



## STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

1. These standard terms and conditions of contract:-
  - are or form part of the special conditions of contract referred to in the General Conditions of Contracts; and
  - will form part of the service agreement to be concluded between SANParks and the preferred bidder, upon bid award, and at which time Annexure A (Contract Schedule) and B (Pricing Schedule) will be concluded.
2. Bidders are required to indicate their acceptance of these standard terms and conditions by initialling (through its authorised representative) each page of these standard terms and conditions including Annexure C.
3. If a bidder does not accept any term or condition contained in these standard terms and conditions, they must clearly indicate such non-acceptance by either:
  - marking up the relevant provisions in these standard terms and conditions; or
  - submitting, as part of their bid response, a separate document detailing their proposed amendments or comments.
4. Failure by a bidder to initial each page of these standard terms and conditions, and to indicate any objections either through mark-ups or a separate submission, shall be deemed by SANParks as the bidder's full acceptance of all terms and conditions set out in these standard terms and conditions.
5. The bidder acknowledges, by initialling these terms and conditions or submitting its comments thereto, that it:-
  - has fully read and understands the provisions contained in these standard terms and conditions;
  - has no expectation of award; and
  - does not deem the initialling of these standard terms and conditions as creating any binding contract between it and SANParks.
6. SANParks reserves the right to amend these standard terms and conditions at its sole discretion as it deems fit and appropriate.

Agreement

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**AGREEMENT**  
(standard terms and conditions)

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## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement clause headings are for convenience and will not be used in its interpretation.
- 1.2 Unless the context clearly indicates a contrary intention, an expression which denotes:
- 1.2.1 any gender includes the other genders;
- 1.2.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.3 the singular includes the plural and *vice versa*.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 The rule of construction that the contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the agreement (ie the *contra proferentem* rule), shall not apply.
- 1.10 Unless otherwise expressly stated, no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement.
- 1.11 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.
- 1.12 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.
- 1.13 Unless the meaning is inconsistent with the context, the following expressions will bear the following meanings, and related expressions will have corresponding meanings:
- 1.13.1 **"Agreement"** means collectively, these Terms and Conditions of Contract together with all of its schedules and/or Annexures, as may be amended by the Parties in writing from time to time, and as set out in clause 3.2;
- 1.13.2 **"Annexures"** means the annexures to this Agreement;
- 1.13.3 **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BBEE Act;
- 1.13.4 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.13.5 **"B-BBEE Codes"** means the codes of good practice on B-BBEE published by the responsible/relevant department, pursuant to the B-BBEE Act;
- 1.13.6 **"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;
- 1.13.7 **"B-BBEE Score"** means 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, to the extent allowed by procurement laws and BBEE codes;
- 1.13.8 **"Bid Documents"** means, collectively, the RFP and Bid Response;
- 1.13.9 **"Bid Response"** means the documents submitted by the Service Provider as their bid proposal in response to the RFP incorporated into this Agreement by reference and which forms an integral part hereof;
- 1.13.10 **"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;
- 1.13.11 **"Change Event"** means any sale, acquisition, merger, or other change of control of the Service Provider, whether occurring directly or indirectly, in a single transaction or a series of related transactions, including any sale of all or substantially all of the assets of the Service Provider;
- 1.13.12 **"Commencement Date"** means the date as set out in the Contract Schedule;
- 1.13.13 **"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;
- 1.13.14 **"Contract Period"** means the duration of this Agreement as specified in the Contract Schedule, calculated from the Commencement Date;
- 1.13.15 **"Contract Price"** means the amount specified in the Contract Schedule, payable by SANParks to the Service Provider for the Services;
- 1.13.16 **"Contract Schedule"** means the schedule which sets out the specific commercial and operational terms applicable to this Agreement and, attached to this Agreement as Annexure A;
- 1.13.17 **"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;
- 1.13.18 **"Data Subject"** means the person to whom or which the Personal Information relates;
- 1.13.19 **"Deliverables"** means 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;
- 1.13.20 **"Disclosing Party"** means the Party disclosing Confidential Information pursuant to clause 7;
- 1.13.21 **"Equipment"** means all vehicles, tools, materials, apparatus and machinery (excluding SANParks Equipment) the Service Provider must and intends to use in connection with the delivery of the Services including at a minimum the items in name and quantity as specified in the Bid Documents;
- 1.13.22 **"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;
- 1.13.23 **"Expiry Date"** means the date falling on expiry of the Contract Period as specified out in the Contract Schedule;
- 1.13.24 **"Force Majeure"** means acts of God, war, civil war, insurrection, earthquake, storm, flood, epidemic, Government sanction, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, changes in laws, rules or regulations, blockage, embargo, labour dispute, strike, lock out or interruption or failure of electricity or telephone service, unavailability of equipment and materials or any event which

