

CONCESSION OPERATOR CONTRACT

for the

PALMWAG CONCESSION

Entered into by and between

ANABEB CONSERVANCY HEREIN REPRESENTED BY MR KAPOI KASAONA IN HIS CAPACITY AS CHAIR AND DULY AUTHORIZED THERETO TO ENTER THIS AGREEMENT

and

SESFONTEIN CONSERVANCY HEREIN REPRESENTED BY MR USIEL NUAB IN HIS CAPACITY AS CHAIR AND DULY AUTHORIZED THERETO TO ENTER THIS AGREEMENT

and

TORRA CONSERVANCY HEREIN REPRESENTED BY MR BENNIE ROMAN IN HIS CAPACITY AS CHAIR AND DULY AUTHORIZED THERETO TO ENTER THIS AGREEMENT

(the Concessionaire)

and

WILDERNESS SAFARIS NAMIBIA (PTY) LTD (REGISTRATION NUMBER 87/085) HEREIN REPRESENTED BY MR MIKE WASSUNG IN HIS CAPACITY AS CHIEF EXECUTIVE OFFICER AND DULY AUTHORIZED THERETO TO ENTER THIS AGREEMENT

(the Operator)

(Jointly hereinafter referred to as "the Parties")

9th AUGUST 2012

w.w.m.

[Signature]

K.L.

[Signature]

[Signature]
R. M. K.

[Signature]

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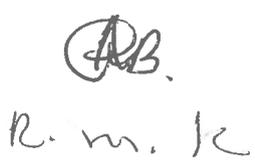
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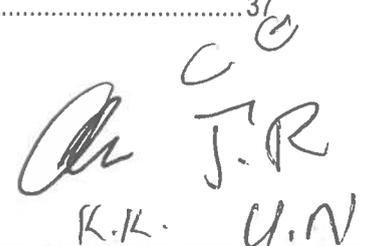
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THIS CONCESSION OPERATOR CONTRACT IS ENTERED INTO BETWEEN

- (1) **THE ANABEB CONSERVANCY, SESFONTEIN CONSERVANCY AND TORRA CONSERVANCY as CONCESSIONAIRE;** and
- (2) **NAMIB WILDERNESS SAFARIS (PTY) LTD, as OPERATOR.**

WHEREAS

- (A) The Concessionaire is comprised of the Anabeb Conservancy, the Sesfontein Conservancy and the Torra Conservancy, which in turn have agreed to collaborate in receiving the Concession Rights from the Ministry of Environment & Tourism (the Concessor) via the Head Concession Contract, managing the Concession Rights and sharing benefits from tourism in the Concession Area. The three parties constituting the Concessionaire shall register a legal entity in which all three parties shall be represented, and which legal entity shall be the Concessionaire for the purpose of all rights and obligations in terms of this Agreement.
- (B) The Concessor has granted the Concessionaire, through a Head Concession Contract (see Annexure 1) the right to utilise the Concession Area to generate income and stimulate economic development through the development and operation of tourism in the Concession Area, and to enter into this Concession Operator Contract with the Operator.
- (C) The Operator has expertise in the development and operation of tourism infrastructure, tourism services and activities for visitors to the Concession Area, and was selected by the Concessionaire as its preferred partner to implement the Project.
- (D) The Operator submitted technical and financial proposals to the Concessionaire to apply for the right to develop and operate the Concession Area (which original proposals were amended following negotiations between the Parties), as outlined in this Agreement (see Annexure 2).
- (E) Appointment of the Operator has received a "no-objection" by the Concessor, as required in terms of the Head Concession Contract.
- (F) The Concessionaire wishes to enter into a Concession Operator Contract for the purposes of implementing the Project with the Operator.
- (G) Without compromising the conservation of the Concession Area, the Parties intend to implement this Concession Operator Contract in the spirit of co-operation and mutual support to achieve the Concessionaire's and the Operator's commercial objectives, whilst at the same time allowing the Concessionaire to fulfil its development objectives.

NOW THEREFORE the Parties agree as follows -

1 DEFINITIONS AND INTERPRETATION

- 1.1 The headings in this Concession Operator Contract, in the Annexures are for convenience only and shall not be taken into consideration in the interpretation or construction thereof.
- 1.2 Words importing the singular only, also include the plural and vice versa where the context requires.

- 1.3 Words importing reference to one or other gender shall be taken to mean both genders.
- 1.4 Any reference to any agreement or Annexure shall be construed as including a reference to any agreement or Annexure amending or substituting that agreement or Annexure and be deemed to be part of this Agreement.
- 1.5 If any definition in this Clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it were a substantive provision in the body of this Concession Operator Contract.
- 1.6 In this Concession Operator Contract and its Annexures the following words and expressions shall have the meanings hereby assigned to them when said terms are used with a capitalised first letter:

“Act”	the Nature Conservation Ordinance 4 of 1975, including amendments promulgated thereafter, or succeeding legislation that may repeal and replace these laws;
“Agreement”	this Concession Operator Contract, including the Annexures hereto;
“Annexure”	an annexure hereto;
“Associated Agreements”	any contracts related to the design, construction, financing, Operation, Management and Maintenance of the Concession or otherwise entered into by the Operator in connection with the Project, including, but not limited to, those contracts listed in Annexure 3;
“Best Industry Practice”	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced tourism operator, contractor or professional seeking in good faith to comply with his contractual obligations, complying with all applicable legislation and laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Concession Operator Contract the intention being that an acceptable balance shall be maintained between tourism and conservation;
“Business Day”	a normal business day excluding weekends and statutory public holidays;
“Clause”	a clause of this Agreement;
“Compliance Events”	shall mean the events outlined in Annexure 4 that must take place prior to the start of any Construction Works;
“Concession”	the restricted rights to develop tourism infrastructure and conduct tourism activities on business principles in proclaimed protected areas, which shall also refer to the granting of the Concession

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Rights outlined in Annexure 4;

“Concession Area”	the area, commonly known as “Palmwag”, in which the Operator is entitled to exercise the Concession Rights, as defined in Annexure 4;
“Concession Area Entry Fee”	the fee charged by the Operator to members of the public and/or to tourism operators for entering the Concession Area for the purpose of conducting tourism activities, as further described in Annexure 4;
“Concession Area Rules”	rules set by the Concessor pertaining to the management and use of the Concession Area, which include but are not limited to the Act, and guidelines specified in this Agreement (see Annexures 4, 6 and 7), and in the Management Plan;
“Concessionaire”	the counterparty to the Operator hereunder;
“Concession Assets”	collectively the Existing Concession Assets and the New Concession Assets, or, if the context is appropriate, any one of them, as further outlined in Annexure 5;
“Concession Fee”	the amount payable for the Concession Rights by the Operator to the Concessionaire in terms of Clause 2.6 and Annexure 4;
“Concession Operator Contract”	this Concession Operator Contract between the Concessionaire and the Operator including the Annexures hereto;
“Concession Period”	the period specified in Clause 2.3 and Annexure 4, and any extensions thereof in accordance with this Concession Operator Contract;
“Concession Rights”	all the rights conferred upon the Operator pursuant to this Concession Operator Contract and Annexures for the purposes of the Project, including, without limitation, the right to traverse and use, including to design, construct, rehabilitate, repair, finance, commission, Operate, Manage, Maintain, repair, charge and collect and raise revenues from the Project, as further explained and illustrated in Annexure 4 of this Agreement;
“Concessor”	Government of the Republic of Namibia represented by the Ministry of Environment & Tourism, and thus being the counterparty to the Concessionaire in terms of the Head Concession Contract;
“Concessor’s Requirements”	specific requirements of the Ministry, including those outlined in Annexure 4, 6 and 7 attached hereto;
“Conservation Management”	the management of biodiversity in all its facets and fluxes as well as palaeontological and cultural (including archaeological) assets in a manner that is consistent with the principles and objectives of the Concession Area and its future Management Plan;

BBR w.w.m. M.H.   R.m.J.C. C.G.  J.R. K.K. U.M.

