PHABENI GATE BUSH BRAAI
PPP AGREEMENT

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

FOR THE

PHABENI GATE BUSH BRAAI FACILITY

IN THE

KRUGER NATIONAL PARK

JUNE 2019
# TABLE OF CONTENTS

1. INTRODUCTION .................................................................................................................. 5
2. DEFINITION AND INTERPRETATION ............................................................................. 5
3. APPOINTMENT .................................................................................................................... 26
4. PROJECT TERM .................................................................................................................. 26
5. PPP RIGHTS ..................................................................................................................... 26
6. OPERATION, MANAGEMENT AND MAINTENANCE ..................................................... 28
7. LABOUR LAWS .................................................................................................................. 35
8. PRIVATE PARTY COVENANTS ......................................................................................... 35
9. WARRANTIES ....................................................................................................................... 37
10. PRIVATE PARTY INDEMNITIES .................................................................................... 40
11. LIMITATIONS ON LIABILITY .......................................................................................... 41
12. PROJECT SITE .................................................................................................................. 42
13. HANDOVER ...................................................................................................................... 45
14. THE ENVIRONMENT ........................................................................................................ 46
15. SANPARKS' UNDERTAKINGS ....................................................................................... 47
16. PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES .............................. 48
17. BLACK ECONOMIC EMPOWERMENT .......................................................................... 48
18. FINANCIAL PROVISIONS AND PAYMENT .................................................................. 48
19. DEFAULT INTEREST ........................................................................................................ 52
20. PERFORMANCE BOND ..................................................................................................... 52
21. REPORTING REQUIREMENTS ........................................................................................ 53
22. INFORMATION AND AUDIT ACCESS ............................................................................ 56

Page 2 of 144
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>SANPARKS STEP-IN</td>
<td>57</td>
</tr>
<tr>
<td>24</td>
<td>FORCE MAJEURE</td>
<td>59</td>
</tr>
<tr>
<td>25</td>
<td>PRIVATE PARTY DEFAULT</td>
<td>62</td>
</tr>
<tr>
<td>26</td>
<td>SANPARKS DEFAULT</td>
<td>67</td>
</tr>
<tr>
<td>27</td>
<td>CORRUPT GIFTS AND FRAUD</td>
<td>68</td>
</tr>
<tr>
<td>28</td>
<td>EFFECTS OF TERMINATION</td>
<td>69</td>
</tr>
<tr>
<td>29</td>
<td>DISPUTE RESOLUTION</td>
<td>73</td>
</tr>
<tr>
<td>30</td>
<td>CHANGES IN CONTROL</td>
<td>75</td>
</tr>
<tr>
<td>31</td>
<td>CESSION, TRANSFER AND SUBSTITUTED ENTITY</td>
<td>76</td>
</tr>
<tr>
<td>32</td>
<td>INTELLECTUAL PROPERTY OF SANPARKS</td>
<td>78</td>
</tr>
<tr>
<td>33</td>
<td>INTELLECTUAL PROPERTY OF THE PRIVATE PARTY</td>
<td>80</td>
</tr>
<tr>
<td>34</td>
<td>AMENDMENTS</td>
<td>82</td>
</tr>
<tr>
<td>35</td>
<td>ENTIRE AGREEMENT</td>
<td>82</td>
</tr>
<tr>
<td>36</td>
<td>VARIATION, CANCELLATION AND WAIVER</td>
<td>83</td>
</tr>
<tr>
<td>37</td>
<td>SEVERABILITY</td>
<td>83</td>
</tr>
<tr>
<td>38</td>
<td>GOVERNING LAW AND JURISDICTION</td>
<td>84</td>
</tr>
<tr>
<td>39</td>
<td>CONFIDENTIALITY</td>
<td>84</td>
</tr>
<tr>
<td>40</td>
<td>NOTICES</td>
<td>87</td>
</tr>
<tr>
<td>41</td>
<td>COUNTERPARTS</td>
<td>89</td>
</tr>
<tr>
<td>42</td>
<td>SCHEDULE 1 - DESCRIPTION OF THE PHABENI GATE BUSH BRAAI FACILITY</td>
<td>90</td>
</tr>
<tr>
<td>43</td>
<td>SCHEDULE 2 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE PHABENI BUSH BRAAI FACILITY</td>
<td>93</td>
</tr>
<tr>
<td>44</td>
<td>SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS</td>
<td>94</td>
</tr>
<tr>
<td>45</td>
<td>SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION</td>
<td>100</td>
</tr>
</tbody>
</table>
46. SCHEDULE 5 – BEE OBLIGATIONS ........................................................................................................ 103
47. SCHEDULE 6 – PPP FEE ......................................................................................................................... 110
48. SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF PHABENI GATE BUSH BRAAI FACILITY WITHIN THE PROTECTED AREAS .......... 112
49. SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION .............................................. 121
50. SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS .................................................. 124
51. SCHEDULE 10 – INSURANCE ................................................................................................................. 125
52. SCHEDULE 11 – PERFORMANCE BOND ................................................................................................. 126
53. SCHEDULE 12 – CAPITAL EXPENDITURE PLAN .................................................................................. 133
54. SCHEDULE 13 – CONSUMER PROTECTION ACT .................................................................................. 135
55. SCHEDULE 14 – PROHIBITED CHEMICAL SUBSTANCES .................................................................... 140
56. SCHEDULE 15 – PEST MANAGEMENT PLAN ....................................................................................... 141
57. SCHEDULE 16 – BAT MANAGEMENT GUIDELINES .............................................................................. 142
58. SCHEDULE 17 – PREFERRED PEST CONTROL CHEMICALS ................................................................. 143
59. SCHEDULE 18 - COMPLIANCE EVENTS ............................................................................................... 144
1. **INTRODUCTION**

1.1 SANParks is a juristic person established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing to exist as such in terms of section 54 of the Protected Areas Act.

1.2 In terms of the Protected Areas Act, SANParks is empowered to exercise control over the Protected Area and in accordance therewith, SANParks wishes to expand the income generation potential of the Protected Area by appointing a suitably experienced hotel and recreational facilities operator to refurbish the Phabeni Gate Bush Braai Facility and design, operate, manage and maintain the Phabeni Gate Bush Braai Facility for the benefit of the public (“the Project”).

1.3 Following a public tender process, SANParks has appointed the Private Party to undertake the Project.

1.4 Accordingly, SANParks and the Private Party wish to enter into this PPP Agreement to regulate the implementation of the Project on the terms and conditions set out below.

2. **DEFINITION AND INTERPRETATION**

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

2.1.1 **“Assessment Rates”** - all assessment rates, fees, levies, or charges and any increase thereon, payable from time to time to any Responsible Authority having jurisdiction over the Phabeni Gate Bush Braai Facility or any building thereon by the owner thereof irrespective of the name by which they may be
<table>
<thead>
<tr>
<th>Number</th>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.2</td>
<td>&quot;Associated Agreement&quot;</td>
<td>the Private Party’s contracts with subcontractors or sub-concessionaires related to the execution and/or fulfilment of the terms and conditions of this PPP Agreement;</td>
</tr>
<tr>
<td>2.1.3</td>
<td>&quot;BBBEE Act&quot;</td>
<td>the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended from time to time;</td>
</tr>
<tr>
<td>2.1.4</td>
<td>&quot;BEE Obligations&quot;</td>
<td>the Black Economic Empowerment obligations imposed on the Private Party as set out in Schedule 5;</td>
</tr>
<tr>
<td>2.1.5</td>
<td>&quot;Bid Submission&quot;</td>
<td>the bid submitted by the Private Party and accepted by SANParks for the right to carry out the Project;</td>
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<tr>
<td>2.1.6</td>
<td>&quot;Black Economic Empowerment&quot; or &quot;BEE&quot;</td>
<td>shall have the meaning ascribed to it in the BBBEE Act;</td>
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<tr>
<td>2.1.7</td>
<td>&quot;Black People&quot;</td>
<td>shall have the meaning ascribed to it in the BBBEE Act;</td>
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<td>2.1.8</td>
<td>&quot;Business&quot;</td>
<td>the business of game drives and operation of bush breakfast and dinner that shall be conducted as a going concern upon the Phabeni Gate Bush Braai Facility site;</td>
</tr>
<tr>
<td>2.1.9</td>
<td>“Business Assets”</td>
<td>the assets of the Business as set out in Schedule 21A;</td>
</tr>
<tr>
<td>2.1.10</td>
<td>“Business Day”</td>
<td>- any day other than a Saturday, Sunday or national public holiday in South Africa;</td>
</tr>
<tr>
<td>2.1.11</td>
<td>“Bush Site”</td>
<td>- the area within the Phabeni Gate Bush Braai Facility used for purposes of bush breakfast and bush dinner/braai;</td>
</tr>
<tr>
<td>2.1.12</td>
<td>“Capital Expenditure”</td>
<td>- any expenditure treated as capital expenditure under GAAP or IFRS as used by the Private Party;</td>
</tr>
<tr>
<td>2.1.13</td>
<td>“Capital Investment Assets”</td>
<td>- the assets of a capital nature procured by the Private Party for the purpose of the conduct of the Business and includes the equipment, furnishings, fixtures and improvements relating thereto;</td>
</tr>
<tr>
<td>2.1.14</td>
<td>“Change in Control”</td>
<td>- any change whatsoever in Control of the Private Party, whether effected directly or indirectly;</td>
</tr>
<tr>
<td>2.1.15</td>
<td>“Companies Act”</td>
<td>- the Companies Act, No. 71 of 2008, as amended from time to time;</td>
</tr>
</tbody>
</table>
| 2.1.16 | “Confidential Information” | - any information or know-how in whatever form relating to the business affairs, trade secrets, products, operating, or marketing techniques, methods or processes, suppliers, customers or
| 2.1.17 | "Consents" | - all consents, permits, clearances authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, certificates required to be issued by or made with any Responsible Authority in connection with the attainment of any of the Project Deliverables; |
| 2.1.18 | "Constitutional Documents" | - the Private Party's memorandum of incorporation and certificate to commence business, as well as the Private Party's shareholders' agreement, equity subscription agreements and/or equity guarantees entered into and provided in respect of the Private Party and any documents or agreements in respect of any debentures issued by the Private Party, all of which are attached to this PPP Agreement as Schedule 9 and the terms of which shall be to the satisfaction of SANParks; |
| 2.1.19 | "Consumer Protection Act" | - the Consumer Protection Act, No. 68 of 2008, as amended from time to time; |
| 2.1.20 | "Control" | - in relation to any entity, the ability, directly or indirectly to: (i) direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying finances of either of the Parties; |
voting rights; or (ii) appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);

2.1.21 “Corrupt Act” - shall have the meaning ascribed to it in Clause 29;

2.1.22 “CPI” - the average rate of change (expressed as a percentage) in the Consumer Price Index for all urban areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it, which change shall be determined by comparing the most recently published index with the index published in respect of the corresponding month in the previous period;

2.1.23 “Phabeni Gate Bush Braai Facility” - the recreational bush site located within the Protected Area as more fully described in Schedule 1, including the land and other facilities together with all supporting infrastructure, plant and equipment, and any new facilities constructed or developed by the Private Party upon the designated
2.1.24 **“Depreciated Value”**

- the value of assets calculated in accordance with depreciation presented for income tax purposes, taking into consideration the unexpired portion of the period specified in Clause 4, provided that the minimum rates of depreciation shall not be less than normal custom and practice.

2.1.25 **“Development Period”**

- a period of up to 6 (six) months reckoned from the Signature Date, during which the Private Party will refurbish the Phabeni Gate Bush Braai Facility Site in line with Private Party’s brand in order to commence with full trading activities thereat; provided that in the event the refurbishment is completed earlier than 6 (six) months from the Signature Date, this period shall be adjusted accordingly to such earlier date as may be stipulated by SANParks in writing. For avoidance of doubt the Development Period includes the period required to obtain any environmental approvals.