- the other Party invoking vis major could not reasonably be expected to prevent or control (including but without any limitations to any illegal strike or action/s by employees or servants of any Party to this Agreement) but shall exclude any event caused by the negligence and/or wilful misconduct of such Party or any of its employees or agents by any failure to observe the standard of care, diligence and skill reasonably expected of appropriately qualified and skilled persons in similar circumstances;
- 1.13.25 **"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;
- 1.13.26 **"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;
- 1.13.27 **"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;
- 1.13.28 **"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;
- 1.13.29 **"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;
- 1.13.30 **"Key Personnel"** means those Personnel listed in the Bid Response and dedicated by the Service Provider to the provision of the Services;
- 1.13.31 **"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;
- 1.13.32 **"Letter of Intent"** means the letter by SANParks to the Service Provider wherein the Service 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;
- 1.13.33 **"Loss/es"** means all direct, indirect and consequential losses, liabilities, costs, expenses, fines, penalties, damages, claims as well as related costs and expenses, unless specifically excluded in terms of this Agreement;
- 1.13.34 **"OHS"** means occupational health and safety;
- 1.13.35 **"OHS Act"** means Occupational Health and Safety Act, Act No. 85 of 1993;
- 1.13.36 **"Parties"** mean SANParks and the Service Provider (as indicated in the Contract Schedule), collectively and "Party" will mean any one of them as the context may indicate;
- 1.13.37 **"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;
- 1.13.38 **"Personnel"** mean employees, approved contractors, sub-contractors and/or independent contractors of the Service Provider to be utilised by the Service Provider to render the Services and includes Key Personnel;
- 1.13.39 **"Premises"** means the locations at which the Services will be rendered by the Service Provider as specified in the Contract Schedule, and shall include the Sites;
- 1.13.40 **"Pricing Schedule"** means the schedule detailing the rates and manner of the payment of the Contract Price by SANParks to the Service Provider attached to the Agreement as Annexure "B";
- 1.13.41 **"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;
- 1.13.42 **"RFP"** means the request for proposals issued by SANParks under the reference number set out in the Contract Schedule to interested parties to submit proposals to SANParks for the Services, including all annexures thereto;
- 1.13.43 **"RSA"** means the Republic of South Africa;
- 1.13.44 **"SANParks"** means 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;
- 1.13.45 **"SANParks Equipment"** means any equipment, tools, materials, apparatus and machinery leased to, on loan to, owned, controlled, operated or in possession of SANParks;
- 1.13.46 **"SANParks Visitors"** means visitors to SANParks Premises;
- 1.13.47 **"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;
- 1.13.48 **"Service Hours"** means the hours specified in the Contract Schedule in terms of which the Service Provider is expected to render the Services;
- 1.13.49 **"Service Levels"** means the levels and standards of performance against which the Services will be measured from time to time as set out in the RFP;
- 1.13.50 **"Service Provider"** means the provider of the Services in this Agreement, as indicated in the Contract Schedule;
- 1.13.51 **"Services"** means the provision of services as described in the Contract Schedule;
- 1.13.52 **"Signature Date"** means the date of signature of this Agreement by the last of its signatories;
- 1.13.53 **"Site"** means the sites at the Premises where the Services will be rendered, as set out in the Contract Schedule;
- 1.13.54 **"Site Handover Date"** means the date specified as such in the Contract Schedule;
- 1.13.55 **"Terms and Conditions of Agreement/TCA"** means these terms and conditions;
- 1.13.56 **"Third Party Agreement"** means a contract between SANParks and a third party on matters that may be related to the Equipment; and
- 1.13.57 **"VAT"** means Value-Added Tax as levied in terms of the VAT Act 89 of 1991.
- 2 **RECORDAL**  
SANParks has appointed the Service Provider to render the Services. The Service Provider has accepted such appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.
- 3 **STRUCTURE OF THE AGREEMENT**
- 3.1 This Agreement, alongside the GCC, are the terms of the relationship between the Parties.
- 3.2 This Agreement is composed of the documents listed below: -
- 3.2.1 RFP;
- 3.2.2 these Terms and Conditions of Contract;
- 3.2.3 Annexures;
- 3.2.4 Bid Response, including all applicable annexures;
- 3.2.5 Letter of Intent; and
- 3.2.6 Purchase Order.
- 3.3 The general conditions of contract are in the GCC / General Conditions of Contract.
- 3.4 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. In the event of a conflict between the Special Conditions of Contract listed in 3.2 and the GCC, the Special Conditions of Contract will take precedence.
- 3.5 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.

#### 4 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.

#### 5 NATURE OF RELATIONSHIP

5.1 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 agency, employment, partnership or joint venture between SANParks and the Service Provider.

5.2 The Service Provider will accordingly not be entitled to (i) hold itself out as being an agent or partner of SANParks, or as being in a joint venture with SANParks; (ii) to make any false or misleading representations concerning the Service Provider's appointment as independent contractor of SANParks; or (iii) to do anything on behalf of SANParks without SANParks prior written consent, or that purports to bind SANParks in any manner whatsoever.

#### 6 GOOD FAITH

6.1 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.

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

#### 7 CONFIDENTIALITY

7.1 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.

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

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

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

7.2.3 to which disclosure is required by Law;

7.2.4 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;

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

7.2.6 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;

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

7.2.8 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.

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

7.4 Notwithstanding this clause, SANParks will be entitled to

disclose and use any Confidential Information for the purposes of conducting its business.

7.5 Subject to clause 17.1, 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.

7.6 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.

7.7 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.

7.8 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.

#### 8 KEY ACCOUNT MANAGER

8.1 The Service Provider will appoint a Key Account Manager whose details are as set out in the Contract Schedule.

8.2 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.

8.3 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.

8.4 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.

#### 9 INTERNAL RULES

9.1 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.

9.2 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 ensure that its Personnel submit to and cooperate with such searches.

9.3 The Service Provider shall be liable for any damages caused by the Service Provider and/or its Personnel whilst at the Premises and whilst rendering Services and hereby indemnifies and holds SANParks harmless in that regard.

9.4 SANParks will screen all equipment brought onto the Premises by the Service Provider or the Personnel.

9.5 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, or otherwise required by law. If such consent is granted, all photographs and other images will be taken under the direct supervision of an authorised representative of SANParks.

9.6 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.

#### 10 SCOPE

10.1 The scope and details of the Services to be rendered by the Service Provider to SANParks are specified in the Bid

Documents and the Contract Schedule.

10.2 The Service Provider will render the Services such that the Services will in all material respects conform to the following: -

- 10.2.1 Bid Documents;
- 10.2.2 the provisions of this Agreement;
- 10.2.3 Good Industry Practices; and
- 10.2.4 Service Levels.

#### 11 SANPARKS RESPONSIBILITY

11.1 SANParks shall give the Service Provider access to the Premises as well as SANParks' Equipment to the extent necessary during this Agreement, which access shall be solely for purposes of rendering the Services.

11.2 SANParks shall monitor the Services that it receives from the Service Provider.

11.3 SANParks shall provide notice of unsatisfactory performance to the attention of the Service Provider for improvement and the Service Provider shall submit to SANParks a remedial plan within 5 (five) days of receipt of such notice by the Service Provider.

11.4 SANParks shall review the reports submitted by the Service Provider in terms of this Agreement and shall provide feedback if SANParks deems it necessary.

#### 12 SECRECY

The Services are provided on the understanding that all the Service Provider's and its Personnel's contact with SANParks Visitors and employees is confidential. The Service Provider shall not, and shall ensure that its Personnel do not, disclose to any third party any information relating to SANParks Visitors and employees, unless such disclosure is with the prior written consent of SANParks and strictly in accordance with such consent, or is otherwise required by and in compliance with the Law.

#### 13 RESPONSIBILITIES OF THE SERVICE PROVIDER

13.1 The Service Provider's responsibilities in respect of the Services are fully set out in the RFP and include but are not limited to those as described in the Contract Schedule.