“Construction Contracts”	the design and construction contracts, entered into or to be entered into, for purposes of the design, construction, rehabilitation, repair and/or commissioning of the relevant Concession Assets (other than for general maintenance or up-keep purposes);
“Construction Phase”	the phase(s) during the Concession Period in which Construction Works are carried out;
“Construction Site”	that part of the Concession Area required for the Construction Works;
“Construction Works”	design, construction, rehabilitation, repair and/or commissioning of the relevant Concession Assets in accordance with this Concession Operator Contract and the Construction Contracts (other than for general maintenance or up-keep purposes);
“Contractor”	the party designated as Contractor under the relevant Construction Contracts;
“Decommissioning period”	the period during which the Operator shall be responsible for vacating the Concession Area or such parts as are utilised by it, and restoring it to the condition as stipulated in the EIA and EMP;
“Detailed Design”	the detailed design for the Construction Works or part thereof prepared by Contractor(s) under the Construction Contract(s), as described in more detailed within Clause 7;
“Effective Date”	the date specified in Annexure 4 determining when the rights and obligations of this Concession Operator Contract become binding on the Parties;
“EIA” or “Environmental Impact Assessment”	the process of assessing the environmental effects of a development and its subsequent operation and ultimate decommissioning, carried out in accordance with applicable Regulatory Provisions and guidelines;
“Environmental and Development Guidelines”	the guidelines for developing or conducting tourism related projects or activities within the Concession Area set forth in Annexure 6, as same may be revised and updated by the Concessionaire and the Operator from time to time, or imposed by the Concessor as new environmental information becomes available;
“EMP” or “Environmental Management Plan”	the environmental management plan to be developed and implemented by the Operator using the template provided in Annexure 6, outlining activities and guidelines for the design, operation and ultimate decommissioning of the developments in terms of this Project;
“Existing Concession Assets”	the immovable assets in the Concession Area associated with or connected to the Project as at the Effective Date, as specified in Annexure 5. For the avoidance of doubt, the following classes of assets shall be considered to be immovable: fences; buildings and

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all their associated fixtures and fittings whether embedded in the ground or not; all other accommodation, storage or service structures whether with or without foundations (including, but not limited to, tents and timber shelters) and all their associated fixtures and fittings whether embedded in the ground or not; all transport infrastructure including airstrips, roads, bridges; and all infrastructure associated with the provision of power, water and sanitation (including, but not limited to, solar installations, power lines, dams, boreholes, wildlife waterholes, windmills, storage tanks, water-pumps and sewerage systems);

“Force Majeure” has the meaning set forth in Clause 14;

“Gross Revenue” all monies, in any manner directly generated by and/or flowing or arising from the Concession and the Concession Operator Contract, received or receivable by the , excluding the commissions of bona fide travel agents and tour operators not related to the Project Company, park entry fees collected from clients on behalf of the Concessor, Namibia Tourism Board levy received from clients, damages claimed, interest earned, insurance proceeds, capital gains realised on the disposal of movable assets and Value Added Tax received by the . For any given year, this Gross Revenue must be consistent with that presented in the Project Company’s accounts for tax purposes for the appropriate Financial Year, as certified by the Operator’s auditors;

“Head Concession Contract” the Head Concession Contract between the Concessor and the Concessionaire including the Annexures thereto (see Annexure 1);

“Joint Management Committee” or “the Committee” the committee to be formed by the Concessionaire, Operator and Concessor as per Clause 2.7 of this Agreement;

“Management Plan” a plan related to the management and use of the Concession Area which is being developed by the Concessor in consultation with the Concessionaire;

“Material Damage” used in the context of the environment means any change in the environment within the Concession Area, caused by the Operator as a result of any activity, whether engaged in by the Operator or not, where the change results in a material adverse effect on the ecological or cultural (including archaeological) integrity of the environment or on the ability of the eco-system on the land to recover or which will have a material effect in the future, all of which shall be measured against the EIA or any subsequent EIA;

“Minimum Concession Fee” shall mean the minimum annual amount payable by the Operator to the Concessionaire, as specified in Annexure 4;

“Ministry” the Ministry of Environment & Tourism;

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“New Concession Assets”	The immovable assets acquired or constructed by the Operator and/or the Concessionaire during the Concession Period or, if the context is appropriate, any one of them, as specified in Annexure 5. For the avoidance of doubt, the following classes of assets shall be considered to be immovable: fences; buildings and all their associated fixtures and fittings whether embedded in the ground or not; all other accommodation, storage or service structures whether with or without foundations (including, but not limited to, tents and timber shelters) and all their associated fixtures and fittings whether embedded in the ground or not; all transport infrastructure including airstrips, roads, bridges; and all infrastructure associated with the provision of power, water and sanitation (including, but not limited to, solar installations, power lines, dams, boreholes, wildlife waterholes, windmills, storage tanks, water-pumps and sewerage systems);
“Operational Period”	the period following the Construction Phase during which the Operator utilises the Concession Assets for the purpose of exercising its Concession Rights;
“Operation, Management and Maintenance” or “Operate, Manage and Maintain”	all activities necessary for the operation, management and maintenance of the Concession Assets and the Concession Area utilised by the Operator in accordance with this Concession Operator Contract;
“Operator”	the counterparty to the Concessionaire hereunder;
“Party”	the Concessionaire or the Operator as the case may be;
“Parties”	collectively, the Concessionaire and the Operator;
“Person”	any individual, partnership, conservancy, corporation, company, business organisation trust, governmental agency, parastatal, Relevant Ministry or other entity;
“Previously Disadvantaged Namibian / Historically Disadvantaged Group” (“PDN/PDG”)	any individuals, or organisation or group who are citizens of the Republic of Namibia who were socially, economically or educationally disadvantaged by racially discriminatory laws or practices which were enacted or practised before the independence of Namibia;
“Project”	the design, construction, rehabilitation, repair, commissioning, financing, Operation, Management and Maintenance of the Concession Assets and implementation of the Concession Rights within the Concession Area, under the terms of this Concession Operator Contract;
“Regulations”	regulations issued in terms of the Act;
“Regulatory	(a) the special conditions and guidelines outlined in Annexures 4,

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SR [Signature] Ball M-H [Signature] 12. m. 1c [Signature] [Signature]

Provisions”

6 and 7; and

(b) collectively the prevailing laws, regulations, ordinances, policy directives and standards of the State and any Relevant Ministry which in any way affect or apply to the Project and/or the activities of the Operator and/or this Concession Operator Contract from time to time or, if the context is appropriate, any one of them and where appropriate includes the Regulations, Concession Area Rules and the Management Plan;

“Related Party”

any Person who holds at least 5% equity interest in the Operator, or any Person in whom the Operator holds at least 5% equity, or

a Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by a Person who holds at least 5% equity interest in the Operator, or

is under the common control with any other Person and who together hold at least a 5% equity interest in the Operator;

where “control” with respect to any Person means the power to direct the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise and the term “controlled” has the meaning correlative to the foregoing;

“Related Party Transaction”

any material transaction relating in any way directly or indirectly to the Project in which the Operator leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or enters into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, a Related Party (other than the Operator);

“Relevant Ministry”

any ministry, department, regional or local agency, ministry or body of the State and any other public ministry, body, entity or Person having jurisdiction under the laws of the State with respect to the Concessionaire or the Operator or the Project;

“Remedy Period”

the period (which shall be reasonable) granted by either party to the other, during which the notified party must take action to make good the damage or rectify the notified default or problem;

“Responsible Persons”

for the purposes of Clause 12, any Contractor, sub-contractor at any level, agent, servant, officer or employee of the Operator;

“State”

the Government of the Republic of Namibia, acting directly or through its lawfully designated representatives.

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2 FRAMEWORK

2.1 Operator Statements

- 2.1.1 The Operator will undertake the Project at its own cost and risk in accordance with the provisions of this Concession Operator Contract. The Concessionaire shall not provide any guarantee or support to the Operator except as otherwise specifically provided herein. This Concession Operator Contract shall not be deemed to grant the Operator any right to impose any obligations on the Concessionaire except as specifically stated in this Concession Operator Contract.
- 2.1.2 All the rights, obligations and remedies of the parties to this Concession Operator Contract against each other are subject to the terms of the Head Concession Contract, which grants the Parties hereto the right to enter into this Concession Operator Contract. In case of a conflict between the provisions of this Concession Operator Contract and the Head Concession Contract, the provisions of the Head Concession Contract shall override the provisions of this Concession Operator Contract.
- 2.1.3 Notwithstanding that this Concession Operator Contract permits or requires the Operator to engage third parties to perform all or part of the Project, such engagements shall not release the Operator from any of its obligations and responsibilities to the Concessionaire hereunder, and the Operator shall be fully responsible for the acts and omissions of such third parties.