2.1.26 **“EIA” or “Environmental Impact Assessment”**

- the process of assessing the environmental effects of a development or an activity and its subsequent operation, carried out in accordance with the applicable
Regulatory Provisions and guidelines;

2.1.27 “Environment” - the aggregate of surrounding objects, conditions and influences that influence the life and habitats of humans or any other organism or collection of organisms, including all or any of the following: air (including the air within any building or the air within any other man-made or natural structure above or below ground), water (including inland waters, groundwater and water in drains and sewers) and land;

2.1.28 “Environmental Laws” - any Laws in respect of the Environment, including, without limitation, the following statutes: the National Water Act, No. 36 of 1998; the Water Services Act, No. 108 of 1997; the National Environmental Management Act, No. 107 of 1998; the National Environmental Management: Protected Areas Act, No. 57 of 2003; the National Environmental Management: Air Quality Act; the Hazardous Substances Act, No. 15 of 1973; and the National Heritage Resources Act, No. 25 of 1999;

2.1.29 “Environmental Specifications” - the requirements, conditions, obligations and specifications
| 2.1.30 | “Equity” | defined in Schedule 7; the entire issued share capital of the Private Party as at the relevant date; |
| 2.1.31 | “Expiry Date” | the last day of the month in which the eighth (8th) anniversary of the Operation Commencement Date occurs; |
| 2.1.32 | “Financial Year” | each period of twelve (12) consecutive months in any given year for purposes of financial reporting of the Private Party; |
| 2.1.33 | “Financing Agreements” | the agreements relating to the financing provided by the Lenders to the Private Party in their form as at the Operation Commencement Date, as amended from time to time; |
| 2.1.34 | “Force Majeure” | has the meaning ascribed to it in Clause 24; |
| 2.1.35 | “GAAP” | generally accepted accounting practice in South Africa as approved from time to time by the South African Accounting Practices Board; |
| 2.1.36 | “Good Industry Practice” | the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time; |
time from a skilled and experienced contractor or professional, engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this PPP Agreement; seeking in good faith to comply with all its contractual obligations herein and all applicable Regulatory Provisions;

| 2.1.37 | “Gross Revenue” | - shall have the meaning ascribed to it in Clause 18; |
| 2.1.38 | “Handover Period” | - means the period commencing from the Signature Date, through the Development Period, up to and including the Operation Commence Date; |
| 2.1.39 | “IFRS” | - International Financial Reporting Standards, being a set of accounting standards and interpretations developed by an independent, not-for-profit organization called the International Accounting Standards Board (IASB); |
| 2.1.40 | “Intellectual Property Rights” | - all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or form part of pending applications), |
utility models, applications for any of the aforegoing, copyrights (including copyright in any software programmes, data and documents), database rights, the *sui generis* rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws or any other jurisdiction;

2.1.41 “KNP Tariffs” - the tariffs stipulated by SANParks for Utility Charges and any other fees, levies and the like, in respect of cost of recoveries incidental to goods and/or services provided by SANParks to the Private Party in the Protected Area, as may be reviewed by SANParks from time to time;

2.1.42 “Laws” - the common law, Legislation, judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law;

2.1.43 “Legislation” - all applicable statutes, statutory instruments, by-laws, Regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having force of law in South Africa;
2.1.44 “Lenders” - means any person providing financing to the Private Party for the execution of the Project by the Private Party, other than the shareholders of the Private Party;

2.1.45 “Licensed Intellectual Property” - all Intellectual Property to be used in the provision of the Project Deliverables by the Private Party or a Subcontractor under licence from any third party, as replaced and/or upgraded from time to time;

2.1.46 “Local” - the geographic area specified by SANParks in respect of the Project, being either within a fifty kilometre (50 km) radius of the Phabeni Gate or within a thirty kilometre (30 km) reach of the boundary of the Protected Area fence (but excluding areas that fall within the boundaries of the neighbouring countries);

2.1.47 “Losses” - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature that have or may result in adverse financial consequences to the Project;

2.1.48 “Minimum PPP Fee” - that portion of the PPP Fee that is payable by the Private Party at all times after the Operation Commencement Date, regardless
of the amount of the Gross Revenue, which is stipulated in Clause 18;

2.1.49 “Minister” - Minister of Environmental Affairs in South Africa or any minister that assumes the responsibility for the Protected Area in the future;

2.1.50 “Operation Commencement Date” - the first Business Day after the expiry of the Development Period, by which date the Private Party shall be required, alternatively be deemed, to have commenced the conduct of the Business, as the case may be, at the Phabeni Gate Bush Braai Facility in accordance with the terms and conditions of this PPP Agreement;

2.1.51 “Park Management Plan” - the management plan developed by SANParks for the Protected Area in consultation with the local authorities, organs of state and other stakeholders and approved by the Minister as provided for in the Protected Areas Act, the objective of which is to ensure the protection, conservation and management of the Protected Area in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which the Protected Area was declared a national park in terms of the Protected Areas
2.1.52 “Park Manager” - the most senior manager of the Protected Area, designated as such by SANParks from time to time;

2.1.53 “Park Rules” - the Environmental rules in respect of the Protected Area, as may be revised and/or updated by SANParks from time to time;

2.1.54 “Parties” - collectively, SANParks and the Private Party;

2.1.55 “Party” - SANParks or the Private Party, as the case may be;

2.1.56 “Performance Bond” - the guarantee to be issued by a financial institution in favour of SANParks on behalf of the Private Party, in respect of the Private Party's obligations to perform under this PPP Agreement substantially in the format specified in Schedule 11 hereto;

2.1.57 “Person” - any individual, partnership, corporation, company, business organisation, trust, governmental agency, parastatal, Relevant Authority or other entity;

2.1.58 “PFMA” - the Public Finance Management Act, No. 1 of 1999, as amended from time to time;
2.1.59 “PPP” - public private partnership, as defined in the Treasury Regulations;

2.1.60 “PPP Agreement” - this public private partnership agreement between SANParks and the Private Party, including the Schedules and any annexures hereto as amended, extended, replaced and varied from time to time;

2.1.61 “PPP Fee” - the fee payable by the Private Party to SANParks in respect of the Project, as detailed in Clause 18;

2.1.62 “PPP Rights” - the right to design, operate, maintain, and manage the Business as more specifically set out in Clause 5;

2.1.63 “Private Party” - Phabeni Bush Braai (Pty) Ltd Registration number, XXXXX a profit private company registered in accordance with the company laws of South Africa;

2.1.64 “Private Party Default” - has the meaning ascribed to it in Clause 25;

2.1.65 “Private Party Parties” - the officers, directors, staff, employees, contractors, sub-contractors, agents, guests, visitors, invitees and patrons of the Private Party or, where the context
requires, any one or more of them;

2.1.66 “Project” - shall have the meaning assigned to that term in clause 1.2 above;

2.1.67 “Project Assets” - all assets required to undertake the Project, including the Business Assets and the Capital Investment Assets, any books and records, any spare parts and tools, as well as the Intellectual Property pertaining to the Business, but excluding all cash and cash equivalents;

2.1.68 “Project Deliverables” - the timeous achievement of the Operation Commencement Date; successful implementation of the Project, including the achievement of the BEE Obligations;

2.1.69 “Project Insurance” - those insurances that the Private Party is required by Law and in terms of this PPP Agreement to purchase and maintain in terms of Clause Error! Reference source not found., upon the minimum terms set out in Schedule 10;

2.1.70 “Project Term” - the period from the Signature Date to the Expiry Date or the Termination Date, whichever occurs first;

2.1.71 “Project Year” - each period of twelve (12) consecutive months, commencing
2.1.72 “Protected Area” - Kruger National Park;

2.1.73 “Protected Areas Act” - the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003,) (as amended) from time to time);

2.1.74 “Rand” or “R” - the South African Rand, the lawful currency of South Africa;

2.1.75 “Regulations” - regulations issued in terms of the Protected Areas Act;

2.1.76 “Regulatory Provisions” - (a) the Environmental guidelines ("Environmental Specifications") for operators operating within the Protected Area which is further described in Schedule 7, as same may be revised and updated by SANParks from time to time, and (b) collectively the Laws, and standards of the State and any Relevant Authority which in any way affects or applies to the conduct of the Project and/or this PPP Agreement from time to time or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Park Rules and Park Management Plan;
2.1.77 “Responsible Authority” - the South African national and/or provincial and/or local governmental authority having jurisdiction over any or all of the Parties or any subject matter of this PPP Agreement. A Responsible Authority shall, for the avoidance of doubt, not include any provider of Utilities;

2.1.78 “Restricted Enterprise” - a person restricted from contracting with SANParks and/or a Responsible Authority as a result of being listed either on -

(i) the Register for Tender Defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act, 2004;

(ii) the Disqualified Directors’ Register (maintained by the Companies and Intellectual Property Commission) in terms of Section 69(13) of the Companies Act; and/or

(iii) any other relevant listing required by Law;

2.1.79 “SANParks” - South African National Parks, a juristic person established in terms of section 5 of the National Parks Act, No. 57 of 1976 and continuing
to exist as such in terms of the provisions of section 54 of the Protected Areas Act;

2.1.80 “SANParks Default” shall have the meaning ascribed to it Clause 28.1;

2.1.81 “SANParks Employees” persons employed or contracted to SANParks and whose employment is regulated in terms of the Public Services Act, 1994;

2.1.82 “Schedules” the schedules to this PPP Agreement, as amended, replaced and varied from time to time;

2.1.83 “Shareholders” the holders of the Equity from time to time;

2.1.84 “Signature Date” the date of signature of this PPP Agreement by the last signing Party;

2.1.85 “Skills Development Spend” has the meaning as set out in Schedule 5;

2.1.86 “South Africa” the Republic of South Africa;

2.1.87 “State” the Government of South Africa, acting directly or through its lawfully designated representatives;

2.1.88 “Subcontractors” any subcontractor of the Private
2.1.89 “Suretyship” - the deed of suretyship which shall be executed by each of the Shareholders in favour of SANParks as more specifically set out in Schedule 23;

2.1.90 “Termination Amount” - the amount payable by a Party on termination of this PPP Agreement in terms of this PPP Agreement;

2.1.91 “Termination Date” - any date of termination of this PPP Agreement, in accordance with its terms;

2.1.92 “Treasury Regulations” - the Treasury Regulations issued under the PFMA that apply to SANParks and/or this PPP Agreement;

2.1.93 “Transferrable Licenses Intellectual Property” - any Licensed Intellectual Property that the Private Party is entitled to transfer to SANParks;

2.1.94 “Utilities” - facilities such as water, electricity, sewage, gas and telecommunications and, where appropriate, includes relevant provider thereof;

2.1.95 “Utility Charges” - charges or fees in respect of consumption of the Utilities used at the Phabeni Gate Bush Braai
2.1.96 "Variable PPP Fee" - that portion of the PPP Fee that is a percentage of the Gross Revenue of the Private Party, which percentage is detailed in Clause 18 and Schedule 6;

2.1.97 "VAT" - value added tax, as defined in the VAT Act or any similar tax which is imposed in place of or in addition to such tax; and

2.1.98 "VAT Act" - Value Added Tax Act, No. 89 of 1991, as amended form time to time.

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

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

2.2.2 for the purposes of any clause in this PPP Agreement, that makes reference to SANParks' approval, such approval shall be deemed to vest with the SANParks Managing Executive: Tourism Development and Marketing;

2.2.3 references to “indexed to CPI” in relation to any amount of money shall mean that such amount has been expressed in April 2017 prices and shall be escalated annually as at the Operation Commencement Date and each anniversary thereof with reference to the then most recent publication of the CPI;
2.2.4 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this PPP Agreement, their respective cessionaries and assignees;

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

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

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

2.2.8 the Introduction and Schedules to this PPP Agreement are an integral part of this PPP Agreement and references to this PPP Agreement shall include the Introduction and Schedules;

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

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

2.2.11 references to any other contract or document shall include (subject to all approvals required to be given pursuant to this PPP Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time;
2.2.12 general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words; and

2.2.13 when a number of days are prescribed in this PPP Agreement, such number shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day.

3. APPOINTMENT

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

4. PROJECT TERM

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

5. PPP RIGHTS

5.1 Exclusive Grant of PPP Rights at the Phabeni Gate Bush Braai Facility

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

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

5.1.2.1 establish any other bush braai facility at the Phabeni Gate;

5.1.2.2 establish game drives which involve any offering of bush breakfast or bush dinner/braai in the Phabeni Gate;
5.1.2.3 grant the PPP Rights or any other rights referred to in this Clause 5 to any third parties.

5.2 Phabeni Gate Bush Braai Facility rights

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

5.2.1.1 the sole and exclusive right to operate game drives and bush breakfast and dinner in the Phabeni Gate;

5.2.1.2 the right to operate services which complement the Phabeni Gate Bush Braai Facility (as approved by SANParks) on an exclusive basis, provided that the Private Party shall allow the public access to the Phabeni Gate Bush Braai Facility except for the Bush Site which the Private Party is entitled to restrict the public from accessing;

5.2.1.3 generate, charge and collect revenues from the exercise of the PPP Rights;

5.2.1.4 use the Phabeni Gate Bush Braai Facility in accordance with the terms of this PPP Agreement;

5.2.1.5 access by the Private Party and its employees to the Protected Area, subject to the normal Protected Area’s operating rules and hours as set by SANParks from time to time;

5.2.1.6 provide morning and night drives as part of its service offering to its patrons, provided that such drives shall be conducted with vehicles complying with the standards and requirements as may be determined by SANParks from time to time;

5.2.1.7 introduce the new services and thematic activities in accordance with the Private Party’s Bid Submission, subject to SANParks’ approval; and
5.2.1.8 undertake the refurbishment and infrastructural development as per the Capital Investment proposed in the Private Party's Bid Submission as detailed in Schedule 12.

5.2.2 All of the Private Party's rights in terms of this Clause 5 shall be exercised in accordance with the terms of this PPP Agreement and subject to the Regulatory Provisions, Environmental Laws, Environmental Specifications and all other Laws.

5.3 Service Delivery

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

5.3.2 in accordance with Good Industry Practice;

5.3.3 in line with the Bid Submission;

5.3.4 conducted in a professional, courteous and friendly manner; and

5.3.5 in accordance and compliance with the Laws, including, to the extent applicable, the provisions of Consumer Protection Act, and Schedule 14.

6. OPERATION, MANAGEMENT AND MAINTENANCE

6.1 Operation, Management and Maintenance by the Private Party

6.1.1 The Private Party shall be obliged during the Project Term to undertake the operation, management and maintenance of the Phabeni Gate Bush Braai Facility and of all of the alterations and developments undertaken thereto by the Private Party in accordance with Good Industry Practice during the hours specified by SANParks from time to time.

6.1.2 The Private Party shall compile a status report in relation to the operation, management and maintenance of the Phabeni Gate Bush Braai Facility which shall be made available to SANParks promptly upon the finalisation thereof, but in any event not later than 5 (five) Business Days after every six
(6) months of the Project Term.

