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| **MASTER SERVICES AGREEMENT ENTERED INTO BY AND BETWEEN** |
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| **SOUTH AFRICAN NATIONAL PARKS**(a statutory body with juristic personality established in terms of section 5 of the now repealed National Parks Act 57 of 1976 and which continues to exist in terms of Section 54 of the National Environmental Management: Protected Areas Act 57 of 2003, as amended) Hereinafter referred to as **"**SANParks**"** with its main place of business as:643 Leyds StreetMuckleneukPretoria 0001 | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(a company duly incorporated in terms of the company laws of South Africa with registration number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )Hereinafter referred to as **"**Service Provider**"** with its main place of business as:- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**SOUTH AFRICAN NATIONAL PARKS**(who warrants that s/he is duly authorised thereto) Name of signatory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Capacity \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **WITNESS**Name of witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **WITNESS**Name of witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(who warrants that s/he is duly authorised thereto) Name of signatory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Capacity \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **WITNESS**Name of witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **WITNESS**Name of witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Place of signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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|  |  | Master Services Agreement  | MSA V1.12.23 |

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| MASTER SERVICES AGREEMENT(standard terms and conditions) |
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# DEFINITIONS AND INTERPRETATION

## In this Agreement clause headings are for convenience and will not be used in its interpretation.

## Unless the context clearly indicates a contrary intention, an expression which denotes:

### any gender includes the other genders;

### a natural person includes a juristic person and *vice versa*; and

### the singular includes the plural and *vice versa*.

## Any reference to any legislation is to such legislation as at the Signature Date and as amended, re-enacted or substituted from time to time thereafter.

## If any provision in a definition is a substantive provision conferring any right or imposing any obligation on a Party, then notwithstanding that it is only in the interpretation clause, effect will be given to it as if it were a substantive provision in the body of this Agreement.

## Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in a particular clause.

## When any number of days is prescribed, such number will exclude the first and include the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the next succeeding day which is a Business Day.

## Any reference to days (other than a reference to Business Days) or to months or years, will be a reference to calendar days, months or years, as the case may be.

## The use of the word "including" followed by a specific example/s will not be construed as limiting the meaning of the general wording preceding it and the rule of interpretation to the contrary will not be applied in the interpretation of such general wording or such specific example/s.

## The terms of this Agreement having been negotiated, the rule of interpretation to the effect that an agreement will be interpreted against the party responsible for its preparation, will not be applied in the interpretation of this Agreement.

## No provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement.

## The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## Unless otherwise stated in any particular clause of this Agreement, any terms and conditions stipulated by the Service Provider, will not apply to the appointment or rendering of the Services by the Service Provider, and accordingly, such terms and conditions of the Service Provider will be of no force and effect.

## Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings and related expressions will have corresponding meanings:

### **"Agreement"** means collectively, these Terms and Conditions of Agreement together with all of its schedules and/or Annexures, as may be amended by the Parties, in writing, from time to time, the Bid Documents, Letter of Intent and the Purchase Order;

### **"Annexures"** means the annexures to this Agreement;

### **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BBEE Act;

### **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;

### **"B-BBEE Codes"** mean the codes of good practice on B-BBEE published by the Department of Trade and Industry, pursuant to the B-BBEE Act;

### **"B-BBEE Credentials"** mean the B-BBEE profile (including gender and race) of an entity that scores B-BBEE points in terms of the B-BBEE Codes;

### **"B-BBEE Score"** mean the B-BBEE score of an entity calculated in accordance with the B-BBEE Act and the B-BBEE Codes as such score is reflected in a valid and up to date Verification Certificate (as defined in the B-BBEE Codes) issued by a Verification Agency (as defined in the B-BBEE Codes); or in the case of a Qualifying Small Enterprise (QSE) or Exempted Micro Enterprise (EME) the score which such QSE or EME is entitled to upon submission of a sworn affidavit to this effect;

### **"Bid Documents"** means, collectively, the RFP and Bid Response;

### **"Bid Response"** means the written proposal received from the Service Provider in response to the RFP, incorporated into this Agreement by reference and which forms an integral part hereof;

### **"Business Day"** means any day which is not a Saturday, Sunday or official public holiday in the RSA in terms of the Public Holidays Act 36 of 1994;

### **"Commencement Date"** means, notwithstanding the Signature Date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

### **"Confidential Information"** means any information relating to either of the Parties or this Agreement or to such Party’s assets and affairs, including all communications (whether written, oral or in any other form) and all reports, statements, schedules and other data concerning any financial, technical, labour, marketing, administrative, accounting or other matter;

### **"Contract Period"** means the duration of this Agreement calculated from the Commencement Date and expiring 5 (five) years thereafter;

### **"Data"** means any data, including personal data as defined in the Electronic Communications and Transactions Act 25 of 2002, the Protection of Personal Information Act 4 of 2013 and any other legislation related to the protection of data, supplied by one Party (“the Disclosing Party”) to the other Party (“the Receiving Party”) or stored, collected, collated, accessed or processed on behalf of the Disclosing Party by the Receiving Party, if applicable;

### **"Deliverables"** any deliverable or work product that the Service Provider creates or delivers relating to the Services, including advice, a document, or other material, and will include all Intellectual Property comprised in or in any way relating to or associated with such deliverables;

### **"Existing Material"** means any work or materials developed by or for either Party independently and outside of the Agreement and provided during the course of the Agreement;

### **"Expiry Date"** means the date falling on expiry of a period of 5 (five\) years from the Commencement Date;

### **"GCC/General Conditions of Contract"** means the document containing the National Treasury general conditions applicable to government bids, contracts and orders of contract, incorporated into this Agreement by reference and which forms an integral part hereof;

### **"Good Industry Practice"** means the exercise of the highest degree of skill, diligence, prudence, judgment, care and foresight and the use of practices, equipment and materials which would reasonably be expected from appropriately qualified, experienced and skilled leading professionals with experience in carrying out work of a similar scope, type, nature and complexity as to the Services;