2.2 Granting of Concession Rights

- 2.2.1 Subject to the terms of this Concession Operator Contract, the Concession Rights are granted to the Operator from the Effective Date of this Concession Operator Contract for the Concession Area as defined in Annexure 4, until the termination or expiry of this Concession Operator Contract.
- 2.2.2 Subject to the provisions of this Concession Operator Contract, the Concessionaire grants to the Operator the right during the Concession Period to:
 - 2.2.2.1 finance, design, construct, Operate, Manage and Maintain the Concession Assets;
 - 2.2.2.2 generate, charge and collect revenues from the Operation, Management and Maintenance of the Concession Assets during the Concession Period; and
 - 2.2.2.3 use the Concession Area as defined by the Concession Rights contained in Annexure 4 for the purposes of the Project.
- 2.2.3 The Operator shall furthermore be entitled to the rights of traverse for tourism purposes over the Concession Area, as outlined in Annexure 4.
- 2.2.4 The Concessionaire reserves the right to grant third parties access to the Concession Area, if it is obliged to do so by the Concessor in terms of the Head Concession Contract, for the purposes of obtaining access to other Concessions, prospecting sites and mining areas, or for Conservation Management, to conduct

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research, or for any other justifiable and reasonable purposes. The Concessionaire shall be obliged to inform and involve the Operator in any discussions and/or negotiations with the Concessor or any Relevant Ministry about access to the Concession Area, or any other action may influence the rights of the Operator. The Concessionaire shall at all times communicate this right to the Concessor or Relevant Ministry, as the case may be, and if necessary also enforce it with the remedies available in the Head Concession Contract and in law.

2.3 Term of Concession Period

The Concession Period shall be for the term as contained in Annexure 4, subject to termination in accordance with this Concession Operator Contract.

2.4 Concession Operator Contract Legally Binding at Effective Date

Subject to the fulfilling of the suspensive conditions in Annexure 4, the Parties hereby represent and warrant that as from the Effective Date, this Concession Operator Contract is legally valid and binding upon them.

2.5 Concession Rights

Further details regarding the rights and obligations bestowed upon the Operator pertaining to:

- the description of the Concession Rights;
- the exclusivity rights;
- carrying capacity to be exploited;
- the tourism activities allowed and activities not allowed;
- non-tourism activities allowed;
- rights of access;
- the requirements of reporting, maintaining registers and records;
- the Concession Area Rules; and
- environmental and development guidelines,

are contained in this Concession Operator Contract, as well as in Annexures 4, 6 and 7.

2.6 Payment of Concession Fees

2.6.1 The Operator shall pay the Concession Fee to the Concessionaire as specified in Annexure 4.

2.6.2 The Operator shall pay all amounts due to the Concessionaire in terms of this Agreement free of exchange, deduction or set-off in Namibian Dollars and in the manner directed by the Concessionaire.

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BAR *M. H.* *AB* *B. M. K.* *C. G.*
J. R. *K. K.* *Y. N.*

- 2.6.3 If the Operator is in default in payment of the Concession Fee for twenty (20) Business Days after a due date specified in Annexure 4, then the Operator shall pay interest on the unpaid fee from the due date until the date of payment at the penalty interest rate as specified in Annexure 4.
- 2.6.4 Notwithstanding the provisions of Clause 2.6.1 above, the Operator shall be liable to collect Concession Area Entry Fees as specified in Annexure 4.
- 2.6.5 Failure by the Operator to make payment of the Concession Fee (with due consideration to the Remedy Period specified in the Breach Clause 16) shall constitute a material breach of the terms of this Agreement, and entitle the Concessionaire to invoke the provisions of the Breach Clause 16.
- 2.6.6 In determining the Gross Revenue of the Operator for Concession Fee calculation purposes, the Operator herewith irrevocably agrees and binds itself to comply with the reporting and auditing requirements as determined by the Concessionaire, and to grant the Concessionaire and/or its agents, unrestricted access on demand to such records at the Concessionaire's cost.
- 2.6.7 The Operator will be responsible for all taxes of general application and without limiting the generality of the a foregoing, any duties, fees or taxes assessed by any Relevant Ministry in respect of this Concession, or in respect of activities conducted with regard to this Concession or activities undertaken by the Concessor relating to the regulation of this Concession Operator Contract.
- 2.6.8 For the avoidance of any doubt, neither the Concessionaire, nor the Concessor, the State, nor any Relevant Ministry shall be liable for any payments except as expressly specified in this Concession Operator Contract or in any applicable law.

2.7 Joint Management Committee of the Concession

- 2.7.1 The parties shall establish the Joint Management Committee (the "Committee") of the Concession granted in terms of this Concession Operator Contract within 3 (three) months of the Effective Date.
- 2.7.2 The purpose of the Committee shall be to:
 - 2.7.2.1 Oversee the implementation of and adherence to this Concession Operator Contract by the Parties;
 - 2.7.2.2 Attempt to find amicable resolutions to disputes between the parties before such disputes are dealt with in terms of this Concession Operator Contract.
- 2.7.3 Subject to further agreement, the Joint Management Committee shall consist of:
 - 2.7.3.1 At least one representative of the Concessor;
 - 2.7.3.2 At least one representative of each of the three conservancies constituting the Concessionaire; and
 - 2.7.3.3 At least one representative of the Operator.

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2.7.4 The Committee members shall elect from among their number:

2.7.4.1 a Chairperson,

2.7.4.2 a Vice Chairperson, and

2.7.4.3 a Secretary

2.7.5 The Committee shall convene at least quarterly or at such more frequent intervals as the circumstances of the Parties, the Concession Area and the Concession may require.

2.7.6 The Committee shall prepare minutes of all its meetings, and at each meeting approve the minutes of the previous meeting.

2.7.7 The Committee members may invite support organisations or advisors to JMC meetings as non-voting attendants.

3 OPERATOR COVENANTS

3.1 Registration & Commencement of Operations

3.1.1 The Operator shall be a incorporated juristic person (a (Pty) Ltd Company), recognised in terms of the laws of the Republic of Namibia, shall be a *bona fide* accommodation or tourism provider in Namibia, shall be registered with the Namibia Tourism Board and shall remain as such for the entire Concession Period.

3.1.2 The Operator shall not amend, restate, supplement or otherwise modify its Articles of Association or Memorandum of Association or substantively change its ownership, unless otherwise agreed by the Concessionaire in writing, where such agreement shall not be unreasonably withheld. For the purposes of this Clause 3.1.2, 'substantively change its ownership' shall mean a change of 10% or more in the shareholding of the Operator or any Related Party.

3.1.3 The Operator shall conclude the Construction Phase and / or commence the Operational Period as approved by the Concessionaire not later than twelve (12) months from the Effective Date, failing which the Concessionaire shall have the right to terminate this Concession Operator Contract in terms of Clause 16 hereof.

