved MPA strength. Show all hard surface areas on plans.

**31.3.22 External lighting**

All lighting in shop fronts to be concealed. The source of the light not to be visible from the street or waterway. Provide downlighters or footlights in colonnades.

Ensure sufficient lighting is provided in arcades. Show light positions on plans.

**31.3.23 Landscaping**

All landscaping should be submitted to the SANParks Design Review Panel for approval prior to the commencement thereof.

**31.4 Environmental requirements**

**31.4.1 Site Works**

No excavation or filling of the erf may be undertaken without the submission and written approval of a detailed plan. No filling of saltmarsh wetland areas is permitted.

No structural loading may be placed on waterway walls.

All proposed foundations must be certified by a Structural Engineer.

**31.4.2 Storm / Rain Water Management**

On waterway or lagoon front stands all roof and surface rain water runoff must either be channelled towards the street or into a pre designed soak away on the waterway/waterfront side of the property. This soak away, to be designed and specified by an engineer, must be positioned so that it does not interfere with the ecobelt, gabion, reno mattress or other edge treatment.

**31.4.3 Rain Water Tanks**

Rain water tanks are strongly encouraged. Incorporate rainwater tanks and sub-surface drainage into design. Indicate clearly on plan with finishing schedule.

**31.5 Signage**

Signage to comply with the Thesens Island Commercial Signage Restrictions. No signage allowed without approval from the SANParks Design Review Panel. Submit plans and elevations to indicate the position of signage. Specify material and fixing method. Signage proposal to be fully dimensioned.

**31.6 Construction**

Building work infringing on the Design Guidelines will be removed at the Private Party's expense.

**31.7 Special conditions**

**31.7.1 SANParks Design Review Panel**

The SANParks Design Review Panel reserves the right to interpret this manual and approve plans at its discretion.

### **32. ANNEXURE IV - DETAILED DESIGN**

The Private Party's Detailed Design, which is subject to approval and amendments proposed by the SANParks Design Review Panel and is part of its Bid Submission, will be appended as Annexure IV.

### **33. ANNEXURE V - ENVIRONMENTAL GUIDELINES FOR PRIVATE PARTIES FOR THE CONSTRUCTION AND OPERATION OF PPP FACILITIES ON THESENS ISLAND STATE LAND WITHIN THE KNYSNA NATIONAL LAKE AREA**

#### **33.1 Introduction**

South African National Parks in 2001, embarked on an initiative to commercialise certain of its operations. One aspect of this effort is the outsourcing of opportunities for various forms of developments within National Parks, to private operators. As the custodian for the Parks, however, SANParks will retain broad oversight responsibility for the operation of the outsourced facilities. In this context, SANParks has established Environmental Guidelines to ensure that the operation of all facilities continues to be and is seen to be an integral part of the Park.

#### **33.2 Legislative Framework**

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, 25 of 1999.

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.

#### **33.3 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.

#### 33.4 **Regulations**

Regulations for the proper administration of the Knysna National Lake Area issued in terms of Section 86 (1) of the National Environmental Management: Protected Areas Act, 2003, provides a comprehensive suite of regulations applicable to SANParks and the Private Parties alike. The regulations in terms of the NEMPAA are legally binding. All staff and personnel associated with the Private Party are obliged to comply with these requirements at all times.

#### 33.5 **Environmental Impact Assessment**

As part of the Thesens Island Development, the Thesens Island Development Company conducted an Environmental Impact Assessment (“**EIA**”) for this development. On 26 November 1999 the Department of Environmental Affairs & Tourism, issued a Record of Decision (“**ROD**”) in which the authorisation included the construction activities to be undertaken on the State Land on Thesens Island. Based upon the ROD as well as a legal opinion submitted to DEAT in July 2005, no additional EIA will be required for the proposed activities on this portion of Thesens Island.

The ROD is a legally binding agreement between the project developer and the environmental authority, and becomes the basis for monitoring compliance with the recommendations of the EMP both during both the Construction and Operational Phases.

#### 33.6 **Environmental Management Plan**

Before the construction and operational phases of a project can commence, mitigation measures have to be developed (within an Environmental Management Plan - EMP) in order to reduce or eliminate potential adverse impacts on the environment to acceptable levels.