### **"Intellectual Property"** means all intellectual property of any nature or form, where-ever situated (and whether registered or unregistered), including any copyright, name, trading style, mark, logo, trademark, brand, drawing, design, pattern, registered design, patent, invention, discovery, process, formula, know-how, computer software, customer lists, rights to domain names, goodwill or any application in respect of any of the foregoing;

### **"Internal Rules"** mean SANParks’ internal requirements and procedures, as may be amended by SANParks from time to time and include but is not limited to inter alia Security Rules;

### **"Key Account Manager"** means the person designated by the Service Provider as its representative who is appropriately qualified and skilled with sufficient seniority, who will act as its primary day-to-day representative for purposes of managing its obligations in terms of the Agreement and to whom all communications from SANParks will be addressed pursuant to clause 8;

### **"Key Personnel"** means those Personnel listed in the Bid Response and dedicated by the Service Provider to the provision of the Services;

### **"Law"** means the laws of the RSA and will be construed as any law (including common or customary law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;

### **"Letter of Intent"** means the letter by SANParks to the Services Provider wherein the Services Provider was notified of SANParks’ acceptance of its Bid Response and any terms applicable to such acceptance and which letter was accepted by the Service Provider;

### **"Loss/es"** means all losses, liabilities, costs, expenses, fines, penalties, damages, claims as well as related costs and expenses as determined in Law, unless specifically excluded in terms of this Agreement;

### **"Parties"** mean SANParks and the Service Provider collectively and **"Party"** will mean any one of them as the context may indicate;

### **"Person"** means any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

### **"Personnel"** mean employees, approved contractors, sub-contractors and/or independent contractors of the Service Provider and includes Key Personnel;

### **"Premises"** meansany of the parks managed by SANParks;

### **"Pricing Schedule"** means the Service Provider’s list of rates per hour fees in respect of the Services submitted as part of the Bid Response;

### **"Purchase Order"** means an official purchase order with a purchase reference number issued by SANParks to the Service Provider for purposes of ordering the Services;

### **"Rejection Period"** means a period of 14 (fourteen) days from receipt by SANParks of the Services, within which SANParks may give written notice to the Service Provider of any unacceptable Services;

### **"RFB"** means the request for bids issued by SANParks under reference number SANParks - 058 - 2023 to interested parties to submit proposals to SANParks for the Services, including all annexures thereto;

### **"RSA"** means the Republic of South Africa;

### **"Security Rules"** mean SANParks’ security requirements, regulations and procedures, as may be amended by SANParks from time to time and include but is not limited to inter alia, (i) the right to search the Personnel and any container in the possession of a Personnel or Service Provider and any motor vehicle driven by a Personnel or Service Provider whilst at the Premises or (ii) the conducting of security screening on any Personnel;

### **"Service Area/s"** means the following provinces/areas in which the Service Provider is appointed to render the Services: -

#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### **"Service Category/ies"** means the following categories of law in which the Service Provider was appointed to render the Services: -

### **"Service Levels"** means, if applicable, the levels and standards of performance against which the Services will be measured from time to time;

### **"Service Request"** means reasonable, specific instructions issued by SANParks to the Service Provider relating to the Services;

### **"Services"** mean the legal services to be provided by the Service Provider to SANParks in relation to the Service Category and in accordance with the Service Request and shall include the Deliverables;

### **"Signature Date"** means the date of signature of this Agreement by the last of its signatories;

### **"Specified Objectives"** means SANParks' aims, objectives, requirements and expectations in respect of the Services set out in the RFB;

### **"Terms and Conditions of Agreement/TCA"** means these terms and conditions; and

### **"VAT"** means Value-Added Tax as levied in terms of the VAT Act 89 of 1991.

# RECORDAL

## SANParks has appointed the Service Provider to render the Services in the Service Area. The Service Provider has accepted such appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

## The Service Provider is appointed by SANParks to a SANParks panel of attorneys and will accordingly be utilised on an ad hoc basis, as and when required by SANParks.

# STRUCTURE OF THE AGREEMENT

## This Agreement, alongside the GCC, are the general terms of the relationship between the Parties. The terms apply to all Service Requests and any Services the Service Provider renders to SANParks.

## The agreement between the Parties is composed of the documents listed below:-

### RFB;

### Service Request;

### Bid Response, including all applicable annexures;

### Terms and Conditions of Agreement;

### Annexures;

### GCC / General Conditions of Contract;

### Letter of Intent; and

### Purchase Order.

## In the event of a conflict between the documents comprising this Agreement, such conflict will be resolved in accordance with the order of precedence, in descending order of priority, as provided in clause 3.2 above.

## Where Annexures include provisions in respect of which the Terms and Conditions of Agreement is silent, then the provisions contained in such Annexure will apply.

# DURATION

## This Agreement shall be deemed to have commenced on the Commencement Date and will endure until the Expiry Date, unless terminated earlier in terms of the Agreement.

# NATURE OF RELATIONSHIP

## The Service Provider will deliver the Services to SANParks as an independent contractor and nothing in this Agreement will be construed as creating any relationship of, employment, partnership or joint venture between SANParks and the Service Provider.

## The Service Provider will accordingly not be entitled to hold itself out as being a partner of SANParks, or as being in a joint venture with SANParks; to make any false or misleading representations concerning the Service Provider's appointment as independent contractor of SANParks.

# GOOD FAITH

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

## The Parties undertake to act towards one another in good faith in all respects relating to this Agreement.

# CONFIDENTIALITY

## Either Party will not, at any time after the Signature Date, notwithstanding any termination or expiry of this Agreement, directly or indirectly disclose or use, whether for its own benefit or that of any other Person any Confidential Information.