3.2 Environmental Compliance and Compliance with Laws, Regulations and Standards

3.2.1 From the Effective Date, and during the Construction Phase and the Operational Period, the Operator shall take all reasonable steps to ensure that it and its officers, employees, Contractors, sub-contractors at all levels, sub-agents, assignees, employees, guests, invitees and patrons abide by and comply with the Nature Conservation Ordinance, the Environmental Management Act, or any subsequent legislation, any Regulatory Provisions under any legislation, the Environmental and Development Guidelines generally in respect of the Concession Area and specifically in respect of this Concession, the Project EIA and EMP, and any valid

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- and enforceable directives or rules issued by the Ministry's staff and/or the Concessionaire from time to time.
- 3.2.2 The Concessionaire shall use all best endeavours in assisting the Operator to acquire the appropriate environmental permits and other permits, approvals and/or licences in accordance with the Regulatory Provisions, provided, however that the Concessionaire shall bear no liability for any failure of the Operator to obtain such permits.
- 3.2.3 Without prejudice to Clause 3.2.2, the Operator shall obtain all necessary environmental and other permits, approvals and/or licences in accordance with the Regulatory Provisions and shall comply with all conditions of any environmental or other permit, approval or licence granted by any Relevant Ministry and shall take all other necessary action required under the Regulatory Provisions for the implementation and the development, Operation, Management and Maintenance of the Project for the Concession Period.
- 3.2.4 Action that is prohibited in terms of the Regulatory Provisions or non-compliance with any duty or obligation that is imposed by the Regulatory Provisions shall be deemed to be a breach of this Concession Operator Contract, as well as a breach by the Concessionaire of the Head Concession Contract. The Concessionaire shall be entitled to give the Operator notice to rectify any such breach if such breach is capable of rectification but, in any event, the Concessionaire shall be entitled to act on any such breach to protect its rights and interests. The Operator hereby indemnifies the Concessionaire and the Concessor for any costs, losses and expenses suffered or incurred by the Concessionaire and / or the Concessor as a result of the Concessionaire and / or the Concessor so acting to protect its rights and interests.
- 3.2.5 The Operator shall undertake an EIA and develop an EMP in respect of the Project, at its own cost and risk, and which is to be prepared by a duly qualified independent environmental consultant, in accordance with the Environmental Management Act.
- 3.2.6 The Operator shall bear all risks and costs with respect to Material Damage to the natural environment caused by the implementation of the Project during the Concession Period arising from any act or omission of the Operator or any third party for whom it is responsible, save where such Material Damage is an unavoidable result of the Project as permitted in terms of this Concession Operator Contract. Should the Operator fail to fulfil any obligations in respect of the Construction, Operation, Management and/or Maintenance of the Concession Assets or such parts of the Concession Area used for this Project, and the associated infrastructure or permit behaviour which, in the reasonable opinion of the Ministry and/or the Concessionaire, may result in Material Damage to the environment, then, without prejudice to the Operator's obligations hereunder and at law, the Ministry and/or the Concessionaire shall be entitled to give written notice to the Operator to immediately cease and desist from such conduct or behaviour, and in such notice shall set out its reasons therefore and the Ministry and/or the Concessionaire shall be entitled forthwith to exercise any powers granted to them in terms of the Regulatory Provisions in respect of the Conservation Management of the Concession Area and the Operator shall promptly make payment to the

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Concessor and/or the Concessionaire for their costs, expenses and other damages suffered or incurred or reasonably expected to be suffered or incurred in connection with the execution of such powers.

- 3.2.7 The Operator shall appoint, at no cost to the Concessionaire, an independent and duly qualified environmental control officer, who shall be responsible for ensuring that Construction Works and Operations, Management and Maintenance are performed in accordance with the Ministry's Requirements and relevant environmental Regulatory Provisions and for monitoring and ensuring the implementation and effectiveness of mitigation measures and other requirements and targets set forth in the EIA and EMP, subject to approval by the Concessionaire and / or the Ministry. The Operator shall deliver regular reports, as frequent as determined in the EMP, prepared and signed by the environmental control officer to the Concessionaire during the Construction Phase and thereafter annual reports as detailed in Clause 8.1.3. Such reports shall also be signed by the authorised signatory representing the Operator.
- 3.2.8 All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest or burial sites discovered within the Concession Area shall (as between the Parties) be the property of the Ministry or other Relevant Ministry. The Operator shall take reasonable precautions to prevent its staff, labour, Contractors or other Persons from removing or damaging any such article or thing. The Operator shall, immediately upon discovery of such article or thing, advise the Concessionaire and the Ministry, and the Ministry shall issue instructions for dealing with it.
- 3.2.9 Subject to complying with its obligations under Clause 3.2.8, the Operator shall be required to minimise and mitigate, and to take reasonable steps to procure that its Contractors minimise and mitigate, to the maximum extent possible, the damage to such discovery as is referred to in Clause 3.2.8 and shall deal with the discovery in terms of the Environmental and Development Guidelines, the EIA and EMP. If need be a revised EIA and EMP specific to the discovery can be called for by the Concessionaire or the Ministry.
- 3.2.10 The Operator shall take all reasonable steps in the performance of its obligations hereunder to prevent and limit the occurrence of any environmental health hazards and to ensure the health and safety of staff, guests, invitees and patrons and shall ensure that all staff, guests, invitees and patrons are adequately covered under an insurance policy as defined in Clause 13 and Annexure 4.
- 3.2.11 During the Concession Period, the Operator shall operate at all times in an environmentally responsible way by adopting appropriate operating methods and practices for conducting a tourism business in a proclaimed nature area and/or protected area and shall adhere to the Regulatory Provisions, the Management Plan, the Environmental and Development Guidelines, the EIA and EMP. This Concession Operator Contract does not confer any consumptive use of plants, animals, minerals or any other natural resources to the Operator.

Further matters to be taken into account are all ecological aspects, including waste disposal, human waste treatment, firewood collection and fuel self sufficiency, camp fire placement, fauna and flora protection, acceptable practices for wildlife


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viewing and photography, feeding or touching animals, preservation of water supply, minimising noise levels, visual impacts, the removal of plants, insects, rocks and the like, removal of souvenirs, social aspects, including local customs and traditions, permission to take photographs, language, privacy, response to begging, use of technological equipment, bartering and bargaining, indigenous rights, local officials and off-limits areas. The Operator shall bring any activity that may have a detrimental impact on the environment to the attention of both the Concessionaire and the Ministry before implementation by the Operator.

- 3.2.12 Any failure by the Operator to adhere to the provisions of Clause 3.2.11, and which failure amounts to a material breach, shall, subject to a Remedy Period, entitle the Concessionaire to invoke the provisions of the Suspension Clause 15 and/or of the Termination Clause 16.1, without liability on the part of the Concessionaire or Ministry for any losses or damages suffered by the Operator.

3.3 Related Party Transactions

- 3.3.1 Unless otherwise agreed by the Concessionaire in writing, the Operator will enter into no material Related Party Transactions, other than Related Party Transactions that are no less favourable to the Operator than those that could have been obtained in a comparable arm's-length transaction by the Operator with an unrelated person.
- 3.3.2 The Concessionaire shall have the right to review the basis for all costs charged, directly or indirectly, to the Operator by a Related Party. The Operator shall give prior written notice to the Concessionaire of any material Related Party Transaction prior to entry therein together with all relevant details relating thereto.
- 3.3.3 The Concessionaire reserves the right to conduct a particularly thorough examination of the cost basis of Related Party Transactions involving the Operator and any companies providing travel agent, booking agent, tourism operating or management services for a fee or commission. Such fees and commissions will be required to conform to normal industry practice. In the event that the Operator benefits directly or indirectly in a financial sense from fees and concessions charged and/or paid to a Related Party arising from this Concession Operator Contract, such revenue to the Operator shall be deemed to be included in the revenue base from which the fees and payments to the Concessionaire are calculated.

3.4 Intellectual Property

- 3.4.1 It is specifically recorded that all intellectual property rights, whether capable of registration or not, regarding the Concession Area's name, logo, image and all other intellectual property matters relating to the Concession Area, its name, logo and/or image shall remain the sole property of the Concessor.
- 3.4.2 The Operator acknowledges that the name of the Concession Area (the "Protected Name") is associated with and peculiar to the Concession Area and is the intellectual property of the Concessor. Consequently, the Operator agrees that the sole and exclusive ownership of the Protected Name shall vest in the Concessor

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and should the Operator utilise the Protected Name, it does so only in terms of this Concession Operator Contract and with the prior written approval of the Concessor.