6.1.3 The Private Party shall comply with the Environmental Specifications set forth in Schedule 7.

6.1.4 The Private Party shall:

6.1.4.1 operate game drives with Open Safari Vehicles that accommodate a maximum of 90 (ninety) guests per session and provide bush breakfast and bush dinner\braai;

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

6.1.4.3 use its best endeavors to maintain the highest standards in accordance with Good Industry Practice in all matters connected with the operation of the Phabeni Gate Bush Braai Facility and shall not sell, display for sale or consumption, deliver to the end user or provide any foodstuffs or products or anything else which does not conform with Good Industry Practice or any Regulatory Provisions with regard to the standard or quality of preparation, display or sale of any foodstuffs at the Phabeni Gate Bush Braai Facility;

6.1.4.4 at all times maintain the equipment used for the Phabeni Gate Bush Braai Facility in a clean, orderly and sanitary condition;

6.1.4.5 ensure that all personnel and staff employed by the Private Party for the Phabeni Gate Bush Braai Facility shall at all times be clean, cleanly and tidily clothed so as to maintain uniformly high standards of presentation and delivery;

6.1.4.6 at all times ensure that any products or foodstuffs in stock are fresh, uncontaminated and hygienically and properly stored and shall ensure
proper storage, disposal, serving and preparation of all foodstuffs and products;

6.1.4.7 at its cost, conduct hygiene audits at the Phabeni Gate Bush Braai Facility at least twice a year ("Hygiene Audit") and shall furnish SANParks with the outcomes of the Hygiene Audit within five (5) Business Days of its completion. In the event the Private Party fails to conduct a Hygiene Audit as contemplated in this Clause, then SANParks shall have the right to conduct or commission such an audit and the costs thereof shall be borne by the Private Party;

6.1.4.8 at all times score a minimum of at least seventy five percent (75%) on the Hygiene Audit total quality index;

6.1.4.9 ensure that:

6.1.4.9.1 it implements measures to prevent pathogens to be detected on food samples;

6.1.4.9.2 the Phabeni Gate Bush Braai Facility acquires and maintains a certificate of acceptability;

6.1.4.9.3 a cleaning programme in respect of the bush site is implemented, including a cleaning schedule and cleaning checklist;

6.1.4.9.4 the staff at the Phabeni Gate Bush Braai Facility is trained in hygiene practices;

6.1.4.9.5 hand washing facilities and proper cleaning chemicals are available;

6.1.4.9.6 food areas are zoned as per food type; and

6.1.4.9.7 the pest control measures such as screening, closure of windows and doors are implemented.
6.1.5 The Private Party shall ensure that the following packaging is not used on the outside seating area of the Phabeni Gate Bush Braai Facility:

6.1.5.1 condiments sachets and any packaging that may pollute the environment;

6.1.5.2 paper serviettes; and

6.1.5.3 butter tubs/pads.

6.1.6 The Private Party undertakes to operate the Phabeni Gate Bush Braai Facility in line with SANParks’ Restaurant / Retail Operations / Procedure Manual. The Parties acknowledge that the aforementioned manuals’ objective is to assist in the daily operations of the Phabeni Gate Bush Braai Facility and allow for good cooperation between the Parties and may be changed from time to time by mutual agreement in order to satisfy their mutual objectives.

6.1.7 SANParks may, in its sole and absolute discretion, conduct regular quality audits at the Phabeni Gate Bush Braai Facility to ensure that the quality of the foodstuffs and products prepared and sold by the Private Party consistently meet the desired standards ("Quality Audit"). The Quality Audits shall be conducted by way of “mystery guests”, spot checks, customer questionnaires or any other quality control checks and measures as deemed necessary by SANParks.

6.1.8 The Private Party shall comply with and subscribe to the minimum standards of responsible tourism as provided for in the Responsible Tourism – SANS 1162.

6.1.9 The Private Party shall ensure that all access to the Phabeni Gate Bush Braai Facility complies with the universal accessibility standards stipulated by the Tourism Grading Council of South Africa from time to time.
6.2 **Assessment Rates and Utilities**

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

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

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

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

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

6.2.4 Should the Utilities within the Phabeni Gate Bush Braai Facility or part thereof be provided by SANParks, then SANParks shall -

6.2.4.1 procure that sub-meters in respect of any Utilities are installed in order to monitor consumption or usage thereof by the Private Party. It will be the Private Party's responsibility to ensure within the first month of operation that the sub-meters read and function correctly in order to eliminate conflicts on meter readings during the Project Term; and

6.2.4.2 the Private Party shall pay to SANParks, the Utility Charges as measured by such sub-meters, together with VAT thereon, within 7 (seven) days of receipt of an invoice in respect thereof from
6.2.5 Should the Phabeni Gate Bush Braai Facility or part thereof be served by a meter or sub-meter which also serves other areas of the Protected Area, then the Private Party shall pay to SANParks the Private Party’s share of all the Utility Charges as measured by such meter or sub-meter expressed as a percentage which the total area of the Phabeni Gate Bush Braai Facility bears to the total area of the Protected Area serviced by such meter or sub-meter, together with the VAT thereon.

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

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

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

6.3 **Consumer Protection Act Requirements**

6.3.1 SANParks shall require the Private Party to comply with the provisions of the Consumer Protection Act that affect the Business.

6.3.2 In the event of the Private Party failing to comply with the provisions of the Consumer Protection Act applicable to it and fails to remedy such non-compliance before the expiry of the period referred to in a notice by
SANParks, SANParks may terminate this PPP Agreement in accordance with Clause 25 by written notice to the Private Party.

6.4 Unauthorised Payments

The Private Party shall not:

6.4.1 offer or give or agree to give any person in SANParks’ employment, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the execution of this PPP Agreement or any other contract or agreement or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract or agreement for SANParks; or

6.4.2 enter into this PPP Agreement or any other contract or agreement with SANParks in connection with which commission has been paid or agreed to be paid by any person, either personally or on such person’s behalf, or to their knowledge, unless before that agreement is made, particulars of such commission and of the terms and conditions of any such agreement have been disclosed in writing to SANParks.

6.5 Third Party Contracts

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

7.1 The Private Party agrees to abide by the laws in force, as amended from time to time, relating to employees engaged in relation to the Business and shall use its best endeavours to ensure similar compliance by its contractors, subcontractors at all levels, assignees and agents.

7.2 The Private Party undertakes to promptly notify SANParks upon its employees embarking on and/or participating in any form of strike or industrial action as a result of any dispute between the Private Party and its employees for any reason whatsoever.

7.3 The Private Party shall enter into a separate Housing Rental Agreement with SANParks in respect of the housing of its staff, if applicable.

8. PRIVATE PARTY COVENANTS

8.1 Subject to the provisions of this PPP Agreement, the Private Party shall conduct and manage the Project:

8.1.1 at its own cost and risk;

8.1.2 in compliance with all applicable Laws, Regulatory Provisions and the Consents;

8.1.3 in compliance with all applicable health and safety standards; and

8.1.4 in accordance with Good Industry Practice.

8.2 The Private Party shall take all reasonable steps to ensure that all the Private Party Parties visiting or working at the Phabeni Gate Bush Braai Facility, adhere to, abide by and comply with:

8.2.1 all Regulatory Provisions, the Environmental Specifications in respect of the Protected Area and specifically in respect of the Phabeni Gate Bush Braai Facility and the EIA;
8.2.2 the terms of this PPP Agreement; and

8.2.3 any valid and enforceable directives or rules issued by the Park Manager from time to time. In cases where the Private Party believes that the Park Manager has issued a directive or rule that is either not valid, or that impacts materially on the commercial soundness of the Project, the Private Party shall have the right to appeal against such rule or directive with SANParks and/or any other person determined by SANParks, in its sole and absolute discretion. SANParks and/or such other person determined by SANParks will, within a reasonable time following receipt of the Private Party’s appeal, verify whether the directive or rule in question was valid and consistent with practice elsewhere in the Park. Pending the results of such an appeal, the Private Party shall abide by the said directive or rule.

8.3 The Private Party shall be responsible for:

8.3.1 obtaining and keeping current all the Consents which may be required for the performance of its obligations under this PPP Agreement;

8.3.2 implementing each consent within the period of its validity in accordance with its terms;

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

8.3.4 maintaining and keeping the Open Safari Vehicles and the Phabeni Gate Bush Braai Facility clean including the area of responsibility described in Schedule 1 hereto.

8.4 Without prejudice to Clauses 8.3.1 and 8.3.2, the Private Party shall obtain all necessary permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any permit, approval or licence granted by any Relevant Authority and shall take all other necessary action required under the relevant Regulatory Provisions governing all facets of the conduct of the Project during the Project Term.
8.5 The Private Party shall bear all risks and costs with respect to material damage to the Phabeni Gate Bush Braai Facility or the environment caused by the operation of the Phabeni Gate Bush Braai Facility during the Project Term arising from any act whatsoever, including an omission by the Private Party.

8.6 The Private Party shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Private Party Parties.

8.7 Unless otherwise agreed in writing by SANParks, the Private Party and other parties to the Associated Agreements shall have no interest in nor receive remuneration in connection with the Phabeni Gate Bush Braai Facility except as provided for in the PPP Agreement or the Associated Agreements.

9. WARRANTIES

9.1 Private Party Warranties

The Private Party warrants that:

9.1.1 it has taken all necessary actions to authorise its execution of this PPP Agreement;

9.1.2 the execution and performance of all of its obligations in terms of this PPP Agreement does not and will not contravene any provision of the Constitutional Documents of the Private Party as at the Signature Date and the Operation Commencement Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Private Party as at the Signature Date and at the Operation Commencement Date;

9.1.3 for the Project Term, no encumbrances shall be granted or created in respect of the Project Assets (other than the Licensed Intellectual Property not owned by the Private Party), including that it has not registered or granted any security interests over the Project Assets which could in any manner (whether in contract or in Law) defeat or override SANParks’ interest in the Project Assets;
9.1.4 all Consents required by the Private Party to meet the Project Deliverables shall be in full force and effect as at the Signature Date and as at the Operation Commencement Date, save for any Consents which are not required under applicable Law to be obtained by the Signature Date or the Operation Commencement Date (as the case may be), provided that the Private Party warrants that it knows of no reason (having used its best endeavours to enquire in this regard) why any such Consent will not be granted on reasonable terms by the time it is required to obtain such Consent;

9.1.5 as at the Operation Commencement Date all authorisations, approvals and licenses required in order to permit the Private Party or the Subcontractors to make use of the Licensed Intellectual Property and the Transferable Licensed Intellectual Property for purposes of performing the Project Deliverables have been validly granted and will remain effective for the remainder of the Project Term, unless the Licensed Intellectual Property and the Transferable Licensed Intellectual Property is required for a shorter period in which event the Private Party or the Subcontractors shall ensure that it has been validly granted and will remain effective for such shorter period of time;

9.1.6 no litigation, arbitration, investigation or administrative proceeding relating to the Private Party or any of its shareholders is in progress as at the Signature Date and as at the Operation Commencement Date or, to the best of the knowledge of the Private Party as at the Signature Date and as at the Operation Commencement Date having made all reasonable enquiries, threatened against it, which is likely to have a material adverse effect on the ability of the Private Party to meet the Project Deliverables;

9.1.7 as at the Signature Date and as at the Operation Commencement Date, the Private Party is not subject to any obligation, the non-compliance of which is likely to have a material adverse effect on its ability to meet the Project Deliverables;

9.1.8 as at the Signature Date and as at the Operation Commencement Date, no proceedings or any other steps have been taken or, to the best of the knowledge of the Private Party having made all reasonable enquiries,
threatened for the winding-up or liquidation or business rescue proceedings (whether voluntary or involuntary, provisional or final), or deregistration of the Private Party or any of its shareholders, or for the appointment of a liquidator, business rescue practitioner or similar officer over it or over any of its assets;

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

9.1.10 it is not a Restricted Enterprise;

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

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

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

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

9.2 **SANParks Warranties**

SANParks warrants that –

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

9.2.2 it has not knowingly omitted to disclose any material information in its possession or under its control relating to any of its assets related to this PPP Agreement;

9.2.3 it has lawfully secured the Consents required by it in terms of Law to conclude this PPP Agreement; and

9.2.4 no restrictive conditions of title exist over the Protected Area that would in any manner prevent or obstruct the Private Party from performing the Project Deliverables.

10. PRIVATE PARTY INDEMNITIES

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

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

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

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

10.1.4 other claim, action, charge, cost, demand or expense by a third party,

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

10.2 In the event of SANParks incurring a third party claim ("third party claim") for which the Private Party has indemnified it then SANParks shall notify the
Private Party thereof within a period of 10 (ten) Business Days of SANParks becoming aware of such claim.

10.3 SANParks will provide the Private Party with all reasonable co-operation and assistance in relation to the third party claim.

10.4 Subject to the terms of any Project Insurances, the Private Party shall be entitled to dispute any such third party claim, at its own cost and risk, and where necessary in the name of SANParks (with the prior written approval of SANParks), subject to the Private Party -

10.4.1 exercising due care in defending a third party claim so as not to bring the name of SANParks into disrepute;

10.4.2 keeping SANParks fully informed of the conduct of such third party claim; and

10.4.3 obtaining the written approval of SANParks (which shall not be unreasonably withheld or delayed) prior to settling any third party claim.

11. LIMITATIONS ON LIABILITY

11.1 Neither Party shall be entitled to recover (whether pursuant to an indemnity or otherwise) any loss to the extent that it has already been or is entitled to be compensated for that loss whether by way of Project Insurance payments or otherwise.

11.2 In particular, each Party shall be under an obligation to mitigate the consequences of any conduct in respect of which it is entitled to compensation under this PPP Agreement (whether by way of indemnity or otherwise).

11.3 Neither Party shall be liable to the other for any damages or any indemnity to the extent that the damages or the amount claimed under the indemnity is for or arises out of loss of profit, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss suffered or allegedly suffered by any person.
12. PROJECT SITE

12.1 Phabeni Gate Bush Braai Facility

12.1.1 The Private Party acknowledges that the Government holds all right, title and interest in the Phabeni Gate.

12.1.2 The location and physical boundaries of the Phabeni Gate Bush Braai Facility shall be the areas defined in Schedule 1.

12.2 Access Following Commencement

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

12.2.2 With effect from the Expiry Date or the Termination Date, as the case may be, the Private Party's interest in the Phabeni Gate Bush Braai Facility shall automatically terminate and the Private Party shall be given access to the Phabeni Gate Bush Braai Facility only for purposes of giving effect to the provisions of Clause 28 (Effects of Termination).