## Either Party may disclose the Confidential Information if and to the extent:

### disclosed to any expert appointed in terms of this Agreement;

### the prior written consent for such disclosure has been obtained from the other Party;

### to which disclosure is required by Law;

### to which disclosure is required by the rules of any stock exchange or regulatory or government body to which either Party is subject, wherever situated, whether or not the requirement for information has the force of law in which event the Disclosing Party will, unless prohibited from doing so, obtain the other Party's consent, not to be withheld unreasonably, for the manner of such disclosure; provided that the Disclosing Party will not be obliged to obtain the consent of the other Party if such disclosure is required before the approval can reasonably be obtained, but the Disclosing Party will in these circumstances promptly notify the other Party of the full details of such disclosure, including the reasons why time did not permit such consent to be obtained;

### the information has come into the public domain through no fault of that Party;

### to which the Confidential Information corresponds in substance to information disclosed and/or made available by a third party to the Disclosing Party at any time without any obligation not to disclose same, unless the Disclosing Party knows that the third party from whom it received that information is prohibited from transmitting the information to the Disclosing Party by a contractual, legal or fiduciary obligation to any other party;

### required to vest the full benefit of this Agreement in either of the Parties; and

### that it is information which was already in the possession of the Disclosing Party prior to its disclosure by the other Party to the Disclosing Party or is independently developed by the Disclosing Party without reference to the Confidential Information.

## Any information so disclosed shall be disclosed only after notification to the other Party.

## Notwithstanding this clause, SANParks will be entitled to disclose and use any Confidential Information for the purposes of conducting its business.

## Upon termination or expiry of this Agreement, the Parties will deliver to each other or, at each Party’s option, destroy all originals and copies of Confidential Information in their possession.

## Without prejudice to any other rights or remedies which either Party may have, each Party acknowledges and agrees that damages are not an adequate remedy for any breach by either Party of the provisions of this clause and either Party shall accordingly be entitled to the remedies of interdict, specific performance and other equitable relief for any threatened or actual breach of any such provision of this clause by the other Party or by any other relevant Person.

## Each Party shall impose the same confidentiality obligations set out in this clause upon its employees, sub-contractors, vendors and other third parties who are in association with it and who may have access to any Confidential Information.

## Neither Party shall make any public announcement (save for any announcement required under applicable law or the rules of any securities exchange or regulatory body to which such Party or its affiliates are subject) regarding the subject matter of this Agreement unless such announcement has been approved by the other Party, provided that such approval shall not be unreasonably withheld or delayed.

# KEY ACCOUNT MANAGER

## The Service Provider will appoint a Key Account Manager whose details are as follows:

### Name:

### Designation:

### E-mail Address:

### Cell Number:

## The Key Account Manager will co-operate fully and comply with all instructions issued by SANParks’ representative in relation to this Agreement and will report to SANParks on the basis and in the format to be determined by SANParks.

## The Service Provider will appoint a substitute Key Account Manager and promptly notify SANParks accordingly whenever such Key Account Manager takes leave or is not available for an extended period of time during any normal working day.

## The Key Account Manager will have no authority to amend the Agreement and may only exercise the authority attributable to the Key Account Manager as set out or implied in this Agreement.

# INTERNAL RULES

## The Service Provider shall, in the performance of this Agreement, comply with and ensure that the Personnel comply with the Internal Rules and with all security related instructions issued by or on behalf of SANParks while such Personnel are at the Premises. The Service Provider must immediately replace any Personnel that fail or refuse to comply with SANParks’ aforementioned Internal Rules.

## The Service Provider acknowledges and accepts the right of SANParks and its personnel to search the Personnel and their baggage and motor vehicle at any time while such Personnel are at the Premises and the Service Provider hereby irrevocably agrees to submit to such searches and consents to such searches.

## SANParks’ security personnel will screen all equipment brought onto the Premises by the Service Provider or the Personnel.

## No photographic or electronic records or images of the interior and/or exterior of the Premises may be taken without the prior written consent of SANParks, unless provided otherwise in this Agreement. If such consent is granted, all photographs and other images will be taken under the direct supervision of an authorised representative of SANParks.

## The Internal Rules may be amended from time to time at SANParks' sole option and/or discretion, and such amendment will be communicated by SANParks to the Service Provider.

# SCOPE

## The Services to be rendered by the Service Provider to SANParks will be provided in detail in the Service Request.

## Prior to the rendering of the Services SANParks may issue the Service Provider with a Purchase Order, the purpose of which shall solely be to order the Services.

## The Service Provider will render the Services so as to enable SANParks to meet its Specified Objectives and the Services will in all material respects conform to the following:-

### Service Request;

### the provisions of this Agreement;

### Good Industry Practices; and

### Service Levels (if applicable).

# SERVICE REQUESTS

## Prior to the rendering of the Services, SANParks shall issue the Service provider with a Service Request which shall be in writing and shall:-

### detail the Services requested by SANParks from the Service Provider;

### where necessary or feasible, contain the timeframes within which the Services must be performed;

### indicate the applicable level of the legal advisor/attorney, which according to SANParks would be suitable to deal with the Service Request. In the event that SANParks fails or neglects to prescribe the relevant level, the Service Provider will in good faith appoint a legal advisor/attorneys with suitable experience and qualifications;

### provide for any special conditions applicable to the Service Request; and

### provide for the name and contact details of the SANParks designated representative requesting the Services, as well as such representative’s signature.

## SANParks reserves the right to issue a Service Request for the Service Provider to render Services in an area/province for which the Service Provider was not appointed.

# DELIVERY OF SERVICES

## If a date for delivery of the Services is specified in a Service Request, the Service Provider will deliver the Services on or before the specified date of delivery. It is recorded and agreed that time is of the essence in respect of the supply and delivery of the Services.

## All Services delivered by the Service Provider are subject to review by SANParks and SANParks may, after delivery thereof and by written notification to the Service Provider and only within the Rejection Period, reject any Services which do not comply with the Agreement, any partial delivery or late delivery of the Services. Failure by SANParks to reject the Services within the Rejection Period will be deemed to be acceptance by SANParks of the Services.

## SANParks shall have the right to claim any damages suffered by SANParks from the Service Provider pursuant to the Service Provider’s delivery of Services that do not comply with the any other provision of the Agreement, partial or late delivery of the Services alternatively demand that the Services be performed in accordance with Good Industry Practices.