Generally, an EMP performs the following functions;

- 33.6.1 it outlines the anticipated environmental impacts of a project,

33.6.2 it outlines the measures to be taken to mitigate these impacts,

33.6.3 it outlines responsibilities for mitigation of impacts.

Definition of an “**Environmental Management Plan**” (EMP): - A plan or programme that seeks to achieve a required end state and describes how activities that have or could have an adverse impact on the environment, will be mitigated, controlled, and monitored.

Definition of “**mitigation measures**”: - Mitigation seeks to find better ways of doing things, by the implementation of practical measures to reduce, limit, and eliminate adverse impacts or enhance project benefits and protect public and individual rights.

The EMP also defines the arrangements that will be put in place to ensure that the mitigation measures are implemented by including recommendations of the roles and responsibilities of the project proponent, environmental management team and contractors.

It will be required from the project developer to compile an EMP as per prescribed guidelines. Before any work can commence this EMP must meet with the approval of SANParks.

The EMP will form the basis of the environmental performance conditions in the PPP Agreement between the Private Party and SANParks. The EMP must address the Pre- Construction, Construction and Operational Phases.

### 33.7 **The Environmental Control Officer (ECO) and Environmental Representative**

33.7.1 The Private Party shall appoint, at no cost to SANParks, an independent Environmental Representative, who shall be responsible for ensuring that the Operation, Management and Maintenance is performed in accordance with SANParks’ Requirements and relevant environmental Regulatory Provisions and for monitoring and ensuring implementation and effectiveness of mitigation measures and other requirements and targets set forth in the EIA. Notwithstanding the foregoing, the Private Party will remain accountable and liable to SANParks for the performance of the Environmental Representative’s obligations in terms of this Agreement.

33.7.2 During the Pre-Construction & Construction Phases the Environmental Representative shall submit monthly reports, and during the Operational Phase the Environmental Representative shall submit twice-yearly reports. Reports will be submitted to both SANParks and the Private Party. The Environmental Representative will report on an ad hoc basis to the SANParks' ECO and will also be the contact person for all environmental matters that need to be dealt with. Duties of the Environmental Representative during the construction phase will include the following:

33.7.2.1 Ensuring that the construction phase is completed without significant adverse impacts on the habitat on and around Thesens Island;

33.7.2.2 Ensuring that the construction phase is completed without significant adverse impacts on the birdlife on and around Thesens Island;

33.7.2.3 Ensuring that the construction phase is completed without significant adverse impacts on the water quality, inter-tidal and sub-tidal fauna and flora, and in particular Red Data Species of the Thesens Island and surrounding area; and

33.7.2.4 Ensuring that the Environmental Guidelines are effectively implemented.

33.7.3 The Private Party's Environmental obligations during the Operational Phase will include the following:

33.7.3.1 Ensuring that the Project has a positive effect on the ecological functionality of Thesens Island and the surrounding area;

33.7.3.2 Ensuring the ongoing effective implementation of the EMP;

33.7.3.3 Using environmental appropriate facilities and activities to enhance environmental awareness and education; and

33.7.3.4 Optimising the recreation and tourism potential of Thesens Island without compromising the ecological objectives.

### 33.8 **Environmental Guidelines**

The Environmental Guidelines for the development detailed herewith must be addressed in the EMP as follows:

**33.8.1 Pre-Construction Phase**

**33.8.1.1 EMP Training**

All parties involved in the project shall be responsible for ensuring that his/her/its employees are familiar with the requirements (content) of this EMP. The Contractor shall familiarize his/her employees and sub-contractors with the contents of this EMP.

The ECO shall require written proof/confirmation from the Contractor that EMP training has been done.

**33.8.1.2 Contract Areas**

The ECO must indicate/point out to Contractors the areas that they will be operating in for the duration of the contract (this shall include access roads to be used, construction lay-down areas, materials storage and delivery requirements, operational demarcation etc.). A material delivery and storage area should be demarcated in conjunction with the Contractor.

No office space or accommodation will be provided by SANParks.

The boundaries of the site shall be demarcated prior to any work commencing on the site. The site boundary demarcation line shall be removed when the site is disestablished.

**33.8.1.3 Access roads for construction**

Only existing roads/access points shall be used for construction access.