12.3 Project Site Conditions

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

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

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

12.3.2.2 for the purpose of such investigation in Clause 12.3.2, inspected and examined the Phabeni Gate Bush Braai Facility and surroundings thereof;

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

12.3.2.4 satisfied itself as to the adequacy of its right of passage over, access to and through the Phabeni Gate Bush Braai Facility; and

12.3.2.5 satisfied itself as to the possibility of interference by persons (including pedestrian and vehicle traffic) with rights-of-way across, access to or use of the Phabeni Gate Bush Braai Facility with particular regard to
the owners and users of any land adjacent to the Phabeni Gate Bush Braai Facility and the Protected Area; and

12.3.2.6 satisfied itself as to the precautions, times and methods of working necessary to prevent or minimise nuisance or interference being caused to any third parties or the Environment.

12.4 To avoid doubt, the Private Party accepts full responsibility for all matters in Clause 12.3.2 and the Private Party shall, in respect of the Phabeni Gate Bush Braai Facility from the Signature Date, not be entitled to make any claim against SANParks whether in contract, delict or otherwise on any ground relating to the matters in Clause 12.3.2; and from the Operation Commencement Date be responsible for and shall indemnify SANParks against -

12.4.1.1 all direct losses sustained by SANParks in consequence of cleaning-up and otherwise dealing with any potentially hazardous materials (being any natural or artificial substance, whether in solid, gaseous or liquid form) capable of causing harm to any human or any other living organism supported by the Environment or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances for which in each case liability or responsibility is imposed under applicable Environment Law at the Phabeni Gate Bush Braai Facility; and

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

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

13. **HANDOVER**

13.1 It is a fundamental requirement by SANParks that the transfer of the Phabeni Gate Bush Braai Facility is undertaken on the basis that:

13.1.1 there is no or minimal disruption in the provision of goods and services to visitors to the Protected Area and includes use of vehicles for products on offer to visitors to the Protected Area;

13.1.2 any structural alterations do not cause the Phabeni Gate Bush Braai Facility to be closed unless alternatives are provided (unless it was closed in any event);

13.1.3 the handover shall be undertaken in such a manner to cause the least disruption and/or intrusion to SANParks and employees and then only in a manner which is mutually acceptable to both SANParks and the Private Party;

13.1.4 the Business will be conducted in the usual manner throughout the Handover Period; and

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

13.2 During the Handover Period:

13.2.1 the Private Party and SANParks shall co-operate and work together to achieve an effective transfer of control and management of Phabeni Gate Bush Braai Facility to the Private Party on the Operation Commencement
Date;

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

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

14. THE ENVIRONMENT

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

14.2 During the Project Term, the Private Party shall conduct, manage and carry out the Project at all times in an Environmentally responsible way by adopting appropriate operating methods and practices for conducting such a Project in a proclaimed National Park and shall adhere to the Regulatory Provisions and the Environmental Specifications.

14.3 The Private Party shall promptly bring to the attention of SANParks any matter which may, in its view, have a detrimental impact on the Environment within the Phabeni Gate Bush Braai Facility and the Protected Area.

14.4 The Private Party shall take all reasonable steps in the conducting of the Project to prevent and limit the occurrence of any Environmental or health hazards and to ensure the health and safety of the Private Party Parties and the general public.
14.5 The Private Party shall comply with its statutory duties in terms of the Environmental Laws and at all times take reasonable measures to prevent pollution or degradation from occurring, continuing or recurring and in so far as such harm to the Environment is authorised by SANParks, the findings of the EIA or by law, to minimise and rectify such pollution or degradation of the Environment.

15. SANPARKS’ UNDERTAKINGS

15.1 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or similar acts of SANParks hereunder shall be given, made and done in writing.

15.2 SANParks shall continue, in the ordinary course of business, to market and promote the Phabeni Gate Bush Braai Facility and co-operate with the Private Party in preparing marketing and promotional material so as to ensure that Phabeni Gate Bush Braai Facility is properly marketed and promoted as an integral part of the Kruger National Park and the marketing and promotional programme for the Kruger National Park as a whole.

15.3 SANParks will co-operate with and assist the Private Party in any manner as may reasonably be necessary to ensure the continued viability of Phabeni Gate Bush Braai Facility and will not engage in acts or omissions which may materially affect the rights or interests of the Private Party in respect of the Phabeni Gate Bush Braai Facility.

15.4 Without limiting the generality of Clause 15.3, SANParks reserves the right to, where a dispute that might have a negative effect on SANParks’ guests arises as per clause 29, take reasonable actions to prevent inconvenience to SANParks’ guests.

15.5 SANParks will operate and manage the Protected Area and will promote it in such manner as may reasonably be necessary to ensure the continued viability and sustainability of the Protected Area as a National Park and as a sustainable and attractive tourist and conservation undertaking.
15.6 SANParks’ procurement processes in relation to the Project complied, to the best of SANParks knowledge and belief, in all material respects with:

15.6.1 all relevant guidelines relevant to such procurement processes; and

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

16. PROHIBITION OF EMPLOYMENT OF SANPARKS EMPLOYEES

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

17. BLACK ECONOMIC EMPOWERMENT

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

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

18. FINANCIAL PROVISIONS AND PAYMENT

18.1 Gross Revenue

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

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

18.1.1.1.1 bad debts (or provisions therefore);

18.1.1.1.2 commissions or similar consideration paid or payable;

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

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

18.1.1.2 and Gross Revenue shall include:

18.1.1.2.1 commissions received or receivable; and

18.1.1.2.2 rentals and other fees received or receivable;

18.1.1.3 but shall exclude:

18.1.1.3.1 sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of IFRS or GAAP (depending on the principles / standards used by the Private Party);

18.1.1.3.2 interest received or receivable;

18.1.1.3.3 the proceeds of, profit or surpluses on the disposal of non-current assets;
18.1.1.3.4 transfers from reserves; and

18.1.1.3.5 bad debts recovered.

18.2 PPP Fees

18.2.1 The Private Party shall pay the PPP Fee to SANParks each and every month from the Operation Commencement Date.

18.2.2 The monthly PPP Fees payable by the Private Party to SANParks shall be the higher of:

18.2.2.1 the Minimum PPP Fee; or

18.2.2.2 the Variable PPP Fee.

18.2.3 The Minimum PPP Fee or the Variable PPP Fee will be calculated using the formula set out in Schedule 6.

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

18.2.5 For purposes of reconciling the PPP Fees payable by the Private Party in any given Financial Year, the Private Party shall, within 120 (one hundred and twenty) days after the end of each Financial Year, furnish its audited financial statements to SANParks, whereafter SANParks shall verify and reconcile the PPP Fees due against the PPP Fees actually paid in the relevant Financial Year.

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

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

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

18.3 Taxes

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

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

18.3.3 All payments to be made to SANParks by the Private Party in terms of this PPP Agreement shall be free of set-off or any other deductions whatsoever and shall be paid by way of electronic funds transfer into the bank account specified by SANParks in its invoices or in otherwise in writing from time to time.
19. DEFAULT INTEREST

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

20. PERFORMANCE BOND

20.1 The Private Party shall provide to SANParks the Performance Bond which shall be operative from the Signature Date, in favour of SANParks issued by a bank or financial institution acceptable to SANParks substantially in the format specified in Schedule 11.

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

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

20.4 The amount to be guaranteed by the Performance Bond for the first twelve month period as from the Signature Date shall be the sum of R 84 000.00 (eighty four thousand rand).

20.5 The Performance Bond shall be reinstated in full and its amount adjusted annually within 90 (ninety) Business Days of the end of each Project Year such that the amount to be guaranteed by the Performance Bond for the relevant Project Year is not less than the amount indicated in Clause 20.4 as adjusted to reflect changes in the CPI since Bid Submission.

20.6 The Performance Bond shall secure the Private Party’s performance under this PPP Agreement and may be called on by SANParks to the extent of any costs, losses, damages or expenses suffered or incurred by SANParks as a result of breach by the Private Party of this PPP Agreement, including, but not limited to, compensation to SANParks for any actions taken by SANParks as a result of breach by the Private Party of any Regulatory Provision(s), Laws, Legislation or Environmental Specifications and payment obligations hereunder. The
20.7 Prior to enforcing the Performance Bond, SANParks shall give notice to the Private Party, informing the Private Party of the breach giving rise to the right of enforcement of the Performance Bond. If such breach is not remedied within the remedy period, SANParks may enforce the Performance Bond.

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

21. REPORTING REQUIREMENTS

21.1 General

21.1.1 The Private Party shall be required to compile and deliver to SANParks a comprehensive quarterly and annual reports in the form prescribed by SANParks from time to time for purposes of reporting on the implementation and performance of the Project Deliverables.

21.1.2 In addition to the Private Party's reporting obligations stipulated in Clause 23.1.1, the Private Party shall, within 10 (ten) Business Days of the event occurring, report in writing to SANParks details of the following events -

21.1.2.1 any encumbrance, lien or attachment imposed on any of the Private Party's property and any seizure thereof which encumbrance, lien, attachment or seizure materially affects, impedes or obstructs (whether directly or indirectly) the ability of the Private Party to perform the Project Deliverables;

21.1.2.2 any transaction in respect of the Equity of the Private Party of which the Private Party is aware; or

21.1.2.3 any receipt by the Private Party of a notice of default under any
Financing Agreement from the Lenders, the circumstances thereof and possible results as viewed by the Private Party.

21.1.3 The Private Party shall, within 10 (ten) Business Days of the receipt of a written request from SANParks, provide SANParks with –

21.1.3.1 any information SANParks may reasonably request pertaining to the PPP Agreement or that SANParks is entitled to under any Law; and

21.1.3.2 a written report on any aspect of the Private Party’s performance of the Project Deliverables or on its compliance with any other obligation under this PPP Agreement.

21.2 **Appointment of Private Party Auditors**

21.2.1 The Private Party will be obliged to appoint auditors for the Project. Failure to do so may result in termination of this PPP Agreement.

21.2.2 In furtherance of its reporting obligations as a company in terms of all applicable Laws, the Private Party shall at all times comply with the record keeping and reporting requirements of the Companies Act if failure to do so would be a breach of the Companies Act and shall ensure that by the Signature Date it has, at its own expense, procured the services of a reputable firm of auditors and that, by the Operation Commencement Date, the Private Party shall implement a suitable accounting and cost control system consistent with GAAP or IFRS (depending on the principles / standards used by the Private Party) so as to properly prepare and record all financial information relating to the Private Party’s activities in respect of the Project. Copies of such accounts and reports shall be provided to SANParks on written request, and SANParks shall have the right to have access to and the right to remove such accounts and reports if acting within its rights and if so required in terms of applicable Laws.

21.2.3 The Private Party shall similarly cause the Subcontractors to make all information, books of accounts, records and other data relating to the Project available to SANParks on reasonable notice if so required in terms
of applicable Laws and if reasonably required for this PPP Agreement.

21.2.4 SANParks may, on reasonable suspicion of fraud or fraudulent misrepresentation by the Private Party which has a direct impact on SANParks and without any prior notice to the Private Party, meet and consult with the Private Party’s auditors regarding the Private Party’s accounts and operations from time to time at the cost of SANParks, subject to Clause 21.2.6 below.

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

21.2.6 Notwithstanding the provisions of Clauses 21.2.4 and 21.2.5 above, if the investigations conducted conclude that the Private Party has committed a fraud or fraudulent misrepresentation, as contemplated in Clauses 21.2.4 and 21.2.5 above, then the Private Party shall be liable for the reasonable costs of meeting(s) and/or audit(s).

21.3 Bi-Annual Management Reports

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

21.3.1.1 a balance sheet of the Private Party’s assets and liabilities;

21.3.1.2 an income statement; and

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

21.4 Annual Reports

21.4.1 The Private Party shall furnish to SANParks as soon as practicable but in any event not later than 120 (one hundred and twenty) Business Days after the end of each Financial Year which occurs after the Operation Commencement Date -

21.4.1.1 3 (three) hardcopies and 1 (one) electronic copy of the Private Party’s complete financial statements for such Financial Year as signed by a duly authorised officer of the Private Party, all in accordance with the requirements of accounting best practice (which must be consistent with the books of accounts and prepared in accordance with GAAP or IFRS (depending on the principles / standards used by the Private Party) consistently applied), together with an audit report thereon;

21.4.1.2 a copy of any audit findings report sent by the Private Party’s auditors to the Private Party or to its management in relation to the Private Party’s financial, accounting and other systems, management and accounts; and

21.4.1.3 a reconciliation of the profit and loss account and the budget for that Financial Year, and an analysis thereof.

22. INFORMATION AND AUDIT ACCESS

22.1 The Private Party shall provide to SANParks all information, documents, records and the like (including all contracts concluded by it for the purposes of or ancillary to the implementation of this Project) in the possession of or available to the Private Party as may reasonably be requested by SANParks for the purpose of complying with any of its statutory reporting obligations including its obligations under the Promotion of Access to Information Act, 2000, the Promotion of Administrative Justice Act, 2000, the Promotion of Equality and

22.2 Without limiting the generality of the aforesaid, the Private Party shall:

22.2.1 provide and shall procure that its Subcontractors shall provide all such information as SANParks may reasonably require from time to time to enable SANParks to provide reports and returns as required by any Responsible Authority, including reports and returns regarding the physical condition of any building occupied by SANParks for purposes of the Project, health and safety, national security, and Environmental safety; and

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

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

23. **SANPARKS STEP-IN**

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

23.2 If pursuant to Clause 23.1 SANParks wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Private Party in writing of -

23.2.1.1 the action it wishes to take;

23.2.1.2 its reasons for taking such action;

23.2.1.3 the date when it wishes to commence such action;

23.2.1.4 the time period (the "Step-in Period") which it reasonably believes will be necessary for such action and which must be a fixed period; and

23.2.1.5 to the extent practicable, the effect of such action on the Private Party and its obligations to perform the Project Deliverables during the Step-in Period.