## All costs incurred by the Services Provider resulting from the unacceptable Services will be for the Service Provider’s account.

## Any payment by the SANParks under this Agreement will not be construed as acceptance by SANParks of any Services delivered.

# CONSIDERATION AND PAYMENT

## SANParks will pay the Service Provider for Services rendered in accordance with the Pricing Schedule.

## SANParks reserves the right to review the proposed tariffs/fees on the anniversary of the Agreement and in its sole discretion propose to the Service Provider adjustments thereto.

## The fees may be negotiated down by SANParks upfront, before acceptance by the Service Provider of a Service Request, on a case by case basis.

## In the event that a court case is postponed by the Service Provider acting on behalf of SANParks or SANParks incurs any expenses as a result of non-compliance by the Service Provider with any procedural requirements, or due to lack of preparation or negligence on the part of the Service Provider, the Service Provider shall bear such costs.

## All payments will be made by way of electronic funds transfer into the bank account nominated by the Service Provider the details of which are:-

### Account Holder:

### Bank:

### Bank Account Number:

### Branch Code:

# INVOICES AND PAYMENT DISPUTES

## SANParks will not be liable for payment of invoices submitted by the Service Provider in respect of any fees, rates, expenses and/or prices that are not reflected in the Pricing Schedule, unless agreed to in writing by a duly authorised representative of SANParks.

## Each invoice issued by the Service Provider will specify in sufficient detail the Deliverables rendered to which the invoice relates, the fee payable in respect thereof, the actual time spent (if applicable), the name of the legal advisor who rendered the Services together with the legal advisor’s/attorney’s level, rates as well as the total fees payable.

## The Service Provider will not bill or invoice SANParks and SANParks will not be liable for disbursements in respect of any travel expenses incurred by the Service Provider outside of the Service Area for which the Service Provider bidded for and was appointed for, unless specifically provided otherwise in a Service Request.

## SANParks will pay the invoice only if satisfied that the Services comply with clause 10. Undisputed invoices will be paid by SANParks within 30 (thirty) days after receipt of the Service Provider’s provided the invoices are accurate and meet all relevant legislative and operational requirements. In the event that SANParks disputes any invoice, SANParks will do so by giving the Service Provider written notice of the nature of the dispute within a period not exceeding 14 (fourteen) days of receipt of the invoice.

## The Parties shall endeavour to resolve the dispute as soon as possible but within 14 (fourteen) days from receipt of the dispute notice by the Service Provider failing which the dispute shall be dealt with in terms of clause 26.

## SANParks may set off any amounts due to it in terms of the Agreement against any amounts payable by SANParks to the Service Provider.

# AUDITS

## The Service Provider shall for the duration of this Agreement and for a period of 5 (five) years after the expiry or termination of this Agreement maintain complete and accurate records of, and supporting documentation for the amounts invoiced to and payments made by SANParks and the Services rendered under this Agreement. The Service Provider must, maintain a complete audit trail, sufficient to permit a complete audit thereof.

## SANParks acting through its duly authorised representatives, including without any limitation, its external auditors or legal advisors, shall at its own costs and on reasonable notice to the Service Provider, be entitled to inspect during business hours and at the premises of the Service Provider or such other premises where the Services are rendered from, all books, records, and supporting documentation related to the rendering of the Services and to make copies of and take extracts from such books, records, and supporting documentation for audit purposes.

# SERVICE LEVELS

## Service Levels shall be agreed between the Service Provider and SANParks on a case by case basis and detailed in the Service Request.

## The Service Provider’s failure to meet agreed Service Levels may have a material and adverse impact on the operations of SANParks, which impact may result in SANParks suffering damages. Accordingly, in the event that the Service Provider fails to meet the prescribed Service Levels, then in addition to all other remedies available to SANParks in law, SANParks may report the Service Provider to National Treasury and request that such Service Provider be placed on National Treasury’s List of Restricted Suppliers.

## In the event that the Service Provider’s failure to perform or to render the Services within any prescribed Service Levels is as a result of Force *Majeure* or is due to the acts or omissions directly attributable to SANParks, the SANParks shall not enforce the provisions of clause 16.2.

# SERVICE PROVIDER WARRANTIES AND UNDERTAKINGS

## The Service Provider warrants and represents to SANParks that:

### it has the necessary expertise, experience, resources, equipment and infrastructure to render the Services in a professional manner and in accordance with Good Industry Practices;

### it is a member of all professional and other bodies as required in terms of the RFP and as may be required by applicable legislation and/or relevant industry regulations pertaining to its business and that such membership is current and valid and will be maintained for the duration of the Agreement;

### it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents and authorities required to perform its obligations pursuant to this Agreement;

### it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;

### by fulfilling its obligations pursuant to the Agreement, it will not be in breach of or default under any other agreement to which it is a party or any obligation it otherwise owed to a third party;

### all information and documents given to SANParks by the Service Provider prior to Signature Date, was, at the time it was so given, and is, as at the Signature Date, true, accurate and complete; and

### the Service Provider is in no way compromising any rights or trust relationship between any other party and the Service Provider, or creating a conflict of interest for the Service Provider or for SANParks.

## The Service Provider further warrants and guarantees that any faults in the Services discovered by SANParks and rendering the Services unsuitable for the purpose for which it was acquired shall be corrected by the Service Provider at no charge to SANParks within a reasonable time and as quickly as possible, provided that the faults are not solely directly attributable to the actions of SANParks. This clause will apply, despite the fact that payment in respect of the Services may already have been effected by SANParks and despite the expiry of the Rejection Period.