13.2 The Service Provider will be responsible for timeously arranging for, and for the costs associated with, the repair of damage and/or necessary replacement to the Premises and/or SANParks Equipment caused due to its and/or its Personnel's negligence and/or wilful default and hereby indemnifies and holds SANParks harmless in respect thereof.

13.3 The Service Provider shall be deemed to have inspected the Premises and SANParks Equipment, to which it has access and/or use, and to be thoroughly acquainted with the conditions under which the Services are to be executed, and generally of all matters which influence the rendering of the Services and shall comply therewith in all respects.

#### 14 DELIVERY OF SERVICES

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

14.2 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, reject any Services which do not comply with the Agreement, any partial delivery or late delivery of the Services.

14.3 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 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.

14.4 All costs incurred by the Service Provider resulting from the unacceptable Services will be for the Service Provider's account and the Service Provider hereby indemnifies and holds SANParks harmless in respect thereof.

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

#### 15 CONSIDERATION AND PAYMENT

15.1 SANParks will, in consideration for the Services duly rendered, pay the Service Provider the Contract Price in accordance with the Pricing Schedule.

15.2 In the event that the Contract Price is subject to annual price adjustment (as provided in the RFP), the Service Provider shall in accordance with the period specified in the Contract Schedule, prior to each anniversary of the Commencement Date, submit to SANParks for consideration a proposed pricing schedule in the format similar to Annexure B.

15.3 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 reflected in the central registry of suppliers that wish to supply goods and services to the government of RSA currently being central supplier database or any government supplier registration system in effect at the time of payment.

#### 16 INVOICES AND PAYMENT DISPUTES

16.1 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 Contract Schedule or Pricing Schedule, unless agreed to in writing by a duly authorised representative of SANParks.

16.2 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 relevant Personnel who rendered the Services together with the title, rates, accompanying substantiating documents including the, monthly incident/occurrence report and attendance register, (and other documents that may be relevant) and the total fees payable.

16.3 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 invoices and supporting documents as provided in 16.2 and provided that 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.

16.4 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 33.

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

16.6 The Service Provider indemnifies SANParks against any and all Losses arising from any breach of this Agreement, including but not limited to the submission of incorrect invoice/s, supporting documentation and bank details.

#### 17 AUDITS

17.1 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.

17.2 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.

#### 18 RISK OF LOSS

18.1 Subject to the conditions as set out in the Agreement and in this clause 18, the Service Provider shall bear the risk of theft and loss of or any damage to Premises, property, material, equipment at the Premises from Site Handover Date provided that such theft, loss or damage occurs during the Service Hours

- and is as a result of the Service Provider's negligence and/or wilful default or the negligence and/or wilful default of any of its Personnel or the Service Provider's breach of this Agreement.
- 18.2 Ownership in or to the Site, Premises, material, equipment at the Premises will at all times during the Contract Period vest with SANParks. Ownership of the Site or immovable property shall remain with the registered owner where SANParks occupies the Premises as the lessee.
- 19 **SERVICE LEVELS**
- 19.1 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.
- 19.2 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 solely due to the acts or omissions directly attributable to SANParks, then the provisions of clause 19.1 shall not apply in that regard only.
- 20 **PENALTIES**
- Subject to GCC Clause 25, SANParks may, without prejudice to its other remedies in law and/or under this contract, deduct from the Contract Price, as a penalty, a sum calculated on any unperformed services at the rate as determined in the Contract Schedule. To the extent allowed by law, SANParks may claim damages and/or this penalty. SANParks may also claim termination of the contract in accordance with the provisions for breach in this contract and/or pursuant to clause 23 of the GCC or as otherwise allowed by law.
- 21 **SERVICE PROVIDER WARRANTIES AND UNDERTAKINGS**
- 21.1 The Service Provider warrants and represents to SANParks that:
- 21.1.1 Its Personnel have the necessary expertise, skills, experience, resources, equipment and infrastructure to render the Services in a professional manner and in accordance with Good Industry Practices;
- 21.1.2 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;
- 21.1.3 it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents and authorities required to perform its obligations pursuant to this Agreement;
- 21.1.4 its Personnel have been subjected to a credit and criminal vetting process and the relevant reports are favourable;
- 21.1.5 all Personnel have undergone the necessary occupational medical assessments and hold valid certificates of fitness to perform the Services allocated to them, where such assessments are required by applicable law or industry practice;
- 21.1.6 it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;
- 21.1.7 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;
- 21.1.8 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
- 21.1.9 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.
- 21.2 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.
- 21.3 The Service Provider undertakes in favour of SANParks at all times to:
- 21.3.1 act in accordance with the lawful instructions of SANParks;
- 21.3.2 use its knowledge and skills to the best advantage of SANParks;
- 21.3.3 not exceed the express or implied limits of the authority attendant to its appointment in terms of this Agreement;
- 21.3.4 not engage in activities which would detract from the proper performance of its duties in terms of this Agreement;
- 21.3.5 comply with all applicable Laws in performing its obligations pursuant to this Agreement and shall indemnify SANParks its employees and other agents against all Losses incurred by SANParks as a result of the Service Provider's failure to comply with such Laws;
- 21.3.6 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;
- 21.3.7 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;
- 21.3.8 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;
- 21.3.9 when dealing with SANParks' property, take all reasonable care and precautions to safe guard such property against any loss and/or possible damage whatsoever;
- 21.3.10 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;
- 21.3.11 comply with SANParks' health, safety, security, environmental and other standards (whichever is applicable);
- 21.3.12 co-operate and consult with other service providers of SANParks, should it be necessary for purposes of ensuring the rendering of the Services in a seamless manner;
- 21.3.13 maintain complete and accurate records of all Personnel rendering Services, copies of their identity documents, and details of their appointment for the Services to be performed, and shall provide such records to SANParks upon request; and
- 21.3.14 procure that all Personnel comply the provisions of the OHS Act while rendering the Services at the Premises, and will ensure the following health and safety requirements are adhered to while rendering Services at the Premises:
- 21.3.14.1 to the extent applicable, all Personnel will wear appropriate personal protective equipment at all times while rendering the Services at the Premises;
- 21.3.14.2 no Personnel may be permitted to render Services at the Premises if such person is medically unfit to safely perform the work allocated to them;
- 21.3.14.3 no Personnel will be permitted to access the Premises or render Services if that person is under the influence of any intoxicating substance; and
- 21.3.14.4 Personnel granted access to the Premises may not cook food or sleep at the Premises, unless expressly authorised by SANParks in writing.
- 21.4 **Bilateral Warranties**
- 21.4.1 Each Party represents and warrants in favour of the other Party that:
- 21.4.1.1 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
- 21.4.1.2 this Agreement constitutes an agreement valid and binding on such Party and enforceable against it in accordance with its terms.
- 21.5 A breach of any of the undertakings and/or warranties contained