23.3 Following the service of the notice referred to in Clause 25.2, SANParks shall take such action as notified thereunder and any ancillary action as it reasonably believes is necessary (the "Necessary Action") and the Private Party shall give all reasonable assistance to SANParks in the conduct of such Necessary Action.

23.4 If the Private Party is not in breach of any of its obligations under this PPP Agreement in respect of which the Necessary Action is proposed to be taken, then for so long as and to the extent that the Necessary Action is taken, and such action prevents the Private Party from providing any part of the Project Deliverables:

23.4.1.1 the Private Party shall be relieved from such obligations; and

23.4.1.2 in respect of the time period over which such Necessary Action is
conducted and provided that the Private Party provides SANParks with such reasonable assistance as SANParks may need in the conduct of such Necessary Action (such assistance, however, to be at the expense of SANParks to the extent of any incremental costs).

23.5 If the Necessary Action is taken as a result of a breach by the Private Party of any of its obligations under this PPP Agreement, then for so long as and to the extent that such Necessary Action is taken and prevents the Private Party from performing any of its obligations, the Private Party shall be relieved from such obligation.

23.6 The relief of the Private Party’s obligations as contemplated in Clause 23.5 above shall apply only if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Private Party Default, then SANParks must serve a notice in terms of Clause 25 (SANParks’ Options) requiring the Private Party to remedy the Private Party Default or to put forward a Remedial Programme.

23.7 Where the provisions of Clause 23.5 apply, the Private Party shall be liable to SANParks for an amount equal to SANParks’ reasonable costs of taking any Necessary Action as contemplated in Clause 23.5.

24. FORCE MAJEURE

24.1 Definition and Procedure

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

24.1.1.1 War (whether declared or not), civil war, armed conflicts or terrorism, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning or other adverse weather condition, epidemic, quarantine, accident, acts or restraints of Government imposition, or restrictions of
or embargos on imports or exports; or

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

24.1.1.3 chemical or biological contamination of the Phabeni Gate Bush Braai Facility from any of the events referred to in Clauses 24.1.1.1 and 24.1.1.2 above, that directly causes either Party to be unable to comply with all or a material part of its obligations under this PPP Agreement.

24.1.2 Subject to Clause 24.1.3, the Party claiming relief shall be relieved from liability under this PPP Agreement to the extent that it is not able to perform all or a material part of its obligations under this PPP Agreement as a result of an event of Force Majeure.

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

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

24.1.3.2 it shall not be relieved from liability under this PPP Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this PPP Agreement due to its failure to comply with its obligations under Clause Error! Reference source not found.

24.1.4 The Party claiming relief shall serve written notice on the other Party within fifteen (15) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure Event.

24.1.5 A subsequent written notice shall be served by the Party claiming relief on
the other Party within a further period of 5 (five) Business Days. The written notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Clause 24.1.3.1, the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it and/or its effects.

24.1.6 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations will be resumed.

24.1.7 If, following the issue of any notice referred to in Clause 24.1.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.

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

24.1.9 The Parties shall endeavor to agree any modifications to this PPP Agreement, which may be equitable having regard to the nature of an event or events of Force Majeure. This PPP Agreement shall terminate in terms of Clause 24.2 if no such agreement is reached.

24.2 Termination for Force Majeure

24.2.1 If, in the circumstances referred to in Clause 24.1.9, the Parties have failed to reach agreement on any modification to this PPP Agreement pursuant to that Clause, within one hundred and eighty (180) days of the date on which the Party affected serves notice on the other Party in accordance with that Clause, either Party may at any time afterwards terminate this PPP Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant event of Force Majeure continue to prevent either Party from performing any
25. **PRIVATE PARTY DEFAULT**

25.1 **Definition**

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

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

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

25.1.3 the Private Party ceasing to carry on business;

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

25.1.5 the Private Party commits a breach of any of its material obligations under this PPP Agreement, which is not specifically mentioned in this Clause 27.1. For the avoidance of doubt for the purposes of this PPP Agreement a failure to comply with any of the obligations imposed on the Private Party as set out in the Schedules to this PPP Agreement shall be deemed to be a breach of a material obligation;

25.1.6 the Private Party fails to pay any sum or sums due to SANParks under this PPP Agreement including but not limited to the requirements contained in
Clauses 44.11, 6.2 and Schedule 6 (which sums are not bona fide in dispute) and such failure continues for 10 (ten) Business Days from receipt by the Private Party of a notice of non-payment from SANParks;

25.1.7 The Private Party or any of its directors or officers is found guilty of a criminal offence involving fraud or bribery or dishonesty, by a court of law, with punishment imposed of a fine of not less than R 500,000 (five hundred thousand Rand) or imprisonment for a period exceeding six (6) months unless such finding is the subject of an appeal that is being diligently pursued by the Private Party or relevant director of officer;

25.1.8 the Private Party or any of its directors or officers falsifies any report, document or information that is provided by the Private Party to SANParks;

25.1.9 breach of any provision of this PPP Agreement has occurred at least 3 (three) times in any Financial Year and the Private Party having failed to remedy such breach within the time stipulated therefor in terms of a breach notice issued to it by SANParks in terms of this PPP Agreement;

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

25.1.11 the Private Party fails to obtain and maintain any Project Insurances as required in terms of this PPP Agreement; or

25.1.12 the Private Party fails to commence trading the Phabane Gate Bush Braai Facility on the Operation Commencement Date.

25.2 SANParks’ Options

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

25.2.1.1 in the case of the Private Party Default referred to in Clauses 25.1.1, 25.1.2, 25.1.3, 25.1.4, 25.1.6, 25.1.7, 25.1.8, 25.1.9 and 25.1.11 terminate this PPP Agreement in its entirety by notice in writing having
25.1.5, 25.1.10 and 25.1.12, serve notice of default on the Private Party requiring the Private Party to remedy the Private Party Default referred to in such notice of default (if the same is continuing) within ten (10) Business Days of such notice of default; or

25.2.1.3 request that the Private Party put forward, within 10 (ten) Business Days of a notice of default, a reasonable programme for remedying the Private Party Default or to remedy the underlying cause of such Private Party Default ("Remedial Programme"). The Remedial Programme shall specify in reasonable detail the manner in and the latest date by which, such Private Party Default is proposed to be remedied. The Private Party shall only have the option of putting forward a Remedial Programme if it first notifies SANParks within 5 (five) Business Days of such notice of Private Party Default that it proposes to do so.

25.2.2 If the Private Party Default is notified to the Private Party in a notice of default in terms of Clause 25.2.1.2 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.

25.3 Remedy Provisions

25.3.1 Where the Private Party puts forward a Remedial Programme in accordance with Clause 25.2.1.3, SANParks shall have 20 (twenty) Business Days from receipt of the same within which to notify the Private Party that it does not accept the Remedial Programme, failing which SANParks shall be deemed to have accepted the Remedial Programme. SANParks shall act reasonably in rejecting the Remedial Programme and shall give reasons for its decision. Where SANParks notifies the Private Party that it does not accept the Remedial Programme, the Parties shall endeavour within the following 5 (five) Business Days to agree any necessary amendments to the Remedial
Programme put forward. In the absence of agreement within 5 (five) Business Days, the question of whether the Remedial Programme (as the same may have been amended by agreement) will remedy the Private Party Default in a reasonable manner and within a reasonable time period If -

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

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

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

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

25.4 SANParks’ Costs

25.4.1 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 25 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

25.4.2 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).

25.5 Termination Amount on Private Party Default

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

25.5.2 Subject to Clause 25.5.1, the following amounts shall be deducted from the amount payable in terms of Clause 25.5.1:

25.5.2.1 the cost and expense incurred or to be incurred in the reinstatement of the Phabeni Gate Bush Braai Facility as at date of termination, fair wear and tear accepted;

25.5.2.2 an amount equal to any liquidated claims recoverable at law;

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

25.5.2.4 any unpaid Assessment Rates and/or Utility Charges payable by the Private Party as at the date of termination.
26. SANPARKS DEFAULT

26.1 Definition

“SANParks Default” means any one of the following events:

26.1.1 an expropriation of a material part of the Phabeni Gate Bush Braai Facility and/or Project Assets of the Private Party by SANParks or other Responsible Authority; or

26.1.2 a breach by SANParks of the material obligations under this PPP Agreement which substantially frustrates or renders it impossible for the Private Party to perform its obligations under this PPP Agreement for a continuous period of at least three (3) months.

26.2 Termination for SANParks Default

26.2.1 On the occurrence of a SANParks Default, or within ten (10) days after the Private Party becomes aware of same, the Private Party may serve notice on SANParks of the occurrence (and specifying details) of such SANParks Default. If the relevant matter or circumstance has not been remedied or rectified within thirty (30) Business Days of such notice, the Private Party may serve a further notice on SANParks terminating this PPP Agreement with immediate effect.

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

26.3 Termination Amount for SANParks Default

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

27.1 **Definition and Warranty**

The Private Party warrants that in entering into this PPP Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this PPP Agreement immediately in terms of Clause 25.1.5.

"Corrupt Act" means:

27.1.1 offering, giving or agreeing to give to SANParks or any other organ of state or to any person employed by or on behalf of SANParks or any other organ of state any gift or consideration of any kind as an inducement or reward:

27.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this PPP Agreement or any other contract with SANParks or any other organ of state; or

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

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

27.1.5 committing any offence:

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

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

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

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

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

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

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

28. **EFFECTS OF TERMINATION**

28.1 **Termination**

Notwithstanding any provision of this PPP Agreement, on service of a notice of termination, this PPP Agreement shall only terminate in accordance with the provisions of this Clause 28 (*Effects of Termination*).

28.2 **Transfers to SANParks on Termination**

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

28.2.1 procure that any Transferable Licensed Intellectual Property procured either by the Private Party or a Subcontractor and required for the continued performance of the Project Deliverables after the Termination Date shall be provided to SANParks and SANParks shall be granted a perpetual non-
exclusive, royalty-free licence to use such Transferable Licensed Intellectual
Property, irrespective of whether or not such Transferable Licensed Intellectual
Property is owned by the Private Party or a Subcontractor, or not;

28.2.2 deliver to SANParks (as far as not already delivered to SANParks) one
complete set of:

28.2.2.1 maintenance, operation and training manuals for the Phabeni Gate
Bush Braai Facility and where they do not exist, the Private Party has
an obligation in terms of this PPP Agreement to acquire or prepare
them; and

28.2.2.2 the historical operating data and plans of the Phabeni Gate Bush
Braai Facility, its furniture, fittings and equipment in a format
acceptable to SANParks;

28.2.3 use all reasonable endeavours to procure that the benefit of all manufacturer’s
warranties in respect of mechanical and electrical equipment used or made
available by the Private Party under this PPP Agreement and included in the
Project Assets are assigned, or otherwise transferred, to SANParks;

28.2.4 ensure that provision is made in all relevant contracts of any description
whatsoever to which the Private Party or any Subcontractor is a party to
ensure that SANParks will be in a position to exercise its rights, and the
Private Party will be in a position to comply with its obligations in accordance
herewith;

28.2.5 remove from the Phabeni Gate Bush Braai Facility all property not required by
SANParks and if it has not done so within 10 (ten) Business Days after any
notice from SANParks requiring it to do so, SANParks may (without being
responsible for any loss, damage, costs or expenses) remove and sell any
such property and shall hold any proceeds less all costs incurred for the credit
of the Private Party;

28.2.6 deliver to SANParks:
28.2.6.1 any keys, remote access apparatus and computer access cards to the Phabeni Gate Bush Braai Facility;

28.2.6.2 without prejudice to Clause 39 (Intellectual Property of SANParks), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Phabeni Gate Bush Braai Facility, including without limitation, the Transferable Licensed Intellectual Property; and

28.2.6.3 complete asset registers and data registers pertaining to the Project;

28.2.7 vacate the Phabeni Gate Bush Braai Facility and shall leave same in a safe, clean and orderly condition.

28.3 Transitional Arrangements

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

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

28.3.1.2 if SANParks wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or similar to, the Project Deliverables or any of them) following the expiry or earlier termination of this PPP Agreement, the Private Party shall co-operate with SANParks fully in such tender process including (without limitation) by:
28.3.1.2.1 providing any information which SANParks may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Private Party (and, for the purposes of this Clause 28.3.1.2.1, “commercially sensitive” shall mean information which would if disclosed to a competitor of the Private Party or Subcontractor give that competitor a competitive advantage over the Private Party or Subcontractor and thereby prejudice the business of the Private Party or Subcontractor); and

28.3.1.2.2 assisting SANParks by providing all (or any) participants in such tender process with access on reasonable notice and at reasonable times to the Phabeni Gate Bush Braai Facility subject to the Private Party’s safety rules and regulations.

28.4 Continuing Obligations

Save as otherwise expressly provided in this PPP Agreement -

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

28.4.2 termination of this PPP Agreement shall not affect the continuing rights and obligations of the Private Party and SANParks under this Clause 28 or under any other provision of this PPP Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

28.5 Termination by reason of Expiry

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

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

28.5.1.2 if this PPP Agreement terminates as a result of a SANParks Default, a
Private Party Default, an event of Force Majeure or a Corrupt Act, other than the Private Party’s right to receive the Termination Amount where Clause 28.5.1.2 applies, SANParks shall not be liable for payment of any compensation to the Private Party or any Subcontractor or any third party by virtue of any transfer or other effect of termination provided for in this Clause 28 (Effects of Termination).

29. DISPUTE RESOLUTION

29.1 Referable Disputes

The provisions of this Clause 29 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.