## The Service Provider undertakes in favour of SANParksat all times to:

### act in accordance with the lawful instructions of SANParks;

### use its knowledge and skills to the best advantage of SANParks;

### not exceed the express or implied limits of the authority attendant to its appointment in terms of this Agreement or;

### use best endeavours not to engage in activities which would detract from the proper performance of its duties in terms of this Agreement;

### comply with all applicable Law in performing its obligations pursuant to this Agreement;

### not perform its responsibilities hereunder with actual knowledge that the manner in which such responsibilities are performed would cause SANParks to be in violation of any applicable Laws;

### be solely responsible for providing all superintendence, labour, materials, tools, equipment and all other things, whether of a temporary or permanent nature necessary for the provision of the Services;

### assume responsibility for the actions of its Personnel in performing the Services and be solely responsible for their supervision, direction and control, payment of salary, workers' compensation, disability benefits and the like;

### when dealing with SANParks’ property, take all reasonable care and precautions to safe-guard such property against any loss and/or possible damage whatsoever; and

### not do anything that may bring the good name of SANParks in disrepute. Any such act or omission occasioned by the Service Provider or its Personnel, acting in the course and scope of their employment with the Service Provider, will be deemed a breach of the Agreement.

## Bilateral Warranties

### Each Party represents and warrants in favour of the other Party that:

#### it has the legal capacity and, where applicable, it has taken all necessary corporate action required to empower and authorise such Party to enter into and implement this Agreement on the terms and conditions contained herein; and

#### this Agreement constitutes an agreement valid and binding on such Party and enforceable against it in accordance with its terms.

## A breach of any of the undertakings and/or warranties contained in this clause or in the will be deemed to be a material breach of the Agreement entitling SANParks to terminate the Agreement forthwith, provided that the Service Provider has failed to remedy such breach when called upon to do so in accordance with the provisions of clause 27 below, unless such breach is incapable of being remedied. A termination under this clause will be without prejudice to any of SANParks rights.

## The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Services.

# SERVICE PROVIDER PERSONNEL

## The Personnel to be utilised by the Service Provider in rendering the Services shall comprise of the personnel in name and/or credentials as set out in the Bid Response.

## The Service Provider may not re-allocate Key Personnel without the SANParks’ prior written consent, which consent will not be unreasonably withheld. When reallocating or replacing any Key Personnel, the Service Provider must ensure that any replacement must meet any and all criteria set out in the RFP and have substantially similar qualifications to the original appointment, and that the provision or continuity of the Services is not prejudiced in any way. On request and after consultation with the Service Provider, the Service Provider will immediately replace, at its own cost, any of the Personnel who are not performing the Services to SANParks’ satisfaction.

# DATA PROTECTION AND PROCESSING OF PERSONAL INFORMATION

## The Service Provider acknowledges that in the provision of the Services it may be exposed to Data of the SANParks, its employees and/or third parties.

## The Parties specifically record that all Data provided by SANParks to the Service Provider or to which the Service Provider may be exposed shall constitute Confidential Information and, where applicable, intellectual property belonging to SANParks.

## The Service Provider hereby warrants in favour of SANParks that it shall at all times strictly comply with all applicable legislation which may be in force from time to time and that it shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than with the express prior written consent of the other Party.

## The Service Provider warrants that it shall immediately inform SANParks should any Data it has access to be compromised in any manner or form. The Service Provider further undertakes to also immediately inform SANParks as to how it will manage such compromise and what steps will be taken to rectify the situation to the satisfaction of SANParks.

## The Service Provider’s obligations under this clause will survive the termination of this Agreement for any reason.

# REPORTING

## The Service Provider shall be required to submit regular written reports in a manner and as and when required to do so by SANParks in the relevant Service Request and which reports shall, inter alia, specify:-

### a description of the Services which have been rendered during a specified period;

### the progress made in respect of each of the Deliverables; and

### such further information as SANParks may reasonably require in relation to the Services, from time to time.

# BROAD-BASED BLACK ECONOMIC EMPOWERMENT

## Save in respect of any amendment to the B-BBEE Act or any other B-BBEE legislation that may come into force after the date of the Bid Response which alters the requisite B-BBEE Credentials and/or B-BBEE Score, the Service Provider represents and warrants that its B-BBEE Credentials and/or B-BBEE Score –

### are as set out in the Bid Response;

### were measured using the B-BBEE Act, the B-BBEE Codes and the relevant B-BBEE legislation in force as at the date of the Bid Response; and

### were certified by means of a Verification Certificate (as defined in the B-BBEE Codes) issued by a Verification Agency (as defined in the B-BBEE Codes) or in the case of a QSE or EME, by means of a sworn affidavit.

## Should, following the date of the Bid Response, the B-BBEE Credentials and/or the B-BBEE Score of the Service Provider drop below the B-BBEE Credentials and/or the B-BBEE Score as set out in the Bid Response, then –

### the Service Provider will notify SANParks in writing of such decrease in its B-BBEE Credentials and/or B-BBEE Score within 7 (seven) days of the Service Provider becoming aware of such decrease; and

### SANParks may, upon written notice to the Service Provider, request that the Service Provider remedy such decrease in its B-BBEE Credentials and/or B-BBEE Score within a period of 90 (ninety) days from the date of such notice, failing which SANParks may terminate this Agreement by giving the Service Provider 90 (ninety) Business Days written notice of its intention to do so.

# INTELLECTUAL PROPERTY

## Each party will own its Existing Material. All right, title, and ownership to or of any Deliverables, save for any own Intellectual Property of the Service Provider or its third party vendors embedded in any Deliverables, are the sole property of or will vest in SANParks and SANParks reserves all moral rights therein.

## Subject to clause 22.1 above, the Service Provider irrevocably:

### cedes, assigns, or transfers to SANParks all the Service Provider’s rights, title and interest in any copyright in all works that are or may become eligible for copyright arising directly or indirectly from or incidental to the Services;

### cedes, assigns and transfers to SANParks all right, title and interest in and to all inventions (including methodologies and products) made within the course and scope of the Services under this Agreement;

### grants to SANParks the exclusive right to alter and adapt the Deliverable;

### assigns to SANParks the rights conferred upon the Service Provider as author by section 20(1) of the Copyright Act, 98 of 1978;

### undertakes, to provide reasonable assistance, when requested by SANParks, to execute all instruments and to do all things as may be necessary to vest copyright and ownership of Deliverables in SANParks and if the Service Provider fails to comply with any request by SANParks within (7) seven days, or such period as agreed to in writing between the Parties the Service Provider irrevocably nominates, constitutes and appoints SANParks to be the Service Provider’s agent, with power to sign all documents and do all other acts, matters and things as may be necessary to give due and proper effect to the terms of this clause. Any costs to be incurred in this regard will be for SANParks’ account.