- 3.4.3 All intellectual property rights, whether capable of registration or not, regarding the Concessionaire's name, logo, image and all other intellectual property matters relating to the Concessionaire, its name, logo and/or image shall remain the sole property of the Concessionaire.
- 3.4.4 Subject to existing rights and obligations, the Concessionaire shall, on application by the Operator, grant a non-exclusive right and licence to the Operator to use the Concessionaire's trademarks.
- 3.4.5 In order to establish and maintain high standards of style, quality and propriety associated with the Concessionaire and / or the Concessor, in the event, the Operator desires to use the Concessionaire's and / or the Concessor's trademarks or logos in any way, the Operator shall first submit the concept or a sample of the proposed use to the Concessionaire and / or the Concessor for approval. Under no circumstances shall any use of the Concessionaire's and / or the Concessor's trademarks or logos or the image or likeness of any trademark, logo or employee, which the Concessionaire and / or the Concessor in good faith believes reflects unfavourably upon or disparages the Concessionaire and / or the Concessor, be approved. The Concessionaire and / or Concessor shall use their best efforts to advise the Operator of its approval or disapproval of the concept or sample within 20 (twenty) Business Days of its receipt of the concept or sample. If the Concessionaire and / or the Concessor approve the concept or sample, the Operator shall not depart there from in any material respect without the Concessionaire's and / or the Concessor's further written approval.
- 3.4.6 If at any time the Concessionaire and / or the Concessor withdraw their approval for the specified use of any trademark or logo, the Operator shall forthwith discontinue all use of such Concessionaire or Ministry trademark or logo and shall remove from public sale or distribution, any previously approved product in respect of which the Concessionaire and / or the Concessor has rescinded approval.
- 3.4.7 Within 20 (twenty) Business Days after the termination of this Concession Operator Contract and where the Operator has operated an entity utilising any Protected Names with the permission of the Concessionaire and / or the Concessor, the Operator shall change the name to a name not substantially similar to any of the Protected Names.
- 3.4.8 The naming of the Operator's lodge or business operation shall be done in consultation with the Concessionaire and subject to the Concessionaire's approval which will not be unreasonably withheld.
- 3.4.9 In circumstances where the name chosen by the Operator and approved by the Concessionaire and / or the Concessor is not part of the Concessionaire's and / or the Concessor's intellectual property, then the rights of the Concessionaire and / or the Concessor contemplated in this Clause 3.4 shall not be applicable and the intellectual property shall be the sole property of the Operator.

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3.5 Transfer of Concession Rights and Concession Assets

- 3.5.1 At the end of the Concession Period or at such earlier time as may be provided herein, the Operator shall hand over its rights or interest in the immovable Concession Assets to the Concessionaire free of charges, liens, claims or encumbrances of any kind whatsoever, free of any liabilities and in good condition. The Operator shall not be entitled to payment of any compensation in connection therewith.
- 3.5.2 The Operator shall keep and maintain the Concession Assets or alterations to the Concession Area in operational order through the Concession Period.
- 3.5.3 Subject to any conditions set out in the Annexures hereto and in accordance with the EIA, EMP and the Detailed Design, which shall be approved by the Concessionaire, at the expiry or earlier termination of this Concession, the Operator shall remove its moveable assets from the Concession Area and vacate the Concession Area or such parts as are utilised by it, and restore it to the condition as stipulated in the EIA and EMP.
- 3.5.4 The Concession Assets and any other structure or facility not removed from the Concession Area at the termination of this Concession shall become the property of the Concessionaire. The Operator shall reimburse the Concessionaire for any cost incurred in the removal of such equipment, structures or facilities from the Concession Area or the reinstatement of the Concession Area in the event that the Operator has not complied with the provisions of Clause 3.5.3 at the termination of this Concession.

3.6 Approvals

- 3.6.1 The Operator warrants and shall ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by the Concessionaire and / or the Ministry required in terms of this Concession Operator Contract, the Construction Contracts or other Associated Agreements shall be so applied for or requested promptly.
- 3.6.2 The Operator shall not erect or bring into the Concession Area any structure, install any facility, nor alter the Concession Area in any way without the prior written consent of the Concessionaire.
- 3.6.3 The Operator shall reimburse the Concessionaire all costs associated with applications for approval under this Clause.
- 3.6.4 The Operator shall upon request by the Concessionaire submit written engineering or building plans and details to the Concessionaire for approval before:
 - a. erecting or altering any structure in the Concession Area;
 - b. bringing any structure into the Concession Area;
 - c. installing any facility; or
 - d. altering the Concession Area in any way.

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The Operator shall not commence any work until the Concessionaire has given its written approval and obtained the Concessor's permission under the terms and conditions of the Head Concession Contract.

3.6.5 When undertaking any work under this Clause, the Operator shall comply with all statutory requirements for the work undertaken.

3.7 Performance Bond

3.7.1 The Operator shall lodge a definitive bond, the Performance Bond, covering its performance of the Project in terms of this Concession Operator Contract.

3.7.2 The Performance Bond must be submitted to the Concessionaire within 20 (twenty) Business Days of signature of this Concession Operator Contract.

3.7.3 The Performance Bond shall be issued in favour of the Concessionaire to the amount indicated in Annexure 4.

3.7.4 The Performance Bond must be substantially in the format provided in Annexure 8 and be endorsed by a reputable financing institution.

3.7.5 The value of the Performance Bond shall escalate annually by the official National Consumer Price Index (NCPI) published by the Bank of Namibia within 60 (sixty) Business Days of the end of each year of the Concession.

3.7.6 The Performance Bond shall secure the Operator's performance under the Concession Operator Contract and may be called on by the Concessionaire to the extent of any costs, losses, damages or expenses suffered or incurred by the Concessionaire as a result of breach by the Operator of the Concession Operator Contract, including, but not limited to, any delay in the payment of sums due to the Concessionaire in terms of the Concession Operator Contract.

3.7.7 The Performance Bond will be callable upon first demand in the event that one or more of the circumstances described in Clause 3.7.6 above has occurred. Forfeiture of the Performance Bond will not preclude the Concessionaire from pursuing any other remedies it may have against the Operator under the laws of Namibia.

3.7.8 In respect to Clause 3.7.7, the Concessionaire shall notify the Operator in writing of its forfeiture of the Performance Bond, stating the reasons thereof, and issue a copy of such notification to the financing institution serving as grantor of the Performance Bond.

4 THE CONCESSIONAIRE'S CONTRIBUTION

Except as otherwise provided for in this Agreement, the contribution of the Concessionaire shall be limited to the granting of the Concession Rights upon the terms and conditions set out herein and the Operator shall not be entitled to receive by virtue of this Concession Operator Contract any financial assistance or payment, including, without limitation, any grants, incentives or subsidies from the State, the Concessionaire, the Ministry or any

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Relevant Ministry. The Concessionaire's contribution is on the basis of the fulfilment of all the requirements set out in this Concession Operator Contract including its Annexures.

5 THE CONCESSIONAIRE'S UNDERTAKINGS

5.1 The Concessionaire's Assistance

Except as otherwise provided in this Concession Operator Contract, the Concessionaire shall give reasonable assistance in the form of advice, introductions and documentary support to the Operator in its dealings with the Concessor, Relevant Ministries and/or community partners and otherwise in connection with implementing the Project in accordance with the terms and conditions set forth herein.

5.2 Access

The Concessionaire shall ensure that, for the duration of the Concession Operator Contract, the Operator, its guests, employees, agents and invitees have reasonable access to the Concession Area, subject to the provisions of this Concession Operator Contract, the Concession Area Rules and other regulations, or legislation, which may be in place from time to time.

5.3 Other Concessions

Nothing herein shall preclude or in any way limit the right of the Concessionaire and/or the Concessor or any Relevant Ministry granting such further or other concessions or to enter into other agreements or to construct or procure the construction of other developments in the Concession Area as the Concessionaire and/or the Concessor in their sole discretion deem fit, nor shall the Operator have any claim arising from the grant of such further or other concessions or from the construction of such other developments, provided that the Concessionaire and/or the Concessor shall fulfil the obligations set out herein with due regard to the Concession Rights granted to the Operator in terms of this Concession Operator Contract including its Annexures.

The Concessionaire shall be obliged to inform and involve the Operator in any discussions and/or negotiations with the Concessor or any Relevant Ministry, about any action that may influence the rights of the Operator. The Concessionaire shall at all times communicate this right to the Concessor or Relevant Ministry, as the case may be, and if necessary also enforce it with the remedies available in the Head Concession Contract and in law.

5.4 Concessionaire Competence

5.4.1 The Concessionaire hereby represents and warrants that the Concessionaire has been duly empowered and authorised to implement the Project under the terms and conditions of a Head Concession Contract with the Concessor and to enter into and perform its obligations under the Concession Operator Contract.

5.4.2 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or

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similar acts of the Concessionaire hereunder shall be given, made and done in writing promptly and without unreasonable delay.

6 ACQUISITION, TRANSFER OF CONCESSION RIGHTS, OWNERSHIP AND RISK

6.1 Development Rights

The Operator shall, after due fulfilment of the Compliance Events enjoy the development rights attaching to the Concession Area, which are specified in Annexure 4, and are designated for the Project.