29.2 Internal Referral

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

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

29.3 Arbitration

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

29.3.2 The arbitration shall be:

29.3.2.1 held and will be completed as soon as possible;
29.3.2.2 governed by the provisions of the Arbitration Act, 1965;

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

29.3.2.4 in Gauteng;

29.3.2.5 conducted in the English language; and

29.3.2.6 in the presence of only the arbitrator/s, his assistant/s and recording staff the arbitrator/s so require/s, the legal and other representatives of the claimant and respondent who wish to be present or represented, and only if and for so long as the arbitrator/s may permit, such witnesses as either of the claimant or respondent may wish to call to present expert or other evidence.

29.3.3 The Parties shall agree on the arbitrator within 7 (seven) Business Days of delivery of the arbitration notice, and failing such agreement, the arbitrator shall be appointed by the secretariat of AFSA on the basis that the arbitrator shall, if the matter in dispute is, or matters are, principally:

29.3.3.1 a legal or deemed legal matter, be a practising attorney or advocate of at least 15 (fifteen) years' standing;

29.3.3.2 an accounting matter, be a practising chartered accountant of at least 15 (fifteen) years standing; or

29.3.3.3 any other matter, be any independent person in the relevant field of not less than 10 (ten) years standing.

29.3.4 AFSA’s decision regarding the appointment of the arbitrator, including the determination whether a dispute is principally a legal, accounting or other matter, shall be final and binding upon the Parties.

29.3.5 If two or more disputes are referred to arbitration at the same time, some
being of an accounting or general nature and others of a legal nature, unless otherwise agreed and such disputes shall all be deemed to be legal matters.

29.3.6 The decisions of the arbitrator/s may be subjected to appeal by either Party in terms of the AFSA Rules. If no appeal is initiated, the arbitrator’s award will be final and binding on the Parties, and at the instance of either of them may be made an order of any court to whose jurisdiction the Parties are or either of them is subject.

29.3.7 Notwithstanding the provisions of this Clause 29.3.7, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted by way of notice of motion by any of the Parties against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this PPP Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

29.4 **Performance to Continue**

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

30. **CHANGES IN CONTROL**

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

31.1 Transfer by the Private Party

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

31.1.1 this PPP Agreement or any Associated Agreement; or

31.1.2 any of its rights, interests or obligations thereunder,

save, in each case, to the extent required for the financing of the operation of the Phabeni Gate Bush Braai Facility as envisaged in the Financing Agreements, and in terms of the provisions of Clause 31.2.

31.2 Subject to the provisions of Clause 31.1, the Private Party may cede, delegate, assign, encumber or transfer the operation of the whole or a part of the Phabeni Gate Bush Braai Facility, provided that:

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

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

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

31.3 Substitute Entity

31.3.1 Upon the occurrence of an event in Clause 25 entitling SANParks to terminate this PPP Agreement, and upon the expiry of the remedy period (in the event a remedy period is provided), or, where no remedy period is provided, upon the occurrence of such event, SANParks shall have the right, subject to the PFMA, to appoint a substitute entity, that the
31.3.1.1 is legally and validly constituted and has the capability to enter into such agreements as may be reasonably required to give effect to the substitution; and

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

31.3.2 The Private Party shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this Clause 31.3 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

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

31.4 Disposal of Shares

31.4.1 SANParks will, notwithstanding the provisions of Clause 31, approve any sale of shares or other beneficial interest in the Private Party and permit that the Shareholders or beneficiaries sell any such shares or beneficial interest where such change does not bring about a Change in Control and provided that:

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

31.4.1.2 the sale of such shares or beneficial interest does not alter the financial, BEE and technical capability of the Private Party to perform and assume the obligations of the Private Party in terms hereof; and
31.4.1.3 SANParks cannot reasonably object to the sale for any reason.

32. **INTELLECTUAL PROPERTY OF SANPARKS**

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

32.2 Subject to Clauses 32.1 and Clause 32.3, SANParks shall, on prior written application by the Private Party and only to the extent necessary for the Private Party to perform the Project Deliverables, grant a non-exclusive revocable right and licence to the Private Party to use SANParks’ trademarks and logos for a period not to exceed the remainder of the Project Term.

32.3 In order to establish and maintain standards of quality and propriety acceptable to SANParks, in the event that the Private Party desires to use SANParks’ trademarks or logos in any way, the Private Party shall first submit the concept or a sample of the proposed use to SANParks for approval, which shall be in its sole and absolute discretion. SANParks shall use reasonable endeavours to advise the Private Party of its approval or disapproval of the concept or sample within 20 (twenty) Business Days of its receipt of the concept or sample. If SANParks approves the concept or sample, the Private Party shall not depart therefrom in any respect without SANParks’ further prior written approval.

32.4 If at any time SANParks revokes its approval for the specified use of any trademark or logo, the Private Party shall forthwith discontinue all use of such trademark or logo and shall remove from public sale or distribution any previously approved product in respect of which SANParks has revoked its approval. The costs incurred by the Private Party as a result of such revocation shall be borne by the Private Party if the grounds for the revocation include any ground described in Clause 32.5.

32.5 SANParks may revoke its approval immediately upon 10 (ten) Business Days written notice to the Private Party if the Private Party, any Subcontractor or any of its or its Subcontractors’ officers, directors or employees commits any crime
or otherwise engages in conduct which violates any law, or engages in any
conduct that offends against public morals and decency and, in SANParks’
reasonable opinion, materially prejudices the reputation and public goodwill of
SANParks.

32.6 The Private Party acknowledges that the name(s) of SANParks (the "Protected
Names") are associated with and peculiar to SANParks and are the Intellectual
Property of SANParks. Consequently, the Private Party agrees that the sole
and exclusive ownership of the Protected Names shall vest in SANParks.

32.7 In circumstances where the Private Party utilises any of the Protected Names,
either on its own or in combination or association with any other name, it does
so only in terms of this PPP Agreement and with the prior approval of
SANParks. On termination or expiry of this PPP Agreement, the Private Party
shall not be entitled to operate or conduct any business using any of the
Protected Names either on its own or in combination or association with any
other name.

32.8 Within 60 (sixty) Business Days after the Expiry Date or the Compensation
Date and where the Private Party has operated a company utilising any of the
Protected Names with the permission of SANParks, the Private Party shall
either:

32.8.1 de-register the company bearing any of the Protected Names; or

32.8.2 change the name to a name not substantially similar to any of the
Protected Names.

32.9 The naming of the Private Party’s business operation shall be undertaken in
consultation with SANParks and subject to SANParks’ approval. In
circumstances where the name chosen by the Private Party and approved by
SANParks is not part of SANParks’ intellectual property, then the rights of
SANParks contemplated in this Clause 34 shall not be applicable and the
intellectual property shall be the sole property of the Private Party.

32.10 SANParks may at its discretion allow its own name, logo and or other branding
on the stationery of the Private Party, at cost to the Private Party. The Private
Party may not use SANParks name, logo or other branding without written consent from SANParks for any reason whatsoever.

32.11 SANParks reserves the right to disallow the Private Party to apply its own name, logos or other branding to the Phabeni Gate Bush Braai Facility in any manner, or otherwise to stipulate the placement and size of such names, logos or other branding. If so allowed by SANParks, the name, logo or other branding of the Private Party shall not conceal, obstruct, compete with the name or logo of SANParks, or be contrary to the professional image of SANParks at any time or in any manner. Any such branding of the Private Party shall be at cost to the Private Party.

33. INTELLECTUAL PROPERTY OF THE PRIVATE PARTY

33.1 The Private Party shall, in respect of all Intellectual Property that is owned by it and any of the Subcontractors, on termination of this PPP Agreement in accordance with its terms after the Operation Commencement Date, grant to SANParks a non-exclusive, royalty free licence to use such Intellectual Property for the Project or any operational and maintenance services to be provided in the future by or for SANParks in relation to the Phabeni Gate Bush Braai Facility, or any facilities that succeed them (the "Permitted Purposes"). Those licences shall be capable of being freely transferred by SANParks to third parties at no cost, for the Permitted Purposes, but to no other parties without the prior written consent of the Private Party.

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

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

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

33.4 In the event that the Private Party uses any Intellectual Property owned by any third party in the Project, other than Intellectual Property which is the subject of Clause 33.1, the Private Party shall prior to using any such Intellectual Property ensure the consent of the relevant owner in order to ensure that the Private Party is at all times after the Operation Commencement Date entitled to –

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

33.4.2 assign all of the Private Party’s rights in and to such Intellectual Property to SANParks, on the basis that those rights shall be capable of being further assigned by SANParks to third parties at no cost, for the Permitted Purposes.

33.5 If the owner of Intellectual Property contemplated in Clause 33.3 withholds or denies such consent, the Private Party shall not use any such Intellectual Property for the Project without the prior written approval of SANParks.
33.6 The Private Party indemnifies SANParks against any liability or costs which SANParks suffers or incurs as a result of the infringement of any third party rights arising from the use by SANParks, any Responsible Authority, or any third party who is licensed to use any Intellectual Property for the Permitted Purposes, or to whom any rights in respect of the Intellectual Property are assigned for the Permitted Purposes, in accordance with the provisions of that licence or assignment, save to the extent that such liability or cost was occasioned by any intentional act or omission by an indemnified party in question, or by its gross negligence.

34. AMENDMENTS

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

35. ENTIRE AGREEMENT

35.1 Except where expressly provided otherwise in this PPP Agreement, this PPP Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this PPP Agreement.

35.2 Each of the Parties acknowledges that:

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

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

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

36. **VARIATION, CANCELLATION AND WAIVER**

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

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

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

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

37. **SEVERABILITY**

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

38. GOVERNING LAW AND JURISDICTION

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

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

39. CONFIDENTIALITY

39.1 For purposes of this Clause, "Confidential Information" means all information or data disclosed under and/or pursuant to this PPP Agreement, whether communicated orally or in writing by either Party to the other or by the representatives of one Party to the representatives of the other and shall include commercially sensitive information contained in any internal document of a Party regarding the nature of its business, operations, processes, intentions, product information, know-how, trade secrets, software, market opportunities, customer and business affairs, but shall exclude information which is prohibited from release for national security reasons.

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

39.3 The provisions of Clause 39.2 shall not apply to -

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

39.3.2 any matter which a Party can reasonably demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 39 (Confidentiality);

39.3.3 any disclosure which is required by any Law (including any order of a Court of competent jurisdiction), or the rules of any stock exchange or governmental or regulatory authority having the force of Law;

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

39.3.5 any provision of information to the advisors of the receiving Party, or to any funders or potential funders, but in the latter case, only to the extent reasonably necessary to enable a decision to be taken on whether that potential funder will become a funder;

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

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

39.4 The disclosures permitted under Clauses 41.3.5, 41.3.6 or 41.3.7 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this Clause 39 (Confidentiality) from the intended recipients.
40. **NOTICES**

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

40.2 The addresses for Notices are as follows:

**SANParks:**

Marked for the attention of the CEO:

c/o Legal Services

Groenkloof National Park

643 Leyds Street

Muckleneuk

Pretoria

Telephone: (012) 426-5000

Facsimile: (012) 343-0155

E-mail: fahlaza.monaledi@sanparks.org

**Private Party:**

Marked for the attention of the Directors: __________________________

Telephone: _____________________

Facsimile: _____________________

E-mail: _____________________

40.3 A notice sent by one Party to another Party shall be deemed to be received:
40.3.1 on the same day, if delivered by hand;

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

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

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

SIGNED AT ........................ ON THE .............................................. 2018.

For and on behalf of

SOUTH AFRICAN NATIONAL PARKS

who warrants his authority hereto

SIGNED AT ........................ ON THE .............................................. 2018.

For and on behalf of

THE PRIVATE PARTY

who warrants his authority hereto
42. **SCHEDULE 1 - DESCRIPTION OF THE PHABENI GATE BUSH BRAAI FACILITY**

42.1 The Phabeni Gate Bush Braai Facility will include the bush site within the designated ‘exclusive use’ of the protected area and the roads for drives within the Phabeni Gate section of the Kruger National Park that are not within the designated ‘exclusive use’ of the protected area.

42.2 The Phabeni Gate Bush Braai Facility:

42.2.1 Access to the launch site is 10 kilometers away from the Phabeni Gate and is shown by the location point (S25.04620 E 031 23694) of satellite map and figure 1 below;
42.3.1 The attached Map is for the Phabeni Gate Section and the Private party shall use the marked roads during the game drives defined as follows: S3, S7 and S10.

42.3.2 The use of any of these roads shall be reviewed and revoked by SANParks from time to time on notice due to operational requirements such as anti-poaching operations, flood disasters etc;

42.3.3 The roads shown in photo 2 do not fall within the designated ‘exclusive use’ of the Protected Area. Therefore SANParks reserves the right to allow any other operator to use the roads for any agreed purpose but with the exception to conduct a bush braai facility;

42.3.4 Bush breakfast: starts at 06h00 in the morning, by transporting guests for morning drives that eventually leads to the bush site for the enjoyment of a bush breakfast. The bush breakfast must be finalized by 09:30 and the Private Party to depart site by 10:00;

42.3.5 Bush braai dinner: starts at 16h30 in the evening by transporting guests for night drives that eventually leads to the bush site for the enjoyment of a
bush braai dinner. The bush braai dinner must be finalized by 21h00 and guests depart the Phabeni Gate Bush Braai Facility by 22h00.
43. **SCHEDULE 2 - RESPONSIBILITY IN TERMS OF MAINTENANCE OF THE PHABENI BUSH BRAAI FACILITY**

43.1 **Private Party Responsibility**

43.1.1 The Private Party shall be solely responsible for the maintenance of the site in accordance to the EMP conducted;

43.1.2 The Private Party shall ensure on the following;

43.1.2.1 Proper erection of a secure storage facility;

43.1.2.2 Clearly demarcated site, in sound condition and clearly visible to guests;

43.1.2.3 Provide equipment (chairs, tables, braai grills, braai stands, fire pits) must be stacked, collapsed neatly and locked up in storage facility after the activity;

43.1.2.4 Develop and adhere to a five year (5) year maintenance schedule which must be aligned to SANParks’ maintenance schedule.