**33.8.1.4 Dissemination of Information to the Public**

Information boards shall be erected at key localities on the site to advise the public of the temporary construction. This will be the responsibility of the Contractor.



**33.8.1.5 Sensitive Ecology**

Ecologically “sensitive” areas, shall be pointed out to Contractors. Construction lay down/storage areas shall not be closer than 10m to the estuary. All possible measures shall be implemented to avoid spillages of any substances.

**33.8.1.6 Construction Procedures**

The Contractor must submit written procedures for all activities that could be potentially harmful to the environment. Such construction procedures shall include timing of activities, equipment and materials to be used, methods for preparing and cleaning the site both during construction and on completion of the works, disposal of waste and any other information deemed necessary.

The Contractor and employees shall not commence work on any activity until such time as the construction procedure has been scrutinised and agreed to in writing by SANParks.

**33.8.1.7 Hours of operation**

Contractor's and employees hours of operation shall be provided by the Contractor for approval in writing by SANParks.

**33.8.2 Construction Phase**

**33.8.2.1 Vehicular access and movement of construction vehicles**

Only existing access roads are to be used for access to the site. These roads also provide access to areas for the stockpiling of material as well as activities such as the mixing of cement. Any damage caused by the construction activities to the roads, paving or curbs must be repaired completely upon completion of the job. Any cement and gravel spillage on the roads is to be cleared up completely.

**33.8.2.2 Movement of construction personnel and equipment**

The Contractor must ensure that all construction personnel and equipment remain within the demarcated construction site at all times. Where construction personnel and/or equipment wish to move outside the boundaries of the site, the Contractor/ employees must obtain permission from the ECO.

**33.8.2.3 Site Office/establishment**

During site establishment, the Contractor must take responsibility for the site to conform to all contractual aspects and standards applicable. This will include aspects related to fires, ablution, storm water management and waste management.

No person shall be permitted to be accommodated on site.

**33.8.2.4 Toilet facilities**

The Contractor and ECO must agree on the use ablution facilities on site during construction. The Contractor shall be responsible for providing all sanitary arrangements for his employees. A minimum of one chemical toilet shall be provided per 10 persons. The siting of toilets shall be agreed with the ECO. These chemical toilets must be serviced at regular intervals. The construction site is to be maintained in a sanitary condition and all toilet facilities shall be maintained in good order.

**33.8.2.5 Site security**

The Contractor will be responsible for providing security during the construction phase. South African National Parks, its Board, directors, employees and agents are not liable for any loss or damage to property. Final security arrangements must be provided by the Contractor for approval in writing by SANParks.

**33.8.2.6 Water for construction purposes**

Water points will be pointed out to the Contractor by the ECO (e.g. water for mixing of cement as well as for drinking). Contractors shall not make use of/collect water from any other source than those pointed out to them as suitable for use by them. Should the supply of water or water points not suffice, the Contractor shall at his/her own expense provide water.

**33.8.2.7 Fires**

No fires will be permitted on construction sites.

**33.8.2.8 Waste Handling**

The construction site shall at all times be kept in a neat and tidy condition. All litter and debris arising from the construction camp shall be collected and removed on a continuous basis to avoid build-up. Contractors shall remove all waste generated by themselves during construction and it shall be disposed of at a suitable (registered) solid waste disposal venue. Stockpiled waste shall not remain on site for longer than 2 days.

The Contractor shall not dispose of any waste and/or construction debris by burning or burying.

The Contractor shall supply waste bins/skips throughout the site at locations where construction personnel are working. The bins shall be provided with lids and an external closing mechanism to prevent contents from blowing out, and shall be scavenger proof to prevent animals attracted to the waste. Bins shall be emptied on a regular basis.

**33.8.2.9 Noise**

The Contractor must take into consideration that the project area is located within a built up environment and that noise could be a major disturbance/nuisance for residents and visitors. All possible measures

must be implemented to ensure that noise is kept to a minimum.