- in this clause 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 34.2 below, unless such breach is incapable of being remedied. A termination under this clause will be without prejudice to any of SANParks rights.
- 21.6 The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Services.
- 22 SERVICE PROVIDER PERSONNEL**
- 22.1 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.
- 22.2 The Service Provider may not re-allocate or replace Key Personnel without 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.
- 22.3 The Service Provider shall perform a thorough background check on all Personnel involved in rendering the Services and shall not assign any Personnel to perform the Services if any information disclosed in such background check reveals a criminal conviction or otherwise indicates that such person, in any way, might not perform the Services in accordance with the standards applicable under this Agreement. Any other mandatory requirements with regard to Personnel who will render the Services, are as indicated in the Contract Schedule.
- 22.4 The Service Provider shall procure that its Personnel cooperate with the relevant law enforcement authorities that have authority and jurisdiction to act. Such cooperation shall include filing reports of incidents and calling in law enforcement officers for incidents or events requiring assistance from or intervention by a law enforcement officer.
- 22.5 The Service Provider shall be responsible for, and hereby indemnifies and hold SANParks harmless against, all such taxes or contributions, including penalties and interest, as well as for minimum wage, overtime or other requirements relative to the Personnel. The Personnel are the Service Provider's employees and the Service Provider shall be fully responsible for them and hereby indemnifies and holds SANParks harmless against any claims made by or on behalf of any such employee.
- 22.6 In hiring, retaining, compensating or disciplining Personnel the Service Provider shall conform with all applicable Laws and without limiting the generality of the foregoing, the Service Provider shall comply with the relevant labour laws of RSA.
- 22.7 The Service Provider shall be solely responsible for issuing instructions to, training and supervising its Personnel and to control the method or means by which they perform the Services.
- 23 STANDARD OPERATING PROCEDURE**
- 23.1 The Service Provider will, no later than 15 (fifteen) days from the Commencement Date, provide SANParks with a draft standard operating procedure document detailing the procedure for the Services, drafted in line with the SANParks standard operating procedure document regarding security, if applicable.
- 23.2 SANParks will within 7 (seven) days of receipt thereof submit to the Service Provider a second draft. The Parties shall agree a final document within a period of 7 (seven) days thereafter.
- 24 EQUIPMENT**
- 24.1 It is recorded that should the Service Provider and/or its Personnel, be required and/or need to use SANParks' Equipment in the rendering of the Services, such usage will be subject to the provisions of this clause.
- 24.2 Unless otherwise provided in this Agreement the Service Provider and/or its Personnel, as the case may be, will be entitled to use the SANParks' Equipment provided that:
- 24.2.1 SANParks consents in writing to the use of such SANParks' Equipment prior to the use thereof; and
- 24.2.2 the Service Provider ensures that all SANParks' Equipment is in a good and serviceable state of repair upon receipt thereof.
- 24.3 In the event that the Service Provider will not have notified SANParks that any SANParks' Equipment is not in a good and serviceable state of repair within 7 (seven) days of receiving same, the SANParks' Equipment will be deemed to have been provided to the Service Provider in a good and serviceable state of repair.
- 24.4 In the event that the Service Provider notifies SANParks that the SANParks' Equipment, or any element thereof is in any manner faulty, SANParks will be required to replace or repair such SANParks' Equipment at its own cost.
- 24.5 The Service Provider will be responsible for timeously arranging for, and for the costs associated with, the repair of any damage to the SANParks' Equipment caused due to its negligence and/or wilful default or the negligence and/or wilful default of any of its Personnel.
- 24.6 Unless expressly provided otherwise, SANParks will be responsible for the service and maintenance of SANParks Equipment during the Contract Period.
- 24.7 The Service Provider will as of the Commencement Date: -
- 24.7.1 ensure that the Equipment is, for the Contract Period, in good working order and available for purposes of rendering the Services; and
- 24.7.2 bear the risk of any damage to, loss or theft of the Equipment and SANParks' Equipment used at the Premises unless such damage or loss is solely caused as a result of SANParks' conduct. Ownership in and to the SANParks' Equipment shall at all times during the Contract Period vest with SANParks and the Service Provider shall have no claims in that regard.
- 25 DATA PROTECTION AND PROCESSING OF PERSONAL INFORMATION**
- 25.1 The Service Provider acknowledges that in the provision of the Services it may be exposed to Data of SANParks, its employees and/or third parties.
- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 The Service Provider hereby indemnifies and holds SANParks harmless against any Losses that SANParks may suffer due or relating to or arising from the Service Provider's and/or its Personnel's non-compliance with applicable information law and regulations
- 25.6 The Service Provider's obligations under this clause will survive the termination of this Agreement for any reason.
- 26 REPORTING**
- 26.1 The Service Provider shall be required to submit regular written reports, in the manner and in the frequency detailed in the RFP and Contract Schedule.
- 27 BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
- 27.1 The Service Provider must remain B-BBEE compliant and maintain or improve the B-BBEE status level it had when the RFP was awarded.
- 27.2 The Service Provider undertakes to provide SANParks, for the duration of the Agreement, with a copy of its valid B-BBEE certificate and/or B-BBEE affidavit (if applicable to the Service Provider in terms of applicable regulations), within 3 (three) days

following written request by duly authorised personnel at SANParks, or such other date as SANParks may stipulate from time to time.

- 27.3 Save in respect of any amendment to the B-BBEE Act or any other B-BBEE legislation, regulations, practice notes and Codes of Good Practice 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:
- 27.3.1 are as set out in the Bid Response;
- 27.3.2 were measured using the B-BBEE legislation and, the B-BBEE Codes in force as at the date of the Bid Response; and
- 27.3.3 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 as permitted in Law, if applicable.
- 27.4 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 –
- 27.4.1 the Service Provider will in writing notify SANParks 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
- 27.4.2 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) calendar days from the date of such notice, failing which SANParks may terminate this Agreement on written notice of termination delivered to the Service Provider or at any time thereafter if the Service Provider has not remedied the breach by the time of such termination.