## SANParks grants to the Service Provider a revocable, non-transferable and non-exclusive licence in respect of any Intellectual Property that may be needed to supply the services to SANParks.

## The Service Provider may only duplicate (or reproduce in any manner or form) a Deliverable or make any adaptations or translations of a Deliverable with SANParks’ prior written consent, which may be withheld.

## Neither party will obtain any rights in the Existing Material or Intellectual Property of the other Party that was not created in performing the Agreement or existed before the commencement of the Agreement, unless a licence is granted.

## The Parties’ respective logo and sub-logos, marks, and trade names are the Parties’ respective trademarks and no Person may use them without written permission. Any other trademark or trade name that may appear on the Parties’ marketing material is the property of its respective owner.

## All violations of proprietary rights will be prosecuted to the fullest extent permissible under applicable Law.

# INTELLECTUAL PROPERTY INFRINGEMENT

## The Service Provider warrants that no aspect of the Services will infringe any patent, design, copyright, trade secret or other proprietary right of any third party. The Service Provider must defend SANParks against any claims made by any third party that the Services infringe its patent, design, copyright, or trade mark and must pay the amount of any resulting adverse final judgment (or settlement, which settlement the Parties will negotiate with the third party). The Service Provider must reimburse SANParks with all costs incurred by SANParks in connection with assisting the Service Provider with the defence of the action immediately on demand (including attorney’s fees on an attorney and client basis). SANParks will notify the Service Provider of the claim in writing and the Parties will have sole control over the defence and/or settlement.

## If any third party succeeds in its claim for the infringement of any Intellectual Property rights, the Service Provider must within 30 (thirty) calendar days of the infringing item having been found to so infringe:-

### obtain for SANParks the right to continue using the infringing item or the parts that constitute the infringement; or

### replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications; or

### alter the infringing item in a way as to render it non infringing while still in all respects operating substantially in accordance with its specifications; or

### withdraw the infringing item and refund SANParks all fees paid by SANParks to the Service Provider for that portion of the relevant Services specifically with regard to the infringing item in the preceding 12 calendar month period.

## This clause will survive termination of the Agreement.

# LIMITATION OF LIABILITY

## To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, the Service Provider shall be liable for all direct Losses incurred the SANParks as a result of the Service Provider’s failure to comply with the terms and conditions set out in this Agreement.

## To the extent permitted by applicable Law, in no event will either Party be liable for any indirect, incidental, special or consequential damages or Losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages) arising from this Agreement.

## The limitation contained in this clause will not apply to (i) any breach by a Party of the other Party’s proprietary or confidential information or intellectual property; (ii) a Party’s indemnification obligations in terms of the Agreement; (iii) or damages arising from a party’s gross negligence.

## SANParks will not be liable for any loss or damage suffered by the Service Provider arising out of or in connection with any breach of the Agreement by the Service Provider or any act, misrepresentation, error or omission made by or on behalf of the Service Provider or the Personnel.

## The Service Provider agrees to indemnify, defend and hold SANParks (and SANParks’ personnel) harmless against any and all:

###  loss of or damage to any property or injury to or death of any person;

### Loss, damage (including attorneys’ fees on an attorney and own client basis), costs and expenses that SANParks may suffer or incur arising directly or indirectly from:

#### wilful misconduct or fraud by the Service Provider or the Personnel;

#### a breach by the Service Provider of SANParks’ proprietary or Confidential Information, or Intellectual Property;

#### an infringement by the Service Provider of any patent, design, copyright, trade secret or other proprietary right of any third party; or

#### collusion between the Service Provider (or any of its Personnel) and any of SANParks’ employees or agents.

## 29.6 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.

# INDEMNITY AND INSURANCE

## With effect from the Commencement Date and subject to clause 24 the Service Provider irrevocably indemnifies, holds and undertakes to hold SANParks harmless against all Losses suffered and/or damages incurred of whatsoever nature and howsoever arising, by SANParks out of or, in the widest sense, in connection with the entering into by SANParks of this Agreement.

## Subject to the provisions of this Agreement, SANParks, its servants and other agents shall be relieved of all liability and indemnified for any Loss or damages suffered as a result of:

### a breach of any of the Service Provider’s warranties; and

### any breach of the provisions of this Agreement by the Service Provider or the Personnel, whether such breach occurs before or after the Loss suffered by SANParks, provided that the aforesaid shall only apply if such breach is the fundamental cause of such Loss.

## The Service Provider hereby warrants that it possesses, as at the Commencement Date, valid and sufficient professional indemnity insurance against any liability that it may incur in terms of this Agreement.

## The Service Provider shall, upon demand by SANParks, be obliged to furnish proof of such professional indemnity insurance to SANParks, and, if reasonably directed to do so, shall increase such indemnity insurance in accordance with SANParks’ instructions.

# DISPUTE RESOLUTION

## Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction any dispute arising from or in connection with this Agreement, its validity, the Parties’ rights and/or obligations hereunder or its termination shall in the first instance be referred to the respective senior representatives of the Parties, who are responsible for them, who shall use their best endeavours to settle the dispute as expeditiously as is practically possible.

## If the dispute cannot be settled as provided for in clause 26.1 within fourteen (14) Business Days or within such period as agreed upon by the Parties in writing the dispute will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation and anyone of the Parties may refer the matter for such.

## Neither Party shall be entitled to withhold performance of any of its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

## The provisions of this clause -

### constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefore or claim at any such proceedings that it is not bound by such provisions; and

### constitute a separate agreement, severable from the rest of this Agreement and shall remain in effect despite determination of or invalidity for any reason of this Agreement.