**33.8.2.10 Safety on site**

Contractors shall adhere to the prescriptions of the Occupational Health and Safety Act (Act 85 of 1993) and Construction regulations. The Contractor shall familiarise himself/herself and its employees with the contents of the fore mentioned. First aid facilities must be on hand at all times in accordance with the requirements of the Occupational Health and Safety Act (Act 85 of 1993). The Contractor shall implement adequate and mandatory safety precautions relating to all aspects of the operation. Such safety measures and work procedures/instructions shall be communicated to construction workers. Warning and advisory signage shall be implemented (also with regards to construction vehicle movement along public roads). A contingency plan must be available for emergency situations.

The perimeter of the construction site must be enclosed with shade-net at all times and proper warning signage provided to keep the public out.

**33.8.2.11 Clearing of vegetation**

No removal of vegetation will be permitted.

**33.8.2.12 Cultural Historical Sites**

SANParks is not presently aware of any cultural or archaeological sites within the Project Site that will preclude development.

If the Contractor discovers undocumented cultural sites or artefacts of any type at any time during the development period and project term, these must not be disturbed, damaged or removed. All such finds shall be brought to the immediate attention of the Park Manager or the ECO.

**33.8.2.13 Stormwater and erosion control**

Stormwater shall be diverted away from all construction or site areas in cut-off drains. Measures shall be taken to reduce water velocity at cleared areas. Exposed soil should be stabilised to prevent soil erosion.

Should it be necessary a slit tap must be installed at drainage points.

**33.8.2.14 Earthworks**

All excavation activities for any purpose whatsoever, should be preceded by selective stripping and stockpiling soil, for the purpose of replacement in the appropriate horizon order, after the completion of construction. These activities should include;

- Trenching,
- Foundations,
- access road construction,
- backfill,
- site clearance, etc.

Replacement and rehabilitation should be progressive with construction and not left until the end. Temporary topsoil stockpiles shall be protected in a manner acceptable to the Park Manager and ECO, so as to avoid erosion by rain or wind. Stockpiled topsoil and sub-soils should be protected from pollution/contamination e.g. by fuel spillages etc. Excavations shall be located well clear of existing infrastructure such as roads, pipelines etc.

Silt traps must be installed as a matter of principle.

**33.8.2.15 Mixing of cement**

Where cement/concrete, etc. is mixed on site, this shall be done in specified areas on aprons or on protective plastic linings and provision shall be made to contain spillage or overflows onto soils. Residue shall be regarded as waste and be handled accordingly - see "Waste handling", above.

The delivery of pre-mixed concrete will be encouraged i.e. "Readymix".

**33.8.2.16      Mixing of chemicals**

The mixing of any herbicides, solvents, asphalt, sealants, adhesives, paints, chemicals or other noxious materials shall only be undertaken in designated areas on aprons that have spillage control channels and separate storage areas. The mixing of materials will not be permitted in the public areas of the site. All surplus or waste materials are to be removed from the site. All these operations shall only be allowed on site with strict observation of the manufacturers' instructions.

**33.8.2.17      Storage and use of fuels, oil and lubricants**

Fuels, oil and lubricants must be stored in a safe, clearly designated area of the construction terrain. Any spillage must be cleared immediately, by removing contaminated soil and dumping it at a designated waste site. No servicing of vehicles / equipment will be permitted.

**33.8.2.18      Site clean-up and rehabilitation**

**Site Clean Up:**

The Contractor shall ensure that all temporary structures, equipment, materials, waste and facilities used for construction activities are removed upon completion of the project. The Contractor shall clear and clean the construction site to the satisfaction of the ECO and the Park Manager.

**Rehabilitation:**

Should any rehabilitation be necessary as a result of activities on site, the Contractor must undertake the rehabilitation with inputs from the Park Manager and ECO.

33.8.2.19      **Architectural Design Guidelines**

Contractors shall adhere to the prescriptions of the Architectural Design Guidelines as provided by SANParks. A “certificate of completion of work” shall only be issued after the technical correctness of work that has been performed, has been verified by SANParks or their appointed consultants.

33.8.2.20      **Complaints regarding visual or noise impact during construction**

In cases where visitors have complaints to the construction activities and associated infrastructure, SANParks shall meet with such persons/parties in order to discuss and address their concerns and to formulate a suitable alternative that would satisfy their concerns.

33.8.3      **Operational Phase**

33.8.3.1      **Electricity**

Generators will be permitted, although the potential environmental impacts (noise, potential contamination from oil and fuel spills) must be considered and effective mitigation measures implemented to address these impacts.