## 28 INTELLECTUAL PROPERTY

- 28.1 Each party will own its Existing Material. All right, title, and ownership to or of any Deliverables, save for any 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 and to the extent that the Service Provider has any rights in the Deliverables, it hereby cedes same and waives all moral rights therein, in favour of SANParks.
- 28.2 Subject to clause 28.1 above, the Service Provider irrevocably:
- 28.2.1 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;
- 28.2.2 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;
- 28.2.3 grants to SANParks the exclusive right to alter and adapt the Deliverables;
- 28.2.4 assigns to SANParks the rights conferred upon the Service Provider as author by section 20(1) of the Copyright Act, 98 of 1978;
- 28.2.5 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.
- 28.3 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.
- 28.4 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.

- 28.5 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.
- 28.6 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.
- 28.7 All violations of proprietary rights may be prosecuted to the fullest extent permissible under applicable Law.

## 29 INTELLECTUAL PROPERTY INFRINGEMENT

- 29.1 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 indemnifies and 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 for 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.
- 29.2 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:-
- 29.2.1 obtain for SANParks the right to continue using the infringing item or the parts that constitute the infringement; or
- 29.2.2 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
- 29.2.3 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
- 29.2.4 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.
- 29.3 This clause will survive termination of the Agreement.
- 30 LIMITATION OF LIABILITY
- 30.1 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 Losses incurred by SANParks as a result of the Service Provider's failure to comply with the terms and conditions set out in this Agreement.
- 30.2 Any 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.
- 30.3 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.
- 30.4 The Service Provider hereby indemnifies and holds SANParks (and SANParks' personnel) harmless against any and all:
- 30.4.1 loss of or damage to any property or injury to or death of any person;
- 30.4.2 Losses that SANParks may suffer or incur arising directly or indirectly from:
- 30.4.2.1 wilful misconduct or fraud by the Service Provider or the Personnel;
- 30.4.2.2 a breach by the Service Provider of SANParks' proprietary or Confidential Information, or Intellectual Property;

- 30.4.2.3 an infringement by the Service Provider of any patent, design, copyright, trade secret or other proprietary right of any third party; or
- 30.4.2.4 collusion between the Service Provider (or any of its Personnel) and any of SANParks' employees or agents.
- 30.5 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.
- 31 OCCUPATIONAL LAWS**
- 31.1 The Service Provider will at all times comply fully with all applicable labour legislation and occupational laws, which includes the Service Provider obtaining cover for all of their Personnel suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Agreement by the Service Provider. If the Service Provider is unsure:
- 31.1.1 which occupational laws (or any parts) apply; or
- 31.1.2 how to comply fully with all applicable occupational laws;
- 31.1.3 the Service Provider must notify SANParks immediately in writing.
- 31.2 Where context allows, the Agreement between SANParks (or employer as defined in the OHS Act) and the Service Provider (or mandatory as defined in the OHS Act) in this clause constitutes the agreement in writing referred to in section 37(2) of the OHS Act.
- 31.3 The Service Provider indemnifies SANParks and SANParks' employees and agents against all Losses due to or arising from or related to the Service Provider's (i) failure to effect and maintain a program of compliance with occupational laws and regulations; or (ii) breach of the OHS Act or any regulations thereto, where SANParks:
- 31.3.1 incurs any liability or fines as a result thereof; or
- 31.3.2 is required by Law to provide benefits to, or pay assessments in respect of, the Service Provider or the Personnel (or their heirs or legal representatives) as a result thereof.
- 31.4 Neither SANParks nor its employees or agents shall be responsible for any loss, damage, injury or death, howsoever caused, to the Service Provider or to its Personnel and the Service Provider hereby indemnifies SANParks and its employees and agents harmless against all Losses which the Service Provider and its Personnel may, at any time, sustain or incur arising out of its access to and the Services performed at the Premises.
- 32 INDEMNITY AND INSURANCE**
- 32.1 With effect from the Commencement Date and subject to clause 30 the Service Provider irrevocably indemnifies, holds and undertakes to hold SANParks harmless against all Losses suffered by SANParks out of or, in the widest sense in connection with the entering into by SANParks of this Agreement.
- 32.2 Subject to the provisions of this Agreement, the Service Provider hereby indemnifies and holds SANParks, its servants and agents harmless against all losses suffered as a result of:
- 32.2.1 a breach of any of the Service Provider's warranties; and
- 32.2.2 any breach of the provisions of this Agreement by the Service Provider or by the Personnel, whether such breach occurs before or after the Loss suffered by SANParks.
- 32.3 The Service Provider hereby warrants that it possesses, as at the Commencement Date and shall maintain throughout the term of this Agreement, valid and sufficient insurance against any liability that it may incur in terms of this Agreement or as may be specified in the RFP.
- 32.4 The Service Provider shall, upon demand by SANParks, be obliged to furnish proof of such insurance to SANParks, and, if reasonably directed to do so, shall increase such insurance in accordance with SANParks' instructions.
- 33 DISPUTE RESOLUTION**
- 33.1 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 reasonable endeavours to settle the dispute as expeditiously as is practically possible.
- 33.2 If the dispute cannot be settled as provided for in clause 33.1 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.
- 33.3 Except as otherwise expressly permitted in terms of this Agreement, 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.
- 33.4 The provisions of this clause -
- 33.4.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw such consent or claim at any such proceedings that it is not bound by such provisions; and
- 33.4.2 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.
- 34 BREACH AND TERMINATION**
- 34.1 This clause exists in addition to s23 and s26 of the GCC and does not replace it.
- 34.2 if a Party ("Defaulting Party"):
- 34.2.1 does not fix any breach of this Agreement (or an order) within the time stipulated in this Agreement (or the relevant order) as agreed by the Parties, or where no such time is stipulated, within 5 (five) Business Days of receiving written notice from the other Party to do so;
- 34.2.2 breaches this Agreement materially twice or more in any 6-month period;
- 34.2.3 is insolvent (bankrupt) as set out in the Insolvency Act 24 of 1936;
- 34.2.4 has some legal disability, including but not limited to being placed in liquidation whether provisionally or finally or is placed under judicial management;
- 34.2.5 takes steps to deregister itself (close down) or is deregistered;
- 34.2.6 makes any settlement or arrangement with its creditors; or
- 34.2.7 fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;
- 34.3 then the other Party ("Aggrieved Party") may, without prejudice to any of its rights:
- 34.3.1 claim specific performance of this Agreement; or
- 34.3.2 immediately cancel this Agreement in writing; and
- 34.3.3 claim Losses from the Defaulting Party, including any claim for any fees already due, where applicable.
- 34.4 Despite any other breach provisions and notice periods contained in this Agreement, SANParks may, at its absolute and sole discretion, terminate the Agreement, upon at least 60 (sixty) 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.
- 34.5 The Parties may terminate this agreement by mutual agreement between the Parties.
- 34.6 SANParks may terminate this Agreement summarily at any time after the period to remedy the breach has expired, if the Service Provider has failed to remedy the defect in the opinion of SANParks, acting reasonably, by giving written notice to the Service Provider.
- 34.7 This clause is separate and divisible from the rest of this Agreement and remains effective even if this Agreement ends or is invalid.
- 35 EFFECTS OF TERMINATION**
- 35.1 On termination, cancellation, or expiry of this Agreement:
- 35.1.1 the Service Provider shall hand-over the Sites back to SANParks in substantially the same condition as they were