# BREACH AND TERMINATION

## This clause exists in addition to s23 and s26 of the GCC, and does not replace it.

## if a Party (“Defaulting Party”):

### does not fix any breach of this Agreement (or an order) within the times as defined and agreed by all Parties of receiving written notice from the other Party to do so;

### breaches this Agreement materially twice or more in any 6-month period;

### is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;

### takes steps to deregister itself (close down) or is deregistered;

### makes any settlement or arrangement with its creditors; or

### fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

### then the other Party (“Aggrieved Party”) may, without prejudice to any of its rights:

### claim specific performance of this Agreement; or

### immediately cancel this Agreement in writing; and

### claim damages from the Defaulting Party, including any claim for any fees already due, where applicable.

## SANParks may, at its absolute and sole discretion, terminate the Agreement, upon at least 90 (ninety) days’ prior written notice to the Service Provider. In the event of such termination, SANParks shall make payment to the Service Provider for all Services performed up to the date of such termination.

## SANParks may terminate this Agreement summarily at any time by giving written notice to the Service Provider where SANParks in SANParks’ sole discretion is of the opinion that:

### the Services being rendered by the Service Provider is of such a standard that they fail to meet SANParks’ requirements;

### the Services being provided by the Service Provider have been provided in an unprofessional manner;

### the Personnel have conducted themselves in an unprofessional manner; or

### any action or inaction by the Service Provider is damaging SANParks’ good name and reputation.

## This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.

# EFFECTS OF TERMINATION

## On termination, cancellation, or expiry of this Agreement:

### the Service Provider will stop providing the Services; and

### each Party will deliver to the other Party, or at the other Party’s option destroy (and procure the delivery or destruction by third party contractors of) all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.

## The Service Provider acknowledges and confirms that no expectation has been created by anyone, by the Agreement or any other agreement, entitling the Service Provider or the Personnel to expect:-

### continued service for any period whether definite or indefinite;

### the renewal or extension of the term of any agreement; or

### the conclusion of any further agreements with SANParks.

## Any expiry or termination of the Agreement, for any reason, will not be capable of being regarded as a “dismissal” as defined in the Labour Relations Act 66 of 1995 nor will the Service Provider or any of the Personnel be entitled to the payment of any remuneration or compensation of any nature, including redundancy or other compensatory payments.

## The termination, cancellation, or expiry of this Agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

# SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL

## SANParks may terminate this Agreement by giving the Service Provider written notice designating a date upon which such termination will become effective in the event of a sale, acquisition, merger, or other change of control of the Service Provider (“Change Event”) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions.

## The Service Provider must notify SANParks of any Change Event within 5 (five) Business Days after becoming aware thereof, upon which SANParks may within 1 (one) month of such notification opt to terminate the Agreement.

## No Change Event will be effective against and legally binding on SANParks, where the prior written consent of SANParks was not obtained. If a Change Event occurs and the Service Provider fails to inform or procure written consent from SANParks, then the Service Provider will be deemed to have breached a material term of this Agreement and SANParks will be entitled to cancel the Agreement without any prior notice to the Service Provider.

## This clause will not be applicable in the event of any change of control of the Service Provider or any of its divisions or subsidiaries whether through the sale of assets, shares, business or otherwise, as a result of any internal corporate restructuring of the Service Provider.

# CORRUPT GIFTS AND FRAUD

## The Service Provider warrants that in entering into this Agreement it has not committed any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this Agreement immediately with written notice and after consultation with the Service Provider.

## **"**Corrupt Act**"** means: -

### 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:

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

#### for showing or not showing favor or disfavor to any Person in relation to this Agreement or any other contract with SANParks or any other organ of state.

### entering into this 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 Service Provider 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;

### committing any offence:

#### under any Law from time to time dealing with bribery, corruption or extortion;

#### under any Law creating offences in respect of fraudulent acts; or

#### at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with SANParks or any other public or private entity; or

#### defrauding or attempting to defraud or conspiring to defraud SANParks or any other public or private entity.

## If the results of any audit of the Services conducted by or on behalf of SANParks indicates the possibility of Corrupt Act, SANParks will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant Personnel or a third party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that a Corrupt Act, any other act of corruption, fraud or theft is proven, SANParks will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.

## The Service Provider shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this clause 30 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).

## 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 Service Provider (or to take any action other than termination of this Agreement).

# CESSION, ASSIGNMENT AND SUB-CONTRACTING

## The Service Provider will not cede any of its rights or delegate or sub-contract any part of its obligations in terms of this Agreement without SANParks' prior written consent, which may be withheld at SANParks’ sole discretion.

## Approval given in terms of clause 31.1 will not relieve the Service Provider of any responsibility, duty or obligation imposed upon it in terms of this Agreement, or by SANParks. The Service Provider will be and remain solely liable and responsible for the rendering of the Services, all acts, omissions, negligence or breaches of the Agreement on the part of the subcontractor or any of its Personnel, and for all acts, omissions or negligence of any subcontractor or any of its Personnel.

## SANParks may at its sole and absolute discretion pay any subcontractor who executed any portion of the Service Provider's obligations directly and the amount paid to any such subcontractor by SANParks will be deducted from any amount due by SANParks to the Service Provider in terms of this Agreement.

# DISENGAGEMENT ASSISTANCE

## The Service Provider agrees that, notwithstanding the termination of this Agreement for any reason whatsoever the Service Provider will, if so required by SANParks, assist SANParks with the seamless transition of the rendering of the Services to an incoming service provider at no cost to SANParks.

## To this extent and without any derogation to any claims sounding in money, which either Party may have or allege against the other Party, the Service Provider shall not be entitled to withhold any information, files, records or reports, or any assistance as required that will be crucial to effect the immediate and seamless transition of the Services. The Service Provider will for a period of 30 (thirty) days from the date of termination specifically:

###  make the Personnel available to provide assistance, advice and guidance to the new service provider or SANParks (or SANParks’ customer) as the case may be; or

### use its best endeavours to ensure that all files and records are complete, up to date and adhere to professional quality standards, failing which SANParks reserves the right to demand that the Service Provider brings the files, records and/or reports up to standard.