Any plans to install a power plant must first be agreed to in writing by SANParks.

33.8.3.2      **Water**

SANParks encourages Private Parties to implement water conservation measures in the design of their developments. Strong consideration must be given to recycling, especially if garden irrigation and other water-intensive amenities are to be provided. Gardens, lawns and water features must be designed to meet this limit.

### 33.8.3.3 **Waste Management**

#### **(a) Liquid Wastes**

The Private Party must make use of the current in-line waterborne sewage system. SANParks prohibits the use of either French drains or French drains used in conjunction with septic tanks at any site. Wastewater may only be discharged into sewage and wastewater facilities.

Fuels, solvents and other liquid wastes must be stored on site in vessels equipped with secondary containment structures to prevent contamination of soil, groundwater and surface waters due to accidental spills or releases. These must be removed from the site and disposed of in accordance with all applicable national, local or SANParks requirements.

All kitchen drains must be equipped with suitable and serviceable fat or grease traps.

#### **(b) Solid Wastes**

SANParks encourages Private Parties to implement a policy of sorting and recycling solid wastes. Waste that cannot be recycled must be removed from both the site and disposed of appropriately.

The Knysna Municipality / SANParks Services Agreement will provide further guidelines in this regard and will be applicable to all Private Parties.

#### **(c) Noxious Fumes**

The Private Party must ensure that the level of smoke and noxious or other fumes emanating from any facility e.g. a restaurant are in compliance with prescribed standards.

### 33.8.3.4 **Fire Management**

The Private Party must implement fire prevention and life safety measures that comply fully with South African standards (SABS



0400).

**33.8.3.5 Damage to SANParks Property**

Any damage caused, by activities of any operation, to any property, services or infrastructure owned, managed or operated by SANParks must be repaired by the Private Party at his/her cost, to the satisfaction of SANParks.

Any repair work must be signed off by SANParks in writing.

**33.8.3.6 Staff Accommodation**

The Private Party may not provide any staff accommodation on site.

**33.8.3.7 Occupational Health and Safety**

All buildings, vehicles, machinery and other structures (including their operation) must comply with relevant South African legislation and standards. The Private Party must have an emergency medical evacuation policy that covers both guests and staff in the event of a serious injury or acute medical emergency. Relevant staff must be trained in and aware of this policy.

**33.8.3.8 Security**

SANParks will permit Private Parties to undertake any necessary security precautions in the Development Site and its immediate surroundings.

Any security arrangements must be approved by SANParks in writing.

**33.8.3.9 Monitoring**

All of the issues discussed and described in this document will require monitoring. SANParks reserves the right to monitor all these issues according to the standards set out in these Guidelines, the findings of the EMP, and/or in a manner agreed between the parties as the

process develops.

Furthermore, the Private Party will be obliged to develop a comprehensive monitoring, auditing and review system and implement the system applicable to all facilities, at their own cost.

#### 34. ANNEXURE VI: PERFORMANCE AND BID BONDS

##### 34.1 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:

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

We, the undersigned

\_\_\_\_\_ and \_\_\_\_\_

(Name) (Name)

acting herein as

\_\_\_\_\_ and \_\_\_\_\_

(Position) (Position)

of

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

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

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

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

8. The Bank shall have no right of recourse or claim of whatever nature against SANParks arising out of its obligation to pay or arising out of actual payment under this Bond to SANParks.

9. Addresses and Notices:

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

SANParks:

Groenkloof National Park  
643 Leyds Street  
Muckleneuk  
Pretoria

Telephone: (012) 426-5027

Facsimile: (012) 343-3849

The Bank:

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Telefax:

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9.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.

9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.

9.5 A notice sent by one party to another party shall be deemed to be received

9.5.1 on the same day, if delivered by hand;

9.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.

9.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON \_\_\_\_\_ 2007

AT

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

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

[NAME] [NAME]

[TITLE] [TITLE]

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

34.2 **PART B: FORM OF CERTIFICATE**

To:[Name and address of Bank]

Attention:

From:South African National Parks

Address:

Dated:

Dear Sirs

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

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

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

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

Yours faithfully,

.....

for and on behalf of

**South African National Parks**



34.3 **PART C: CHARACTERISTICS OF THE BID AND DEVELOPMENT BOND**

To: South African National Parks (SANParks)

WHEREAS [name of bidder] (the “Bidder”) is to submit to you a bid to enter into a PPP Agreement with SANParks for the purpose of the SANParks Thesens Island Restaurant in the Knysna National Lake Area.