- received;
- 35.1.2 the Service Provider must within 5 (five) Business Days following such termination, cancellation or expiry, return all SANParks' Equipment to SANParks in substantially the same condition as they were received, reasonable wear and tear excluded;
- 35.1.3 the Service Provider must stop providing the Services; and
- 35.1.4 each Party must 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.
- 35.2 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:-
- 35.2.1 continued service for any period whether definite or indefinite;
- 35.2.2 the renewal or extension of the term of any agreement; or
- 35.2.3 the conclusion of any further agreements with SANParks.
- 35.3 If any expiry or termination of the Agreement, for any reason, is regarded as a "dismissal" in Law the Service Provider and Personnel will not be entitled to the payment of any remuneration or compensation of any nature, including redundancy or other compensatory payments.
- 35.4 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.
- 36 **SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL**
- 36.1 The Service Provider must notify SANParks in writing within 5 (five) Business Days of becoming aware of a Change Event.
- 36.2 SANParks may within 1 (one) month of such notification, or within 1 (one) month of otherwise becoming aware of the Change Event, as the case may be, opt to terminate this Agreement by giving the Service Provider written notice designating a date upon which such termination will become effective.
- 36.3 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, despite anything to the contrary in this Agreement.
- 36.4 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.
- 37 **CORRUPT GIFTS AND FRAUD**
- 37.1 The Service Provider warrants that in entering into this Agreement and for the duration of this Agreement it has not committed any and will not commit any Corrupt Act. Any breach of this warranty shall entitle SANParks to terminate this Agreement immediately on written notice to the Service Provider.
- 37.2 "Corrupt Act" means: -
- 37.2.1 offering, giving or agreeing to give to SANParks or any other organ of state or to any person employed by or on behalf of SANParks or any other organ of state any gift or consideration of any kind as an inducement or reward:
- 37.2.1.1 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
- 37.2.1.2 for showing or not showing favour or disfavour to any Person in relation to this Agreement or any other contract with SANParks or any other organ of state.
- 37.2.2 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;
- 37.2.3 committing any offence:
- 37.2.3.1 under any Law from time to time dealing with bribery, corruption or extortion;
- 37.2.3.2 under any Law creating offences in respect of fraudulent acts; or
- 37.2.3.3 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
- 37.2.3.4 defrauding or attempting to defraud or conspiring to defraud SANParks or any other public or private entity.
- 37.3 If the results of any audit of the Services conducted by or on behalf of SANParks indicate 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.
- 37.4 The Service Provider shall reimburse SANParks with all costs incurred by SANParks in exercising any of its rights in terms of this clause 37 (including, without limitation, any relevant increased administrative expenses and attorney and own client costs, where applicable).
- 37.5 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).
- 38 **CESSION, ASSIGNMENT AND SUB-CONTRACTING**
- 38.1 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.
- 38.2 Approval given in terms of clause 38.1 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.
- 38.3 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.
- 39 **DISENGAGEMENT ASSISTANCE**
- 39.1 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.
- 39.2 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:
- 39.2.1 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
- 39.2.2 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.
- 40 **FORCE MAJEURE**
- 40.1 No party will be responsible for any breach of this Agreement / failure to perform its obligations caused by circumstances beyond its control insofar as it is able to prove that:
- 40.1.1 such failure was due to an impediment beyond its reasonable control;

- 40.1.2 it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of this Agreement; and
- 40.1.3 it could not reasonably have avoided or overcome the impediment or at least its effects.
- 40.2 If there is an event of Force *Majeure*, the Party affected will tell the other immediately of:
- 40.2.1 the cause, nature and extent of the circumstances;
- 40.2.2 the expected duration of the circumstances; and
- 40.2.3 the extent to which its performance will be affected;
- and they will meet within 7 days to negotiate other ways to carry out any affected responsibilities under this Agreement. The Parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 40.3 If a Party cannot fulfil a material (significant) part of its responsibilities under this Agreement for more than 30 days because of Force *Majeure*, the other Party may cancel this Agreement without liability to the affected Party, on 7 days' written notice.
- 41 ADDRESSES AND NOTICES**
- 41.1 Notices
- 41.1.1 Any notice, consent, approval or other communication in connection with this Agreement ("Notice") will be in writing in English.
- 41.1.2 Each Party chooses the physical address, fax number and/or email address corresponding to its name as set out in the Contract Schedule as the address to which any Notice must be sent.
- 41.1.3 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 the Contract Schedule.
- 41.2 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: -
- 41.2.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in 41.1.2 the Contract Schedule. 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;
- 41.2.2 on the first Business Day after the date of transmission, if sent by email to the recipient's email address in 41.1.2 the Contract Schedule
- 41.3 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 41.1.2 the Contract Schedule.
- 41.4 Service of legal process
- 41.4.1 Each Party chooses its physical address referred to in the Contract Schedule 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*) addressed for the attention of the person referred to therein.
- 41.4.2 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.
- 41.5 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.
- 42 SANPARKS' SUBCONTRACTORS**
- 42.1 Where the Service Provider is required to liaise with third parties for purposes of this Agreement, the following provisions will apply:
- 42.1.1 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.
- 42.1.2 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
- 42.1.3 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 SANParks in response to an application by the Service Provider in writing to do so.
- 42.2 SANParks shall be responsible for obtaining and maintaining all necessary licenses, consents or authorities under the Third-Party Agreements (including, without limitation, any consents or licenses required to enable the Service Provider to fulfil its obligations in terms of the Agreement) and shall be liable for all fees and other charges payable to any third party pursuant to the Third Party Agreement.
- 43 PARTIES' REPRESENTATIVES**
- 43.1 In order to ensure that: -
- 43.1.1 a successful working relationship is maintained between the Parties;
- 43.1.2 any relevant queries, complaints, instructions and/or directions in relation to the rendering of the Services can be effectively and timeously dealt with; and
- 43.1.3 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 relationship manager referred to in the Contract Schedule.
- 43.2 SANParks may, on 14 (fourteen) days written notice to the Service Provider, change its designated representative.
- 44 NON-SOLICITATION**
- 44.1 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:
- 44.1.1 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
- 44.1.2 terminate his or her employment with its current employer.
- 44.2 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.
- 45 GENERAL**
- 45.1 **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.
- 45.2 **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.
- 45.3 **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. Each Party will pay its own costs in connection with the negotiation and finalisation of the Agreement.
- 45.4 **Governing Law:** The Agreement will be governed by the laws of the RSA and the Parties submit to the jurisdiction of the RSA