43.2 **SANParks Responsibility**

43.2.1 SANParks shall be responsible for the management of the entire bush environment including the protection of breakout fire and protection of animal welfare within the designated ‘exclusive use’ area.

43.2.2 Site shall be slashed to a maximum of 1.5 meters outside the demarcation fence.
44. SCHEDULE 3 – PRIVATE PARTY OPERATIONAL REQUIREMENTS

44.1 Promotion and conduct of business

44.1.1 In the conduct of the Business the Private Party shall actively promote the Phabeni Gate Bush Braai Facility and use its best endeavors to further the mutual business interests of SANParks and the Private Party and, without limiting the generality of the aforesaid, shall provide and promote the goods and/or services required of the Business as specified herein.

44.2 Standards of Phabeni Gate Bush Braai Facility

44.2.1 In the conduct of the Business the Private Party shall at all times maintain the Phabeni Gate Bush Braai Facility and all services provided therein to the highest standard and ensure that the premises are at all times clean and safe for customers.

44.2.2 Specific emphasis should be placed on the procedures to remove human waste from the toilet facility. Hence chemical holding tanks which need to be emptied at the Phabeni Gate Bush Braai Facility have to be used.

44.3 Branding

44.3.1 Private Party’s brand design must take cognisance of the Protected Area’s ambience. This includes the color of the Open Safari Vehicles – should not be overly visible. Dark green or beige will be preferable.

44.4 Service Provision

44.4.1 In the conduct of the Business the Private Party shall keep the Phabeni Gate Bush Braai Facility open for business in accordance with the reasonable requests of the Kruger National Park and the requirements of any relevant statute, bye-law or regulation relating to the Business.

44.5 Product Offering
44.5.1 The Design Plan submitted by the Private Party must be adhered to unless otherwise agreed by SANParks.

44.5.2 The product offered by the Private Party should make optimal use of the game drive opportunity and bush site: this shall include morning drives followed by bush breakfast and night drives followed by a bush dinner/bush braai.

44.5.3 The Private Party is obliged to offer dining options to guests on Phabeni Gate Bush Braai Facility and should as a minimum include breakfast and dinner options.

44.5.4 The Private Party is obliged to maintain and utilize the Phabeni Gate Bush Braai Facility outlined in the Private Parties bid submission.

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

44.5.6 The Private Party is obliged to provide universal access at the Phabeni Gate Bush Braai Facility.

44.6 Uniforms

44.6.1 The Private Party is obliged to provide all staff with suitable and customised apparel in line with the theme proposed for the Phabeni Gate Bush Braai Facility.

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

44.6.3 Notwithstanding the generality of the foregoing Clause 44.6.2, any member of staff serving guests in the Phabeni Gate Bush Braai Facility and for game drives will not be permitted to wear open shoes or sandals.

44.6.4 The Private Party will be obliged to introduce and provide all staff with the
44.7 Loyalty Card Programme

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

44.8 Customer Survey Programme

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

44.9 Customer Feedback System

Where customer Feedback Systems are implemented, this will be done in conjunction/collaboration with the Private Party. The Private Party is required to achieve an average score of seventy-five percent (75%) for the experience at the Phabeni Gate Bush Braai Facility.

44.10 Phabeni Gate Bush Braai Facility Staff and Staff Transport

In the conduct of the Business, the Private Party shall be solely responsible for all staffing requirements at the bush. The Private Party is responsible for the transport of their employees from the workplace/bush site to outside the Kruger National Park after operation hours. The Private Party is responsible for the transport of their staff to the required medical facilities. In the event that SANParks’ transport can be utilised, the related cost of transport will be for the Private Party’s account. The Private Party will be required to do standard background security checks (Inclusive of criminal record checks) for all employees that will work in the Kruger National Park.
44.10.2 The Private Party is required to institute integrity testing (Polygraph) as a Condition of Service before and employee takes up employment in the Kruger National Park (as per SANParks’ current Policy and Procedures).

44.11 **Staff Housing**

44.11.1 The Private Party shall not be allocated any staff housing in the Phabeni Gate. All staff are required to seek accommodation outside the Kruger National Park.

44.12 **Advertising**

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

44.13 **Maintain stocks**

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

44.14 **Supplier Accounts**

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

44.15 **Meetings**

44.15.1 To provide for a forum where the parties can resolve disputes and agree operational issues, it is encouraged that the Private Party and the Phabeni Gate Hospitality Services Manager (HSM) agrees on a monthly meeting that will be attended by both parties.
44.16 Procedure Manuals

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

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

44.17 Quality Audit

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

44.18 Games

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

44.19 Problem Animal Management

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

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

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

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

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

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

44.19.3 No food or food waste may be left unattended from the beginning of the hand over phase and during the operational phase.

44.19.4 All solid and wet waste must be stored in bins in scavenger-proof storage areas, and cleared regularly.

44.19.5 The scent of food left lying around also attracts animals. For this reason the bins that are used for storing waste must seal as tightly as possible in order to reduce odours. When the bins are emptied, they must be washed and disinfected thoroughly.

44.20 **Conservation Levy**

44.20.1 The Private Party guests shall be required to pay the Conservation Levy as required from SANParks’ guests. However, the Conservation Levy applicable to Private Party guests shall be equal to a once-off fee applicable to local guests to Kruger National Park as amended from time to time.
45. **SCHEDULE 4 – PRIVATE PARTY BID SUBMISSION**

45.1 The Private Party shall adhere to and comply with the Private Party’s Bid Submission. Notwithstanding the generality of the aforesaid, the Private Party is obliged to adhere to the Business, Operational and Design Plan and Risk Matrix attached herewith.
45.2 Private Party Business Operational and Design Plan
45.3 **Private Party Risk Matrix**
46. **SCHEDULE 5 – BEE OBLIGATIONS**

In this Schedule,

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

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

46.2.1 Community trust - A not-for-profit trust created in terms of applicable law by volunteer members for channelling the proceeds of various activities and investments for the common good of persons ordinarily resident within a specific town, village or settlement.

46.2.2 Local - A geographic area specified by SANParks, being within a 100 km reach of the boundary of the Protected Area fence (but excluding boundaries to the neighbouring countries), or as otherwise specified by SANParks.

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

46.3.1 Ownership:

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

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

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

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

46.3.2.4 As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of Employment Equity Act and CEE report are not applicable to the calculation of scores under the QSE Scorecard.

46.3.3 Skills Development

46.3.3.1 As per the *Amended Tourism B-BBEE Sector Code, 2015*, the demographic representation of Black People as defined in the Regulations of Employment Equity Act and CEE report are not applicable to the calculation of scores under the QSE Scorecard.

46.3.4 Enterprise and Supplier Development

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

46.3.5 Socio-economic Development

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

46.4 **B-BBEE Scorecard**
46.4.1 If the Private Party anticipates that the SPV will qualify as a Qualifying Small Enterprise ("QSE") (total annual revenue of less than R45 million or above R5 million), as defined by the Amended Tourism Code, then the QSE Scorecard will apply.

46.4.2 If the Private Party anticipates that the SPV will qualify as an Exempted Micro Enterprise ("EME") (total annual revenue of R5 million or below), as defined by the Amended Tourism Code, then the B-BBEE scorecard will not apply. The SPV must submit a sworn affidavit or certificate issued by Companies and Intellectual Property Commission on an annual basis to confirm that their total annual revenue is within the EME threshold and confirm their level of Black Ownership.

46.4.3 Where the SPV’s turnover exceeds or falls short of the thresholds for a Large Enterprise, QSE or EME, SANParks may require the Private Party to submit a revised B-BBEE Proposal. A maximum transition period of one year will apply.

46.4.4 In addition, in keeping with SANParks’ objectives, particular attention will be paid to the implementation of broad-based Black Economic Empowerment ("B-BBEE"), particularly those from local communities adjacent to the Parks. In this regard, SANParks requires for the Private Party to enter into agreements with local community trust partners, who are entitled to a minimum of 10% shareholding in the SPV that must be established for the purpose of this PPP opportunity. The SPV will be required to provide the Trust Deed, or any other applicable constitutional documents related to the Local Community Trust, to SANParks for review and approval to ensure that benefits are flowing to beneficiaries of the Local Communities; in addition, the SPV will be required report annually on benefits to the Local Community, in a specified format that will be provided by SANParks.

46.4.5 **Qualifying Small Enterprise Scorecard**

<table>
<thead>
<tr>
<th>Element</th>
<th>Element Weighting</th>
<th>Indicator</th>
<th>Measurement Category &amp; Criteria</th>
<th>Weighting Points</th>
<th>Compliance Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>26</td>
<td>Voting Rights</td>
<td>Exercisable Voting Rights in the entity in the hands of Black People</td>
<td>3</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Exercisable Voting Rights in the entity in the hands of Black Women</td>
<td>2</td>
<td>15%</td>
</tr>
<tr>
<td>Element</td>
<td>Element Weighting</td>
<td>Indicator</td>
<td>Measurement Category &amp; Criteria</td>
<td>Weighting Points</td>
<td>Compliance Targets</td>
</tr>
<tr>
<td>---------</td>
<td>------------------</td>
<td>----------</td>
<td>---------------------------------</td>
<td>------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Economic Interest</td>
<td></td>
<td></td>
<td>Exercisable Voting Rights in the entity in the hands of a Local Community Trust</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Economic Interest in the entity to which Black People are entitled</td>
<td>5</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Economic Interest in the entity to which Black Women are entitled</td>
<td>3</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Economic Interest in the entity to which a Local Community Trust is entitled</td>
<td>3</td>
<td>10%</td>
</tr>
<tr>
<td>Realisation Points</td>
<td></td>
<td>Net Value</td>
<td></td>
<td>8</td>
<td>As per Codes</td>
</tr>
</tbody>
</table>

**Score out of 26**

| Management Control | 15 (+2 Bonus) | Executive Management | Black representation at Executive Management | 2 | 60% |
| | | Black Female representation at Executive Management | 1 | 30% |
| | | Local People representation at Executive Management | 1 | 20% |
| | Senior, Middle and Junior Management | Black representation at Senior, Middle and Junior Management | 4 | 60% |
| | | Black Female representation at Senior, Middle and Junior Management | 2 | 30% |
| | | Local People representation at Senior, Middle and Junior Management | 2 | 25% |
| | All Employees | Black Employees as a percentage of all Employees (excluding Executive Management) | 1 | 75% |
| | | Black Female Employees as a percentage of all Employees (excluding Executive Management) | 1 | 40% |
| | | Local People as a percentage of all Employees (excluding Executive Management) | 1 | 60% |
| | Bonus Points | Number of Black Employees with Disabilities as a percentage of all Employees | 2 | 1% |

**Score out of 15 (+2 bonus)**

| Skills Development | 25 (+5 Bonus) | Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black People as a percentage of the Leviable Amount | 10 | 3% |
| | | Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black Females as a percentage of the Leviable Amount. | 9 | 1.5% |
| | Learnerships, Apprenticeships, and Internships | Number of Black People participating in Learnerships, Apprenticeships and Internships paid for by the measured entity as a percentage of total Employees. | 6 | 2.5% |
| | Bonus Points | Number of Black People absorbed by the measured and/or industry entity at the end of the Learnerships/ internship or Apprenticeship programme. | 5 | 100% |

**Score out of 25 (+5 bonus)**
<table>
<thead>
<tr>
<th>Element and Supplier Development</th>
<th>30</th>
<th>Preferential Procurement</th>
<th>B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend</th>
<th>8</th>
<th>60%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend</td>
<td>5</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>B-BBEE Procurement Spend from all local Empowering Suppliers that are Exempted Micro Enterprises or Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend</td>
<td>5</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Supplier Development</td>
<td>Annual value of all qualifying Supplier Development contributions to local entities made by the measured entity as a percentage of the target</td>
<td>7</td>
<td>2% of NPAT</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Enterprise Development</td>
<td>Annual value of all qualifying Enterprise Development contributions to local entities made by the measured entity as a percentage of the target</td>
<td>5</td>
<td>1% of NPAT</td>
</tr>
</tbody>
</table>

**Score out of 30**

<table>
<thead>
<tr>
<th>Socio-economic Development</th>
<th>5 (+3 Bonus)</th>
<th>Socio-economic Development</th>
<th>Annual value of all local Qualifying Socio-Economic Development contributions by the measured entity as a percentage of the target</th>
<th>5</th>
<th>1% of NPAT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Bonus Points</td>
<td>Status as TOMSA levy collector</td>
<td>3</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Score out of 5**

<table>
<thead>
<tr>
<th>Total Points</th>
<th>101 (+10 Bonus)</th>
<th>Score out of 101</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Threshold</td>
<td>80</td>
<td></td>
</tr>
</tbody>
</table>

46.5  **Milestones and Targets Going Forward**

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

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

46.6  **External B-BBEE Verification**
46.6.1 The Operator shall appoint a reputable external verification agency to determine the SPV/s B-BBEE 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.

46.6.2 The B-BBEE Verification Certificate will categorise the SPV/s according to their contribution to B-BBEE.

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

46.6.4 The Private Party is obliged to comply with the BEE commitments as outlined in the bid submission.
46.6.5 Private Party’s BEE Proposal
47. SCHEDULE 6 – PPP FEE

47.1 Variable PPP Fee

47.1.1 The Variable PPP Fee shall be expressed as a flat percentage of Gross Revenue generated by the Phabeni Gate Bush Braai Facility included under the PPP Agreement.