WHEREAS you require the bidder to include in the bid a bid bond for R150 000-00 (One Hundred and Fifty Thousand Rand);

AND WHEREAS we have agreed to give you such a bid bond;

NOW THEREFORE we hereby irrevocably and unconditionally undertake to pay you, upon your first written demand and without objection or argument, the sum of R150 000-00 (One hundred and Fifty Thousand Rand), upon any or all of the following occurrences:

- Any material misrepresentation made by the bidder in its bid submission or any other information and documentation submitted by it under the request for qualifications or this request for proposals;
- The withdrawal or modification of its bid during the period of validity;
- Failure to assume operations as determined in the PPP Agreement;
- Failure by the preferred bidder to furnish the required performance bond under the PPP Agreement in accordance with the provisions of the PPP Agreement.

This bond shall be valid in respect of the 12 (twelve) months’ period after the Signature Date.

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

SIGNATURE AND SEAL

---

Name of Bank\_\_\_\_\_

Address\_\_\_\_\_

Date\_\_\_\_\_

**34.4 PART D: PRIVATE PARTY'S PERFORMANCE AND BID BONDS**

The Private Party's Performance and Bid Bonds are to be appended as Part D of Annexure VI.

**34.4.1 Private Party Performance Bond**

#### 34.4.2 **Private Party Bid Bond**

**35. ANNEXURE VII - SHAREHOLDING, COMPANY STRUCTURE AND REQUIRED QUALIFICATIONS TO OPERATE PROJECT SITE**

**35.1 PART A: REQUIRED QUALIFICATIONS TO OPERATE PROJECT SITE**

In order to participate in the bidding process, bidders are required to meet the following qualification criteria:

**35.1.1 Financial capacity**

35.1.1.1 Given the fact that the project is of a high value and may entail risk to both the preferred bidder and SANParks, it is important that interested parties demonstrate financial strength. In this regard the minimum asset value of the interested parties for the SANParks Thesens Island Restaurant must be R5 (five) million.

35.1.1.2 As the preferred bidder must be a SPV, it must demonstrate financial strength with reference to the asset value of its shareholders in proportion to their shareholding. The interested party must also demonstrate, to SANParks' satisfaction, that its shareholders are solvent. Audited financial statements, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided to illustrate any assertion made by an interested party in this regard.

**35.1.2 Tourism experience**

35.1.2.1 The project is likely to require interested parties with substantial experience and expertise in the tourism market. Interested parties are therefore required to provide examples of similar projects conducted by the interested parties.

35.1.2.2 In their Bid Submissions, Bidders must include documentation to demonstrate their compliance with the following operational and financial criteria. Bidders must demonstrate their ownership and/or operation of the requisite facilities that demonstrates their compliance. Such criteria may be met by either the Private Parties themselves or, in the case of franchisors, by their franchisees. Revenue figures shall be net of Value Added Tax (VAT):

<b>No. of Seats</b>	<b>Annual Turnover</b>
100	R2 million

**35.2 PART B: PRIVATE PARTY JUDICIAL STATUS, SHAREHOLDING  
STRUCTURE AND QUALIFICATIONS TO OPERATE PROJECT**

The following documents of the Private Party are appended as Part B of Annexure VII:

- 35.2.1 Copies of the share certificates in respect of all issued shares;
- 35.2.2 The Shareholders' Agreement/ Joint Venture Agreement;
- 35.2.3 The Equity Subscription Agreements;
- 35.2.4 The Certificate of Incorporation, Certificate to Commence Business, Memorandum of Association and Articles of Association, Partnership Agreement, Trust Deed or other founding statutes;
- 35.2.5 The Private Party's Financial Documents submitted as part of its Bid Submission; and
- 35.2.6 The Private Party's Tourism Track Record submitted as part of its Bid Submission.