courts.

- 45.5 **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.
- 45.6 **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.
- 45.7 **Consent:** 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.
- 45.8 **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 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.

**ANNEXURE C**  
**POPIA COMPLIANCE REQUIREMENT**

**1. DEFINITIONS**

- 1.1 Unless the context indicates a contrary meaning:
- 1.1.1 **"Data Subject (s)"** means the person to whom Personal Information relates, including the Service Provider, SANParks, and SANParks' employees who are the recipients of the Services;
- 1.1.2 **"Laws"** means those laws which apply to the Services;
- 1.1.3 **"Operator"** means any party who processes Personal Information for a Responsible Party;
- 1.1.4 **"Personal Information"** means:
- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - (b) information relating to the education or the medical, financial, criminal or employment history of the person;
  - (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - (d) the biometric information of the person;
  - (e) the personal opinions, views or preferences of the person;
  - (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - (g) the views or opinions of another individual about the person; and
  - (h) the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person,
- including Special Personal Information;
- 1.1.5 **"process or processing"** means any operation or activity or any set of operations, whether or not by automatic means, performed by the Responsible Party or Operators including where applicable the Service Provider, SANParks and any other Operator under the control of SANParks or the Service Provider and concerning a Data Subject's Personal Information, including—
- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
  - (b) dissemination by means of transmission, distribution or making available in any other form; or
  - (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 1.1.6 **"POPIA"** means the Protection of Personal Information Act, 4 of 2013;
- 1.1.7 **"record"** means any recorded information
- (a) regardless of form or medium, including any of the following:
    - (i) writing on any material;
    - (ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;
    - (iii) label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
    - (iv) book, map, plan, graph or drawing;
    - (v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;
  - (b) in the possession or under the control of a Responsible Party;
  - (c) whether or not it was created by a Responsible Party; and
  - (d) regardless of when it came into existence;
- 1.1.8 **"Responsible Party"** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing Personal Information, including where applicable the Service Provider or SANParks;
- 1.1.9 **"Services"** means the Services provided by the Service Provider to SANParks and SANParks' employees under and in terms of the Agreement;
- 1.1.10 **"Special Personal Information"** means
- (a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a Data Subject; or
  - (b) the criminal behaviour of a Data Subject to the extent that such information relates to—
    - (i) the alleged commission by a Data Subject of any offence; or
    - (ii) any proceedings in respect of any offence allegedly committed by a Data Subject or the disposal of such proceedings.

**2. INTRODUCTION**

- 2.1 POPIA is a data protection privacy law applicable in South Africa, which seeks to manage and protect a person's Personal Information against abuse and misuse by another.
- 2.2 SANParks has concluded the primary agreement ("**Agreement**") in South Africa with the Service Provider, in terms of which the Service Provider will provide to SANParks' employees the Services.
- 2.3 In order to provide the Services, the Service Provider, SANParks, and certain Operators will have to process Personal Information belonging to each other and to the Data Subjects who are the recipients of the Service, namely SANParks employees
- 2.4 In accordance with the Laws, read together with the provisions of POPIA, the Service Provider, SANParks and where applicable any Operators have a legal duty to handle the Data Subject's Personal Information in a specific manner, which duties will be determined by the service types making up the Services and the type of processing which is carried out by SANParks, the Service Provider and the Operators.
- 2.5 Following the above, the Parties are desirous of setting out their respective rights and duties in relation to the Personal Information which is to be processed under and in terms of the Agreement, which rights and duties are set out below.

**3. RESPONSIBLE PARTY**

- 3.1 In order to provide the Services, the Service Provider may or will have to, as and when required, process Personal Information pertaining to the Data Subjects, in its capacity as a Responsible Party, which processing will be done as per the provisions set out under POPIA.
- 3.2 In accordance with the various Laws, read together with the provisions of POPIA, the Service Provider is under a duty to keep the Personal Information which it receives from the Data Subjects private and confidential, and not to disclose same to any other party save under the following circumstances:-
- 3.2.1 where the Service Provider has obtained the consent from Data Subject to disclose his or her Personal Information to SANParks or any other party;

- 3.2.2 where by virtue of the various Laws, the Service Provider has a legal duty to pass the Personal Information onwards to another party;
- 3.2.3 where the passing on of such Personal Information is done in order to protect a legitimate interest of the Data Subject;
- 3.2.4 where the Service Provider is under a contractual duty to provide reports to SANParks, such information will be passed on to SANParks in a de-identified manner unless SANParks requires identifiable information, as the context requires.