6.2 Transfer of Concession Rights

6.2.1 The Concessionaire shall, on the Effective Date, transfer the Concession Rights to the Operator and shall thereafter ensure that the Operator continues to be entitled to such enjoyment of the Concession Rights as is necessary for the Operator to perform its obligations under this Concession Operator Contract, and to enjoy the Concession Rights, from the date of transfer to the termination or expiry of this Concession Operator Contract.

6.2.2 Subject to the prior written approval of the Concessionaire, which shall not be unreasonably refused or delayed, the Concession Rights contained herein shall be freely transferable from the Operator to a third party, creditor or successor in title of the Operator or a buyer of the Concession Rights contained herein.

6.2.3 The Operator shall not use this Concession, including the Concession Rights and Concession Area as collateral or surety for any purpose other than for the Operation, Management and Maintenance of this Concession.

6.3 Suitability and Condition of the Concession Area

6.3.1 The Operator is deemed to have inspected and examined the Concession Area and to have satisfied itself as to the condition of such parts of the Concession Area, which are to be utilised through the Concession Rights, including any structures erected therein and including subsurface soil conditions and access roads.

6.3.2 The Concessionaire makes no representation and gives no warranty to the Operator in respect of the condition of the Concession Area or any structures located therein and the Operator accepts the Concession Rights and any structures erected in the Concession Area in their present condition (including subsurface soil conditions) and subject to all defects.

6.4 Ownership of Land in the Concession Area

6.4.1 Subject to the terms of this Concession Operator Contract, the Operator has, and will have, no title to, or ownership interest in, or liens, or leasehold rights or any other rights (save for the Concession Rights) in the land on which the Project is to be constructed or in the Concession Assets. Title to such land and assets shall be held, directly or indirectly, by the Ministry or the State.

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6.4.2 The Operator has no and will have no rights with respect to the airspace above, or the area below the surface of, the Concession Area or the land on which the Project and any Concession Assets are to be constructed, except the right to use such land for the sole purpose of the Project during the Concession Period in accordance with the terms of this Concession Operator Contract. The Concessor and/or any Relevant Ministry has reserved unto itself the right to grant to third parties and/or to the Concessionaire all rights with respect to the airspace above and the area below the surface of the Concession Area, provided that in exercising such right it shall have due regard to the rights granted to the Concessionaire in terms of this Concession Operator Contract.

The Concessionaire shall be obliged to inform and involve the Operator in any discussions and/or negotiations with the Concessor or any Relevant Ministry, about any action may influence the rights of the Operator. The Concessionaire shall at all times communicate this right to the Concessor or Relevant Ministry, as the case may be, and if necessary also enforce it with the remedies available in the Head Concession Contract and in law.

6.5 Damage to or Destruction of the Concession Assets

- 6.5.1 Upon delivery of the Concession Rights or any portion thereof to the Operator, the Existing Concession Assets, or any portion thereof and any New Concession Assets shall be at the sole risk of and under the care, custody and control of the Operator.
- 6.5.2 Without prejudice to the generality of Clause 6.5.1, the Operator shall bear all risks and costs with regard to any weather conditions (subject to as provided in Clause 14), including, without limitation, floods, and with regard to physical conditions or obstructions (both above-ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered during the Construction Works or at any time during the Concession Period.
- 6.5.3 Should the Concession Assets or any portion thereof be damaged or destroyed at any time during the Concession Period, the Operator shall, within a reasonable period of time, at its own cost and expense, repair, rebuild or replace the same so that after such repair, rebuilding or replacing, such Concession Assets shall, to the satisfaction of the Concessionaire, be substantially in the same or improved condition as prior to such damage or destruction.
- 6.5.4 In the event that the extent or nature of such damage or destruction is such that it would be impossible or commercially not viable to repair, rebuild or replace the relevant portion of the Concession Assets, or in the event that the cost and expense to be incurred to repair, rebuild or replace same exceeds the proceeds of any insurance available to the Operator for such purpose, the Operator shall be excused from the obligation to so repair, rebuild or replace but shall be required to remove the damaged or destroyed Concession Assets at the Operator's own costs. In such event the Concessionaire or the Operator shall have the right to proceed pursuant to Clause 14 on the basis that an event of Force Majeure shall be deemed to have occurred.

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6.5.5 Should the Concessionaire and the Operator disagree with respect to what is "commercially not viable" in Clause 6.5.4, any Party may request the other Party to agree within 10 (ten) Business Days on an independent expert to make a determination in that regard. Should the Parties be unable to agree on the identity of such expert within 10 (ten) Business Days of the second party being so requested, such expert shall be chosen by the President of the Law Society of Namibia or the chairperson of the Professional Arbitration and Mediation Association of Namibia (PAMAN) to make such determination. The expert shall act as an expert and not as an arbitrator and the determination by such expert shall be final and binding on the Parties.

7 CONSTRUCTION WORKS

7.1 Design and Construction

7.1.1 Preparation of the Detailed Design shall be the responsibility of the Operator, and shall be approved in writing by the Concessionaire and the Concessor, prior to any Construction Works taking place. The Concessionaire's approval shall not be unreasonably refused or delayed.

7.1.2 Any developments in the Concession Area shall be constructed substantially in accordance with the Detailed Design. The Detailed Design shall be amended to take into account requirements of the EIA.

7.1.3 The Operator shall undertake or procure the Construction Works in accordance with the Detailed Design and to meet the requirements of the Concession Contract, in so far as they relate to the Construction Works, and, subject thereto, in accordance with the findings of the EIA. The Operator bears sole responsibility for the procurement of all construction materials, the adequacy of the design in terms of construction quality and safety (including fire safety), Concessor's Requirements and compliance with this Concession Operator Contract and any Regulatory Provisions. The Operator may submit to the Concessionaire written proposals for any significant modifications by the Operator to the Detailed Design, which in the Operator's opinion would improve construction quality or safety to enable the Concessionaire to monitor environmental compliance. The Concessionaire's approval for such modifications shall not be unreasonably refused or delayed.

7.1.4 The location, design and construction of any points of access to and/or egress from the Construction Site during construction shall be subject to the provisions detailed in the EIA.

7.2 Project Programme

Subject to the Concessionaire having provided to the Operator the Concession Area, the Operator shall undertake the Construction Works subject to a project programme of the Operator's own choosing, as amended by the Operator from time to time. The only compellable legal obligation toward the Concessionaire that the Operator will have in respect of the Project programme is that all construction activity will be completed within the timeframe stipulated in the Detailed Design and Construction

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Works programme or such longer period as agreed in writing with the Concessionaire. In the event that Construction Works are running behind schedule the Operator is required to inform the Concessionaire in writing within twenty (20) Business Days prior to the agreed deadline for completion, stating detailed reasons for the inability to meet construction deadlines. In the event that Construction Works are still continuing as at that date, the Operator shall be ordered to provide to the Concessionaire a detailed explanation of the reasons for such delay, and a new time table for completion. .

7.3 Contracts

7.3.1 The Operator shall as soon as reasonably possible after the conclusion of this Concession Operator Contract enter into the relevant Associated Agreements and such other contracts necessary to ensure the timely and proper completion of the Detailed Design, Construction Works, financing, Operation, Management and Maintenance of the Concession Assets, and such future design and construction as may be necessary to meet the Operator's obligations in terms of this Concession Operator Contract. The Operator must satisfy itself that the terms of such agreements fully describe the rights, obligations, risk allocation and protection of the Operator's rights. The Concessionaire and its advisers, the State and Relevant Authorities shall have no liability whatsoever arising from any of the Associated Agreements.

7.3.2 The Operator shall take all reasonable steps to ensure that the Contractors perform the Construction Works in accordance with the terms of the relevant Construction Contracts.

7.4 Concessionaire Monitoring

The Concessionaire or any of its designated representatives may from time to time, enter any part of the Concession Area but, in respect of those parts of the Concession Area on which Construction Works are being carried out, only at reasonable times and on reasonable prior notice to the Operator and the relevant Contractor, provided that the Concessionaire or its designated representative must comply with the reasonable safety requirements of the Operator or Contractor which generally apply.