47.1.2 The Variable PPP Fee shall be as follows:

\[
\text{VARIABLE PPP FEE} = \text{___\% of GROSS REVENUE.}
\]

47.2 Minimum PPP Fee

The following Minimum PPP Fees are expressed in April 2017 South African Rand, and will be adjusted throughout the Project Term of the PPP Agreement according to movement in the Consumer Price Index:

<table>
<thead>
<tr>
<th>MINIMUM PPP FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Month (Excl VAT)</td>
</tr>
<tr>
<td>R 7,000.00</td>
</tr>
</tbody>
</table>
47.3 Private Party PPP Fee Offer
48. **SCHEDULE 7 – ENVIRONMENTAL SPECIFICATIONS FOR THE OPERATION OF PHABENI GATE BUSH BRAAI FACILITY WITHIN THE PROTECTED AREAS**

48.1 **Introduction**

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

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

48.2 **Legislative Basis for these Guidelines**

SANParks is bound by a number of statutes with relevance to environmental management of parks, including (without limitation) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA); the National Water Act 36 of 1998; the Water Services Act, 108 of 1997; the National Environmental Management Act, 107 of 1998 (NEMA); the National Environmental Management: Air Quality Act; the Hazardous Substances Act, 15 of 1973; and the National Heritage Resources Act.

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

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

The EIA laws and Regulations do not specifically require an EIA for a development such as the refurbishment and/or expansion of a Phabeni Gate.
Bush Braai Facility. However, given that the development is taking place within a protected area such as a National Park, SANParks requires environmental scoping to be conducted on any proposal to expand or modify the existing Phabeni Gate Bush Braai Facility that is being bid for. Modifications include both structural changes to the facility and additions to the facility or its environs, including signage. The scoping report must be submitted to DEA, the “relevant environmental authority” as defined in the EIA Guideline documents.¹

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

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

In addition to the environmental laws the Private Party will also be bound by any laws pertaining to operation on a railway line as determined by the Rail Safety Regulator.

48.3 **Guidelines Based on SANParks Internal Requirements**

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

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

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

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

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

48.4 Precautionary Principle

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

48.5 Code of Conduct

48.5.1 The Private Party undertakes to induct all staff employed on the Kruger National Parks Code of Conduct.

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

48.6  **Environmental Impact**

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

48.6.2 The operator needs to subscribe to the South African Seafood Initiative (SASSI) and only sell/include fish on the menu with green status or SASSI certified if fish is part of menu.

48.7  **Water Management and Guidelines**

48.7.1 The operator shall provide vermin proof bins on site and ensure that the bins are securely anchored.

48.7.2 The operator will ensure that bins are provided with liners to aid waste removal.

48.7.3 The operator will have waste separation procedures in place to guide the following;

48.7.3.1 Removal of solid waste (tins, bottles, bags, plastics etc.) from the site immediately after the site was used (within 8 hours);

48.7.3.2 Removal of all fly ash from the fire pit and the braai stands;

48.7.3.3 Provide a secure rust free ash bin on site that shall be emptied at a suitable site when it is full;

48.7.3.4 Ensure that the site is free from any litter by conducting follow up daytime visit to clean up the site;
48.7.3.5 Aim to avoid accidental loss through effective maintenance, installing quality storage and reticulation systems and implementing leak detection systems

48.8 **Noise Pollution**

48.8.1 The operator will ensure that there is no amplified music on the site. The use of radios, players, televisions sets is prohibited.

48.9 **Light Pollution**

48.9.1 No permanent electric lights are allowed on site.

48.9.2 No lights shall be erected higher than 2 meters.

48.9.3 All lights will be less than the equivalent of a 40-watt incandescent bulb.

48.9.4 All paraffin lamps will be of low-pressure flame type.

48.10 **Site Management**

The Private Party will manage the site in line with the following guidelines;

48.10.1 Operator will put emergency procedures in place for (fire, injury, animals, and floods. etc);

48.10.2 Availability of a first aid kit;

48.10.3 Secure of a storage unit (if available);

48.10.4 Plants with a stem diameter (at 100mm above ground) of more than 20mm must not be slashed or damaged;

48.10.5 All chairs will be stacked and stored neatly or removed from site after the bush dinner and bush breakfast;
48.10.6 All tables will be collapsed and stored neatly or removed from site after the bush dinner or bush breakfast;

48.10.7 The site will be vacated by all personnel before 10:30pm.

48.11 **Fire risk and Management**

48.11.1 The Private Party must ensure that dry flammable material (vegetation) is removed from the close proximity of the fire.

48.11.2 The Private party must ensure that fire protection measures are nearby and easily available. This shall include but not limited to (water, extinguishers, beaters etc.)

48.11.3 The Private party must ensure that fire protection measures are nearby and easily available. This shall include but not limited to (water, extinguishers, beaters etc.)

48.11.4 The Private Party will only be allowed to use a removable fire pit that shall not be permanently left on site.

48.11.5 A fire cover shall be available and placed over the ashes before departure.

48.11.6 Only firewood from a certified and renewable source shall be brought on site. Usage of firewood from the surrounding area is strictly prohibited;

48.11.7 Only less than 10 litres of paraffin shall be allowed on site per bush braai;

48.11.8 The Private Party must ensure that the fire pit is clean and in sound condition.

48.12 **Vegetation**

48.12.1 Damage to trees will be prevented at all times;

48.12.2 Scrubs and other small plants shall be protected at all times;
Surrounding trees will be free from nails and wires;

Plants with a stem diameter (at 100mm above ground) of more than 20mm should not be slashed or damaged.

**48.13 Health and Hygiene**

48.13.1 The Private Party agrees to empty portable toilets after each use of a bush braai.

48.13.2 The Private Party agrees to empty toilets into a suitable and functioning sewage system.

48.13.3 The Private Party agrees to keep toilets in a clean state and supply toilet paper.

48.13.4 The Private Party agrees to have a hand wash basin (or bowl) with biodegradable soap and a hand towel.

**48.14 Site Security**

48.14.1 The Private Party will provide the catering teams with game guards during the setup.

48.14.2 The total number of game guards to persons (catering, guides and clients) will not exceed a ratio of 1:15

48.14.3 Game guards on site will have the required qualification as tendered in the bidding documents

48.14.4 The Game guards will ensure that a serviceable torch, a firearm/rifle in sound condition is kept on site all times.

48.14.5 Guides on site will have the minimum qualification required form the bidding documents.

48.14.6 The Private Party undertakes to educate guests of dangers and
emergency procedures and ensure that parents\ guardians of children between 2 and 6 years old have been formally briefed before arriving on site.

48.14.7 The Private Party will ensure that only a maximum number of 30 guests are permitted on site.

48.14.8 Compliance with first aid requirements as determined in the General Health and Safety Regulations with at least the following items to be kept at site at all times.

48.14.9 The Private Party undertakes to include the following policies in the waste management:

48.14.10 Green Procurement Policy: This policy defines the procedures that the Private Party will implement to ensure that all produce, containers and packaging comes from suppliers that under-write environmental principles, and that waste be recyclable as far as possible;

48.14.11 Hazardous Waste Policy: The Hazardous Waste Policy defines procedures that the Private Party will implement to manage any hazardous waste, to ensure that it is firstly minimized, but also that it is stored and discarded in a safe and legal way.

48.15 Road and Vehicle Management

48.15.1 All Open Safari Vehicles (OSV) must be roadworthy conditioned.

48.15.2 Guide is required to comply with Kruger National Park speed limit.

48.15.3 Road Assistance Plans will be communicated to the guests before departure in the event of road breakdown
48.15.4 Private Party Environmental Proposal
49. **SCHEDULE 8 – PRIVATE PARTY PREQUALIFICATION RESOLUTION**

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

The following outlines the major areas of qualification:

49.1 **Financial Requirements:**

The Submitting Company shall submit

49.1.1 audited financial statements corresponding to the last two (2) years

49.1.2 annual reports for the last two (2) years

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

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

49.2 **Financial capacity**

Outline ability to source suitable funding to perform under the PPP Agreement:

49.2.1 Acquisition and maintenance of Open Safari Vehicles, Catering Equipment, Dining Tables and Chairs, Vehicle for Transporting Equipment and Staff and site area equipment.

49.2.2 Acquisition of the guard safety equipment and the game drive equipment (torches, blankets for guests, binoculars etc.) and first aid kit equipment.

49.3 **Experience and existence**
49.3.1 **Tourism Industry:** The operator must have proven operating experience in the game drive, transfer tours or catering industry for at least 3 years.

49.3.2 **Turnover of business:** The turnover for the business should not exceed R 10 million per annum.

49.4 **Performance Bond**

49.4.1 The Private Party will be obliged to issue SANParks with a performance bond (or to deposit into SANParks’ account) to the sum of R 84, 000 (Eighty Four Thousand rand) for the first twelve month period as from the Signature Date and will be increase by CPI for each year thereafter.
49.5 **Private Party Prequalification Resolution**
50. **SCHEDULE 9 – PRIVATE PARTY CONSTITUTIONAL DOCUMENTS**
51. **SCHEDULE 10 – INSURANCE**
52. SCHEDULE 11 – PERFORMANCE BOND

52.1 PART A: FORM OF PERFORMANCE BOND

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

Whereas:

(a) SANParks has awarded a PPP Agreement for the design, construction, fitting, installation, equipping, commissioning, financing, Operation, Management and Maintenance of the SANParks Phabeni Gate Bush Braai Facility in the Kruger National Park under a PPP Agreement (hereinafter called the “PPP Agreement”) to [ ] (hereinafter called the “Private Party”); and

(b) The Private Party is obliged by the terms of the PPP Agreement to provide this Bond to SANParks to secure the performance of its obligations under the PPP Agreement.

We, the undersigned

__________________________ and ______________________________

(Name) (Name)

acting herein as

__________________________ and ______________________________

(Position) (Position)

of

____________________________________________________________

(hereinafter called the “Bank”)

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

1. The Bank shall pay an amount not exceeding 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:

_____________________________________________________________________________

Telefax:

_____________________________________________________________________________

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

9.3 All notices, demands, communications or payments intended for any party shall be made or given at such party’s domicilium for the time being.
9.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.

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

9.5.1 on the same day, if delivered by hand;

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

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

SIGNED ON ________________  ______________________2018

AT

______________________________________________________________

(Place)

SIGNATURE ___________________SIGNATURE____________________

[NAME] [NAME]

[TITLE] [TITLE]

WITNESS 1 _________________WITNESS 2 _____________________
52.2 **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**
52.3 **Private Party Performance Bond**
53. SCHEDULE 12 – CAPITAL EXPENDITURE PLAN

53.1 Introduction

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

53.1.2 Failure by the Private Party to comply with the provisions of this Schedule 12 to the PPP Agreement and the Private Party Default is not remedied before the expiry of the period referred to in the notice by the Institution; the Institution may terminate this PPP Agreement with immediate effect by written notice to the Private Party.
54. **SCHEDULE 13 – CONSUMER PROTECTION ACT**

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

54.1 **Purpose and Policy of CPA**

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

- establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;

54.1.1 reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:-

54.1.1.1 who are low-income persons or persons comprising low-income communities;

54.1.2 who live in remote, isolated or low-density population areas or communities;

54.1.3 who are minors, seniors or other similarly vulnerable consumers; or

54.1.4 whose ability to read and comprehend any advertisement agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;

54.1.5 promoting fair business practices;
54.1.6 protecting consumers from:

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

54.1.6.2 deceptive, misleading, unfair or fraudulent conduct.

54.1.7 The Private Party shall in the course of operating the Phabeni Gate Bush Braai Facility in the Protected Area observe the following procedures:

54.2 Disclosure and Information

54.2.1 Information in plain and understandable language - Private Party shall be required to produce, provide or display any notice, document or visual representation of anything connected with the Business in plain language.

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

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

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

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

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

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

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

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

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

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

54.2.4 Sales records

54.2.4.1 Private Party shall provide a written record of each transaction to the consumer to whom any products are sold.

54.2.4.2 The record must include at least the following information:

54.2.4.2.1 Private Party's full name, or registered business name, and VAT registration number;

54.2.4.2.2 the address of the premises at which, or from which, the products were sold;
54.2.4.2.3 the date on which the transaction occurred;

54.2.4.2.4 a name or description of any products sold or to be sold;

54.2.4.2.5 the unit price of any particular products sold or to be sold;

54.2.4.2.6 the quantity of any particular products sold or to be sold;

54.2.4.2.7 the total price of the transaction, before any applicable taxes;

54.2.4.2.8 the amount of any applicable taxes; and

54.2.4.2.9 the total price of transaction, including any applicable taxes.

54.3 Fair and Honest Dealing

54.3.1 Unconscionable conduct

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

54.3.2 False, misleading or deceptive representations

54.3.2.1 Private shall not, by words or conduct:

54.3.2.1.1 directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;

54.3.2.1.2 use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
54.3.2.1.3 fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the Private Party.

54.4 Quality Service

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

54.4.1.1 making sure that the consumer does not wait for too long in the queue, when the consumer is purchasing some product items at the Phabeni Gate Bush Braai Facility;

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

54.4.2 If a Private Party fails to perform a service to the standards contemplated in Clause 54.4.1 above, the consumer is entitled to demand from the Private Party, to either:-

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

54.4.2.2 refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.
55. **SCHEDULE 14 – PROHIBITED CHEMICAL SUBSTANCES**
56. SCHEDULE 15 – PEST MANAGEMENT PLAN
57. **SCHEDULE 16 – BAT MANAGEMENT GUIDELINES**
58. SCHEDULE 17 – PREFERRED PEST CONTROL CHEMICALS
59. **SCHEDULE 18 - COMPLIANCE EVENTS**

The following Compliance Events will apply to the Project:

59.1 The Approval of an Environmental Impact Assessment, if required for the Project, by the Relevant Authority.

59.2 Provision by the Private Party of a Performance Bond in the amount and form indicated in Clause 20.

59.3 Approval of the Detailed Design by the SANParks Design Review Panel.

59.4 The commencement of operations within six (6) months from Signature Date.