#### **4. OPERATOR**

- 4.1 In order to provide the Services, the Service Provider may have to, as and when required, process Personal Information pertaining to Data Subjects on behalf of the SANParks, which Services will be provided by the Service Provider in its capacity as an Operator and not as a Responsible Party and in such capacity warrants and undertakes:
  - 4.1.1 that it will in such capacity comply with the specific obligations in relation to any Personal Information which it may process on behalf of the SANParks as set out under POPIA as well as any reasonable directions and instructions which SANParks may direct from time to time;
  - 4.1.2 that it will only use and / or process the Personal Information for the purpose of the Services and for no other purpose;
  - 4.1.3 that it will keep all the Personal Information strictly confidential and not disclose the Personal Information to any other person unless required by law and only once it has provided SANParks and the Data Subject with adequate warning of this requirement to disclose and the related details thereof, including the identity of the person who is to receive the Personal Information, the reason for the disclosure and confirmation that the person to whom the Personal Information is to be disclosed has undertaken to process such Personal Information in accordance with the provisions of POPIA;
  - 4.1.4 that it will have in place appropriate reasonable technical and organisational measures to protect and safeguard the Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which in addition, provides a level of security appropriate to the risk represented by the processing and the nature of the Personal Information to be protected and which safeguards comply with the requirements set out under POPIA;
  - 4.1.5 that it will notify the SANParks immediately where it has reasonable grounds to believe that the Personal Information, which has been processed by it, has been lost, destroyed, or accessed or acquired by any unauthorised person. In such event, the Service Provider will (i) comply with all instructions and directions given by SANParks, (ii) take steps to minimise the impact of the security compromise on SANParks and affected Data Subjects, (iii) provide all information requested by SANParks, and (iv) cooperate fully with SANParks in relation to any notifications and investigations which SANParks may request assistance with;
  - 4.1.6 that it will process the Personal Information strictly in accordance with the Agreement and this Annexure C, POPIA and the POPIA processing conditions;
  - 4.1.7 that it will not sell, alienate or otherwise part with the Personal Information or any of the records housing the Personal Information;
  - 4.1.8 that it shall not transfer to a third party, the Personal Information or allow the processing of the Personal Information by a third-party, including a third-party Operator, without the written consent of SANParks;
  - 4.1.9 that it shall not transfer or process the Personal Information outside of South Africa without the prior written consent of SANParks; and
  - 4.1.10 that it will ensure that any person acting under its authority, including any employee or third party Operator, shall be obligated to process the Personal Information only on instructions from it or SANParks and strictly in accordance with this Annexure C, POPIA and the POPIA processing conditions.
- 4.2 The obligations in this Annexure also apply to and extend to any Personal Information disclosed to or received by the Service Provider prior to the signature date of this Annexure.
- 4.3 The Service Provider warrants that it has the legal authority to give the above-mentioned warranties and fulfil the undertakings set out hereunder.
- 4.4 SANParks, in order to ascertain compliance with the warranties and undertakings housed hereunder, will have the right, on reasonable notice and during regular business hours to view and or audit, either by itself or through an independent agent, the Service Provider's facilities, files, and any other data processing documentation needed for the required review, audit and/or independent or impartial inspection.
- 4.5 The Service Provider indemnifies and holds SANParks harmless against any loss, damage, action or claim which may be brought by whomsoever against SANParks or any of its directors or employees in consequence of the Service Provider or its employees, Operators or any agents breaching any of the warranties and undertakings housed under this clause 4.5 and which breach pertains to the Personal Information, which the Service Provider or its Operators have received or have been mandated to process in its capacity as Operator terms of this Annexure C.
- 4.6 In the event of the Service Provider, its employees, its Operators or agents breaching any of the warranties and undertakings housed under this clause or breaching any of the provisions of POPIA and / or the POPIA Personal Information conditions, and which breach pertains to the Personal Information which it has received from SANParks or the Data Subjects and which it has been mandated to process in terms of this Annexure, in its capacity as Operator, then in such an event, the Service Provider shall be liable for all and any damages which it may have caused in consequence of said breach, including patrimonial, non-patrimonial and punitive damages actually suffered by SANParks and / or SANParks employee or family member in consequence of said breach.
- 4.7 At the request of SANParks, the Service Provider will provide SANParks with evidence of financial resources sufficient to fulfil its responsibilities set out under this clause, which may include insurance coverage.

#### **5. DATA PROTECTION AND THE DUTIES OF THE CONTRACTING PARTIES**

- 5.1 The Service Provider and SANParks will collect and process each other's Personal Information for the purposes of the Agreement
- 5.2 Each Party agrees and accepts that they shall process the other Party's Personal Information in their respective capacities as a Responsible Party, which processing shall be done in order to pursue and fulfil the objectives and purposes of the Agreement
- 5.3 Each Party in their respective roles as Responsible Party will process the other's Personal Information in accordance with the provisions of POPIA.
- 5.4 Each Party, in so far as each other's Personal Information is concerned agrees:
  - 5.4.1 to take appropriate, reasonable technical and organisational security measures to protect each other's Personal Information from (i) unauthorised or accidental destruction; (ii) theft, forgery, loss, or unlawful use; (iii) technical faults; (iv) unauthorised alteration, copying access; or (v) any other unauthorised Processing;
  - 5.4.2 to immediately notify the other of any data security breach upon its discovery and promptly make available to the other details of the data security breach;
  - 5.4.3 to reasonably cooperate with each other in order to remediate such data security breach and prevent any recurrence.
- 5.5 On termination of the Agreement, each Party in so far as each other's Personal Information is concerned agrees, subject to the relevant legislation, to destroy or purge any documents, materials, or media that may contain Personal Information pertaining to the other and shall on request provide the other Party with a written and signed certification confirming the destruction.

#### **6. TERMINATION**

- 6.1 In the event of the Agreement being terminated whenever and for whatsoever reason, then in such an event:
  - 6.1.1 the Service Provider undertakes, where it processes the Data Subject's Personal Information as Operator:
    - (a) to restore and / or transfer back to SANParks all and any Personal Information pertaining to SANParks employees within a period of 30 (thirty) days from date of termination of the Agreement;

- (b) to confirm in writing simultaneously when a transfer takes place, that all such Personal Information, notwithstanding the return of same to the Service Provider, will be kept confidential and that it will not under any circumstances use the aforementioned information for whatsoever reason.
- 6.2 The Parties respective obligations to maintain confidentiality, privacy and security over Personal Information received pursuant to the Agreement shall survive the termination or expiration of the Agreement.
- 6.3 Without limitation of any provision contained in the Agreement, the Parties shall not use or disclose any Personal Information that such Party creates, receives, maintains, or transmits as a result of entering into or performing the Agreement, other than as expressly permitted or required by the Agreement or under POPIA.
- 6.4 Any breach by the Service Provider of its obligations set out in this Annexure C shall be deemed to be a material breach of this Annexure and every other agreement concluded between the Service Provider and SANParks and shall entitle, but not oblige, SANParks to immediately terminate the Agreement and any other agreement concluded between the parties on written notice to the Service Provider.