**36. ANNEXURE VIII - COMPLIANCE EVENTS**

The following Compliance Events will apply to the Project:

- 36.1 The Approval of an Environmental Impact Assessment, if required for the Project, by the Relevant Authority.
- 36.2 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 3.12.
- 36.3 Approval of the Detailed Design by the SANParks Design Review Panel.
- 36.4 Payment of the KOC Payment by the KOC Payment Date.

**37. ANNEXURE IX – DEVELOPMENT AND ENVIRONMENTAL PROPOSAL**

The Private Party's Development and Environmental Proposal, which is part of its Bid Submission, will be appended as Annexure IX.



## **38. ANNEXURE X - PPP FEES**

### **38.1 Minimum PPP Fee**

38.1.1 The Minimum PPP Fee is determined relative to 1 July 2009, and shall be adjusted to take cognisance of inflation, in accordance with the provisions of this PPP Agreement. The minimum PPP Fee for each Project Year is as follows:

- Project Year 1 : R250 000-00;
- Project Year 2 : R300 000-00;
- Project Year 3 : R350 000-00;
- Project Years 4 – 15 : R400 000-00.

38.1.2 The Minimum PPP Fee shall escalate on an annual basis throughout the Project Term in accordance with changes in the Consumer Price Index, by the method defined in Clause 1.5 of this PPP Agreement.

### **38.2 Variable PPP Fee = X% of GROSS REVENUE**

Gross Revenue is:

38.2.1 any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on at or by virtue of the Project, in any manner, directly or indirectly, as is or would normally be included in gross revenue in terms of GAAP and including the deemed value of accommodation made available to Shareholders and third parties or sold forward as well as the deemed value of any payments or benefits received by the Private Party that take a form other than a monetary form. Without derogating from its generality, the term “gross revenue” shall mean revenue before the deduction of:

38.2.1.1 bad debts (or provisions therefore);

38.2.1.2 commissions or similar consideration paid or payable;

- 38.2.1.3 cash, credit-card or similar discounts or commissions;
- 38.2.1.4 costs and expenses other than trade discounts granted in circumstances that are not arm's-length or to a Related Party;
- and gross revenue shall include;
- 38.2.1.5 commissions received or receivable;
- 38.2.1.6 rentals and other fees received or receivable;
- but shall exclude;
- 38.2.1.7 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;
- 38.2.1.8 interest received or receivable;
- 38.2.1.9 the proceeds of, profit or surpluses on the disposal of non-current assets;
- 38.2.1.10 transfers from reserves; and
- 38.2.1.11 bad debts recovered.

**38.3 Private Party's PPP Offer**

The Private Party's Bid Submission PPP Offer is appended as Clause 38.3.

## 39. ANNEXURE XI – BEE OBLIGATIONS

### 39.1 Definitions

In this Section 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.

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

- 39.1.1 "**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;
- 39.1.2 "**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;
- 39.1.3 "**Black People**" is as defined in the BEE Act, save that it is limited to South African citizens. In other words, Black People are Africans, Coloureds and Indians who are South African citizens. For avoidance of doubt, this term does not include juristic persons or any form of enterprise other than a sole proprietor.
- 39.1.4 "**Black Person**" means any such citizen;
- 39.1.5 "**Black Women**" means female Black People;
- 39.1.6 "**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;
- 39.1.7 "**Community Trust**" means the a trust registered in terms of the Trust

Property Control Act;

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

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

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

39.1.8.3 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;

39.1.8.4 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;

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

39.1.9.1 employment related expenditure;

39.1.9.2 procurement from public utilities and natural monopolies; and

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

39.1.10 **"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;

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

39.1.11.1 direct investment in Black Owned and Black Empowered SMMEs;