7.5 Concessionaire Rejection

At any time prior to the completion of the Construction Works, if the Construction Works have not been carried out substantially in accordance with the provisions of Clauses 7.1 and 7.2, the Concessionaire shall be entitled to reject in writing any work, materials or equipment, which is not in accordance with the Construction Programme or if the Construction Programme has been varied by the Operator without complying with the provisions of Clauses 7.1 and 7.2 and, to require the Operator, at its own cost, to correct the work or substitute proper materials and equipment within a reasonable time.

7.6 Information Relating to the Construction Works

The Operator shall furnish to the Concessionaire or any of its designated representatives all such reports and other information relating to the Construction Works as the Concessionaire may reasonably request from time to time.

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7.7 As-Built Drawings

Upon completion of any Construction Works, the Operator shall supply the Concessionaire with copies of all as-built drawings and other technical and design information and completion records relating to the finished Construction Works.

7.8 Costs Recoverable from Contractors and Third Parties

Where the Operator is entitled under any Construction Contract or any contract for Operations, Management and Maintenance to recover costs which have been or are reasonably expected to be incurred by the Concessionaire in connection with the Project, the Operator shall enforce its rights to recover such costs and shall pay any amounts so recovered promptly to the Concessionaire.

7.9 Commencement

Actual construction will only be permitted to begin from the Effective Date, and only after the Compliance Events have taken place to the satisfaction of the Concessionaire.

7.10 Progress Reports

The Operator shall provide monthly reports on the progress of the Construction Works, providing such details as the Concessionaire shall reasonably specify.

7.11 Environmental Impact Assessment

Before commencement of the Construction Works, the Operator shall undertake an EIA at its own cost in respect of the Project and shall ensure that such EIA is prepared by an independent environmental consultant in accordance with the Environmental Management Act (2007).

7.12 Environmental Control Officer (ECO)

The Operator shall appoint, at no cost to the Concessionaire, an independent environmental control officer who shall be responsible for ensuring that all aspects of the Project are carried out in accordance with the relevant environmental Regulatory Provisions and the EMP and for monitoring and ensuring the implementation and effectiveness of mitigation measures and other requirements and targets set forth in the EIA. The Operator shall deliver reports, as frequent as determined in the EIA, to the Concessionaire during the Construction Phase and thereafter annual reports as required by the Concessionaire and an annual EMP audit report prepared by an independent environmental consultant, all at the Operator's sole cost.

8 OPERATION, MANAGEMENT AND MAINTENANCE

8.1 Operation, Management and Maintenance by the Operator

8.1.1 The Operator shall be obliged during the Concession Period to equip and furnish the Concession Assets and to undertake the Operation, Management and

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Maintenance of the Concession Assets and of all related Construction Works and developments undertaken by the Operator according to Best Industry Practice.

- 8.1.2 The Operator shall, at its cost, provide ongoing maintenance to the Concession Assets on the understanding that the Concessionaire may prescribe specific standards and methods applicable in the tourism sector which shall be employed in the process of maintenance of the said Concession Assets
- 8.1.3 The Operator shall furnish the Concessionaire with an annual report in an agreed format regarding the Operation, Management and Maintenance of the Concession Assets.
- 8.1.4 Subject to the provisions of this Concession Operator Contract, the Operator shall Manage, Operate and Maintain the Concession Assets:
 - 8.1.4.1 at its own cost and risk;
 - 8.1.4.2 in a manner consistent with the EIA and the EMP;
 - 8.1.4.3 in compliance with all applicable Regulatory Provisions and consents;
 - 8.1.4.4 in compliance with all applicable health and safety standards;
 - 8.1.4.5 otherwise in accordance with Best Industry Practice;
 - 8.1.4.6 in compliance with the provisions of the Management Plan;
 - 8.1.4.7 in compliance with the Concession Area Rules; and
 - 8.1.4.8 in compliance with all the standards set out in Annexures 2, 4, 6 and 7 of this Concession Operator Contract.

8.2 Third Party Contracts

The Operator may use a third party or third parties or a joint venture partner to carry out all or part of its design, financing, development, Construction, Operation, Management and Maintenance obligations under this Concession Operator Contract with the prior written approval of the Concessionaire, which approval shall not be unreasonably withheld or delayed. Any such sub-contract shall be an Associated Agreement and the terms of any such sub-contract shall in all material respects reflect the spirit and purport of this Concession Operator Contract and be bound to the terms of this Concession Operator Contract. The Operator undertakes to deliver a copy of the relevant contract to the Concessionaire within 20 (twenty) Business Days of it being entered into. The engagement of a third party shall not release the Operator from any of its obligations hereunder.

8.3 Modifications during Concession Period

- 8.3.1 Modifications to any part of the Concession Area required by the Operator shall be preceded by an appropriate EIA and EMP at the cost of the Operator, and shall also be subject to the prior written consent of the Concessionaire and subject to the provisions set forth in this Concession Operator Contract. The Concessionaire shall

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be entitled to seek expert advice at the cost of the Operator for the designing of an EMP for the intended modifications.

- 8.3.2 The Concessionaire may in its discretion impose any reasonable terms and conditions as it considers appropriate for any modifications in terms of Clause 8.3.1.

9 CONCESSION AREA MANAGEMENT

- 9.1. The Concessor is responsible for Conservation Management of the Concession Area.
- 9.2. The Operator shall be responsible for managing tourism access into and within the Concession Area (as specified further in Annexure 4) and for such other functions as may be agreed between the Parties and the Concessor,
- 9.3. The Concessionaire's and Concessor's staff, as well as any other duly authorised Government personnel on official duty for the purpose of exercising their functions, shall have access to all parts of the Concession Area at all times. Any refusal by the Operator, its staff or agents, to grant the Concessionaires or Concessor's staff (or any other Government personnel on official duty) access in terms hereof, shall constitute a material breach on the part of the Operator.
- 9.4. When exercising its rights in terms of Clause 9.3 the Concessionaire and Concessor shall have due regard to the commercial activities of the Operator, and when access may negatively impact on such commercial activities, the Concessionaire and Concessor shall consult with the Operator prior to accessing the Concession Area in order to avoid and / or minimize such negative impact.

10 EMPOWERMENT

10.1 Empowerment Objectives

- 10.1.1 When making decisions affecting the performance of its obligations in respect of the Project and under this Concession Operator Contract, the Operator shall take into account all applicable laws in regard to the State policies and objectives on affirmative action and the empowerment of Previously Disadvantaged Namibians and Previously Disadvantaged Groups (PDNs and PDGs).
- 10.1.2 The Operator shall make every effort and use all appropriate opportunities to foster the empowerment of PDNs, including, but not limited to, creating business and employment opportunities for PDNs, provided that such empowerment is consistent with the conditions specified in Annexure 2 hereto.
- 10.1.3 The Operator shall ensure compliance with all legal and Regulatory Provisions relating to affirmative action and empowerment.

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10.2 Specific Empowerment Obligations of the Operator

- 10.2.1 Notwithstanding the generality of the obligations set forth in Clause 10.1, the Operator shall implement and adhere to the specific and quantifiable undertakings and conditions relating to empowerment that are included in Annexure 2 hereto.
- 10.2.2 The Operator shall provide an annual report to the Concessionaire on the extent to which these specific objectives referred to in Clause 10.2.1 and Annexure 2 have been met, as well as documenting other achievements in promoting the empowerment of PDNs / PDGs.

11 EMPLOYMENT ISSUES

11.1 Labour Laws

The Operator agrees to abide by the Labour Act 11 of 2007 and all other laws in force, as amended from time to time, relating to the employment of staff employed for this Concession and shall use its best endeavours to take all reasonable steps to ensure similar compliance by its Contractors, sub-contractors at all levels, assignees and agents, and furthermore agrees to adhere to and ensure, as far as practicably possible, adherence to fair labour practices.

12 LIABILITY WITH RESPECT TO THIRD PARTIES

12.1 Operator Indemnification

- 12.1.1 The Operator herewith indemnifies the Concessionaire and the Concessor, and holds the Concessionaire and the Concessor harmless from and is responsible to third parties for, any liability, loss, damage, damages, cost or costs of any kind whatsoever incurred or suffered by any third party or the Concessionaire or the Concessor on or after the Effective Date, including any claim against the Concessionaire or the Concessor or a Relevant Ministry, as a result of any act or omission of the Operator or any Responsible Person, (including without limitation any default or failure by the Operator under this Concession Operator Contract) within or in consequence of any act or omission in terms of this Concession Operator Contract except to the extent directly caused by any gross negligence, material default or material breach of statutory duty on the part of the Concessionaire or the Concessor or such Relevant Ministry.
- 12.1.2 Without limiting the generality of the foregoing, the Operator hereby indemnifies the Concessionaire and the Concessor against all liability, loss, damage, damages, costs and claims in respect of:
 - (a) death or injury to any Person; or
 - (b) loss of or damage to any property; or
 - (c) any economic loss,

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arising out of any such act or omission.