# FORCE *MAJEURE*

## In the event of any event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Agreement impossible or so impractical as to be considered impossible under the circumstances (Force *Majeure*) or preventing or delaying a Party from the performance of any obligation hereunder, then the Party affected by such Force *Majeure* will be relieved of its obligations hereunder during the period that such Force *Majeure* continues. The affected Party’s relief is only to the extent so prevented.

## Such Party will not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the Force *Majeure*, provided always that a written notice will be promptly given by the affected Party of any such inability. Any Party invoking Force *Majeure* will upon termination of such Force *Majeure* give prompt written notice thereof to the other Party.

## The Parties undertake to do everything in their power to establish restitution of the rights and obligations under the Agreement as soon as possible. Should the Force *Majeure* continue for a period of more than 6 (six) weeks, then either Party has the right to cancel the Agreement.

# ADDRESSES AND NOTICES

## Notices

### Any notice, consent, approval or other communication in connection with this Agreement (Notice) will be in writing in English.

### Each Party chooses the physical address, fax number and/or email address corresponding to its name as below as the address to which any Notice must be sent:-

#### SANParks

##### Physical Address: 643 Leyds Street, Muckleneuk; Pretoria; 0001

##### E-mail address: fahlaza.monaledi@sanparks.org

##### Attention: General Manager: Legal Services

#### Service Provider

##### Physical Address: \_\_\_\_\_\_\_\_\_

##### E-mail address:

##### Attention:

### Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked in clause 34.1.2

## Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:-

### on the day of delivery, if delivered by hand to a responsible person at the recipient’s physical address in clause 34.1.2. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;

### on the first Business Day after the date of transmission, if sent by fax to the recipient’s fax number in clause 34.1.2 and

### on the first Business Day after the date of transmission, if sent by email to the recipient’s email address in clause 34.1.2.

## Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in clause 34.1.2.

## Service of legal process

### Each Party chooses its physical address referred to in clause 34.1.2 as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (*domicilium citandi et executandi*) addresses for the attention of:

#### **SANParks**: Attention: Head: Legal Services

##### E-mail address: fahlaza.monaledi@sanparks.org

#### Service Provider: Attention:

##### E-mail address:

### Any Party may by Notice to other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

## E-mailed notices of intended legal proceedings as contemplated in the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 will remain subject to section 4(2) of this Act.

# SANPARKS’ SUBCONTRACTORS

## Where the Service Provider is required to liaise with third parties for purposes of the Agreement, the following provisions will apply:

### when deemed necessary, SANParks shall notify the Service Provider of the applicable terms and conditions of the Third Party Agreement insofar as they relate to or have an impact on the Service Provider’s obligations.

### where the Service Provider is reliant on such third party for the delivering of any aspect of the Services, and after reasonable Service Provider steps the third party does not provide the assistance as is reasonably required by the Service Provider, this will be escalated by Service Provider to SANParks for an intervention. For the duration and limited to the impact, such third party failure shall entitle the Service Provider to excused performance; and

### the Service Provider shall have no authority to relieve others appointed by SANParks to undertake services of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the SANParks in response to an application by the Service Provider in writing to do so.

# PARTIES’ REPRESENTATIVES

## **In order to ensure that: –**

### a successful working relationship is maintained between the Parties;

### any relevant queries, complaints, instructions and/or directions in relation to the rendering of the Services can be effectively and timeously dealt with; and

### the Parties have an effective channel for the communication of day-to-day operational matters.

## the Service Provider designates the Key Account Manager and SANParks designates the following person:-

#### SANParks: Fahlaza Monaledi; General Manager: Legal Services Department; (012) 426 5076, fahlaza.monaledi@sanparks.org

## SANParks will on 14 (fourteen) days written notice to the Service Provider, change its designated representative.

# NON-SOLICITATION

## Either Party shall not during the term of this Agreement and of any extension of it and for a period of twelve (12) months after expiry or termination of this Agreement for any reason whatsoever, either for itself or on behalf of anyone else, except with the prior written approval of the other Party, directly or indirectly persuade, induce, solicit, encourage or procure any employee of the other Party when this Agreement terminates to:

### become employed by or interested in any manner whatsoever in anyone other than its current employer, nor shall either Party employ any such person in that period on either a full-time or part-time basis in any capacity whatsoever or engage the services of any such person as an independent contractor on either a full-time or part-time basis in that period; or

### terminate his or her employment with its current employer.

## If any Party breaches this clause, it shall pay to the aggrieved Party an amount equal to one (1) year’s salary for any solicited employee of the aggrieved Party, as liquidated damages and not as a penalty. The amount of the annual salary shall be the total annual ‘cost to company’ in effect at the date the employee was solicited.

# GENERAL

## **Whole Agreement:** This Agreement constitutes the sole record of the Agreement between the Parties in relation to the subject matter hereof. Neither Party will be bound by any representation, warranty, promise nor the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

## **Waiver:** No indulgence granted by a Party will constitute a waiver of any of that Party's rights under the Agreement; accordingly, that Party will not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

## **Legal Costs:** The Service Provider will pay all legal costs, as between attorney and own client, incurred by SANParks as a result of any breach of the Agreement by the Service Provider.

## **Governing Law:** The Agreement will be governed by the laws of the RSA and the Parties submit to the jurisdiction of the RSA courts.

## **Non Variation:** Unless otherwise provided for in this Agreement, no addition to, variation, novation or agreed cancellation of any provision of the Agreement will be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

## **Severability:** Each provision of the Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement which is, or becomes invalid, unenforceable or unlawful in any jurisdiction will, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the other provisions of the Agreement, which will remain of full force and effect.

## Each Party will pay its own costs in connection with the negotiation and finalisation of the Agreement.

## Where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement such action will not be unreasonably delayed or withheld, except where expressly provided as being in the sole discretion of a Party. An approval, acceptance, consent or similar action by a Party under this Agreement will not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

## **Counterpart:** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.