39.1.11.2 joint ventures with Black Owned and Black Empowered SMMEs that

- result in "substantive" skills transfer;
- 39.1.11.3 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
- 39.1.11.4 twinning initiatives with Black Owned and Black Empowered SMMEs which result in cost savings or revenue generation for those SMMEs;
- 39.1.12 "**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;
- 39.1.13 "**Learnership**" refers to learnerships as defined in the Skills Development Act, No. 97 of 1998, amended in 2003;
- 39.1.14 "**Local**" means the geographic area being within a 50 km kilometre radius of the Project Site or Park;
- 39.1.15 "**Local Community Trust Ownership**" means Equity in the Private Party which must, as a mandatory provision of the Project, be acquired by a Local Community Trust;
- 39.1.16 "**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;
- 39.1.17 "**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;
- 39.1.18 "**Preferential Procurement**" refers to all spend with BEE compliant suppliers, to be calculated as follows:
- 39.1.18.1 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
- 39.1.18.2 fifty cents (50c) for every one Rand (R1) spent with Satisfactory BEE Contributors;
- all of which terms are defined as follows:
- 39.1.18.3 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;
- 39.1.18.4 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;
- 39.1.18.5 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;
- 39.1.18.6 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;
- 39.1.18.7 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
- 39.1.18.8 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;
- 39.1.19 **"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;
- 39.1.20 **"Supervisory"** refers to the junior management and professional staff;

39.1.21 **"TOMSA (Tourism Marketing South Africa) Levy Collectors"** refers to tourism enterprises who are registered to raise funds on behalf of the trust;

39.1.22 **"Total Employee Time"** refers to the total working hours calculated as the product of the total number of employees and their standard working hours;

39.1.23 **"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.

## 39.2 2104 Milestones and Targets

39.2.1 The Private Party shall from Effective Date to 31 December 2014 comply with the commitments and undertakings set out in the following table.

Indicator	2014 Weightings		2014 MILESTONES	
			Indicators to measure BEE achievement	2014 Milestone
	Weighting	Sub-weighting		Target
	A	B		C
<b>Ownership</b>	20%	13%	Percentage share of economic benefits as reflected by direct shareholding by black people	20%
		7.0%	Local Community trust ownership	10%
<b>Strategic representation</b>	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%
<b>Employment equity</b>	12%	1.0%	Black people as a percentage of management	50%
		1.0%	Black women as a percentage of management	25%



	2014 Weightings		2014 MILESTONES	
Indicator			Indicators to measure BEE achievement	2014 Milestone
	Weighting	Sub-weighting		Target
	A	B		C
		2.0%	Local people as a percentage of management	25%
		1.0%	Black people as a percentage of supervisors, junior and skilled employees	65%
		1.0%	Black women as a percentage of supervisors, junior and skilled employees	35%
		2.0%	Local people as a percentage of supervisors, junior and skilled employees	45%
		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%
<b>Skills development</b>	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%
<b>Preferential procurement</b>	18%	12.0%	Spend on BEE compliant companies as a percentage of total procurement spend	50%
		6.0%	Spend on local BEE compliant companies as a percentage of total procurement spend	25%
<b>Enterprise development</b>	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%

	2014 Weightings		2014 MILESTONES	
Indicator			Indicators to measure BEE achievement	2014 Milestone
	Weighting	Sub-weighting		Target
	A	B		C
		5.0%	Enhanced revenue and/or cost savings and/or twining initiatives facilitated for black owned SMMEs, as a percentage of revenue.	1%
<b>Social development and industry specific</b>	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%
		3.0%	Status of TOMSA levy collector	Yes
<b>Total BEE points</b>	<b>100</b>	<b>100</b>		

### 39.3 Milestones and Targets Post-2014

39.3.1 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.

39.3.2 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.

39.3.3 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.

**39.4 External BEE Verification**

39.4.1 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.

39.4.2 The Private Party shall be obliged in terms of the PPP Agreement to, at a minimum, obtain an A-rating from the external verification agency for each Project Year. In the event of default by the Private Party to comply with this provisions and the Private Party default is not remedied before the expiry of the period referred to in the notice by SANParks, SANParks will have the right to terminate the PPP Agreement with immediate effect by written notice to the Private Party.

**39.5 Private Party's BEE Proposal**

The Private Party's BEE Proposal is appended as Clause 39.5.

**40. ANNEXURE XII – FINANCING AND CAPITAL PLAN, BUSINESS AND OPERATIONAL PLAN AND RISK MATRIX**

The Financing and Capital Plan, the Business and Operational Plan as well as the Risk Matrix constituting part of the Private Party's Bid Submission, are appended as part of Annexure XII.

**40.1 Financing and Capital Plan**

## 40.2 **Business and Operational Plan**

#### 40.3 Risk Matrix