12.2 Concession Acknowledgement

The Operator acknowledges that the fauna and flora in the Concession Area, including the presence of dangerous animals, as well as the intrinsic features and environment of the Concession Area constitute a potential danger to people and property. The Operator shall take steps to draw the attention of all guests, visitors, invitees, employees, contractors, patrons and the like to the dangers in the Concession Area and will obtain from such persons an indemnity and waiver in the format approved by the Concessionaire and the Concessor from time to time. The requirements of this Clause shall not effect, in any way, the indemnity provided under Clause 12.1.

12.3 Legal Action

If any legal action is brought or claim is made against the Concessionaire and / or the Concessor in respect of which the Concessionaire and / or the Concessor is entitled to be indemnified under Clause 12.1, the Operator shall, if required to do so by the Concessionaire and / or the Concessor, defend any such action or claim at its own expense or provide the Concessionaire and / or the Concessor with full co-operation in defending such action.

13 INSURANCE

13.1 Construction

During the period of any Construction Works, the Operator shall, to the reasonable satisfaction of the Concessionaire, maintain and/or shall procure that the relevant Contractor maintains adequate insurance on the Concession Assets and its other insurable properties including Contractor's all risks insurance, third party liability insurance, employer's liability insurance and, where appropriate, consequential loss/completion delay insurance. Adequate insurance cover means sufficient insurance cover to place the Concessionaire in the position it would have been had the Concessionaire self insured in similar circumstances and as stipulated in Annexure 4.

13.2 Operation

During the period starting at the delivery of the Concession Area or any portion thereof to the Operator and ending on the date of the termination or expiry of this Concession Contract, the Operator shall, to the reasonable satisfaction of the Concessionaire, maintain or procure maintenance of adequate insurance on the Concession Assets and casualty insurance, third party liability insurance and employer's liability insurance as stipulated in Annexure 4.

13.3 Covenants Relating to Insurance

13.3.1 The Operator shall provide the insurance policies set forth in Clauses 13.1 and 13.2 and Annexure 4 for the benefit of the Concessionaire and all relevant Contractors and consultants engaged in the Construction Works and Operation, Management and Maintenance.

13.3.2 The Operator will maintain the insurance in accordance with Best Industry Practice.

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- 13.3.3 The interest of the Concessionaire shall be noted on the policies set forth in Clauses 13.1 and 13.2. The Operator shall provide the Concessionaire with certified copies of the certificates of all such insurance and shall periodically review the extent and adequacy of the coverage provided by such insurance in the context of this Clause 13 and the prevailing conditions in Namibia.
- 13.3.4 The proceeds of any claims under the all risks insurance policies referred to in Clause 13.1 and under the property and casualty insurance policies referred to in Clause 13.2 hereof shall be applied to the repair or restoration of the buildings and/or other insured Concession Assets.
- 13.3.5 If the Operator is unable to obtain insurance in the sums or on the terms required by Clauses 13.1 and 13.2, at a reasonable commercial rate, it shall immediately notify the Concessionaire of any material areas of change in the terms or level of the insurance cover and shall restore the terms and level of cover to the required levels as soon as such become available.
- 13.3.6 Should the Concessionaire and the Operator disagree with respect to what is "commercially reasonable" or "economically viable" in Clause 6.5 or Clause 16.2 or in any other Clause of this Agreement, or as to what is "a reasonable commercial rate", either Party may request the other Party to agree within 10 (ten) Business Days on an independent insurance expert to make a determination in that regard. Should the Parties be unable to agree on the identity of such expert within 10 (ten) Business Days of the second Party being so requested, such expert shall be chosen by an arbitrator in terms Clause 17 to make such determination. The expert shall act as an expert and not as an arbitrator and the determination by such expert shall be final and binding on the Parties.

13.4 Terms of Insurance

- 13.4.1 The Operator shall maintain the aforementioned insurances on the best terms available in the domestic insurance market, which are authorised by the relevant State authorities to provide the respective coverage; alternatively in the event of the Operator being within a company group structure, the Operator may be insured in terms of its group insurance policies.
- 13.4.2 Unless the Concessionaire agrees otherwise such terms shall include:
 - 13.4.2.1 waiver of subrogation against the Concessionaire, its agents, servants, officers, employees and contractors;
 - 13.4.2.2 a provision whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit or indemnity;
 - 13.4.2.3 a breach of condition provision or warranty/severability/non-vitiation provisions acceptable to the Concessionaire or if such provisions are not generally available in equivalent policies written in the Namibian insurance market, each of the Operator and the Contractor(s) (if any) shall covenant, for the duration of such non-availability, with the Concessionaire in writing that it will not make any misrepresentations to,

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or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail;

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

13.4.2.5 a provision whereby the policy shall only be cancelled subject to 60 (sixty) Business Days' notice, or 40 (forty) Business Days' notice in respect of non payment of premium;

13.4.2.6 a provision that a notice of claim given to the insurer by the Operator, shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties under the policy; and

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

14 FORCE MAJEURE

14.1 "Force Majeure" defined

"Force Majeure" shall mean an event resulting in consequences of a material nature beyond the control of either Party, whose occurrence could not have been reasonably foreseen at the date of the execution of this Concession Operator Contract, which specifically but not exclusively includes:

14.1.1 war, civil war or terrorism, or floods, storm, earthquake, landslip, volcanic activity or other forces of nature; or

14.1.2 nuclear, chemical or biological contamination, unless the source or cause of the contamination is the result of actions of either Party or their sub-contractors; and

14.1.3 which directly causes either Party to be unable to comply with all or a material part of its obligations hereunder.

14.2 Notice of Force Majeure

Each Party shall promptly notify the other of the occurrence of a perceived event of Force Majeure and when such event has ceased. Any disagreement as to whether an event of Force Majeure has occurred shall be resolved in terms of the dispute resolution procedure in Clause 17.

14.3 Continuation of Project Operations

14.3.1 Decisions concerning Force Majeure and the application of this Clause 14.3 shall be directed toward the completion of the Construction Works and continued Project operations for the remainder of the Concession Period. In this regard the Operator shall, to the maximum extent possible, continue the Construction Works and

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Project operations during the occurrence of any event of Force Majeure, and shall also notify the Concessionaire of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Concessionaire.

14.3.2 Subject to Clause 14.6, the Party claiming the occurrence of the Force Majeure shall be excused from performance of its obligations under this Concession Operator Contract to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither Party shall be entitled to:

14.3.2.1 terminate this Concession Operator Contract on account of such occurrence other than in accordance with the terms and conditions of Clause 14.5; and/or

14.3.2.2 claim damages, penalties or other compensation as a result of such failure to perform except in accordance with Clause 14.5

14.4 Insured Events of Force Majeure

To the extent that the consequences of an event of Force Majeure falls within the terms of the insurance cover required hereunder, then the Operator shall forthwith make the appropriate claims thereunder and shall apply the proceeds as required in terms of the insurance requirements contained in Clause 13.

14.5 Consequences of Force Majeure

14.5.1 If the Parties agree or it is determined under Clause 14.2 that an event of Force Majeure has occurred, the Concessionaire and the Operator shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

14.5.2 If an event of Force Majeure (or its consequences) continues for 60 (sixty) or more consecutive Business Days and the Parties have not reached a mutually satisfactory resolution to the changed circumstances, and the effect of Force Majeure continues, this Concession Operator Contract may, upon 20 (twenty) Business Days prior notice, be terminated by the Concessionaire, or where the event of the Force Majeure is an uninsured event or, if insured there is a material shortfall in the proceeds of such insurance, then in such event this Concession Operator Contract may, upon 20 (twenty) Business Days prior notice, be terminated by the Operator.

14.6 Prior Obligations

The foregoing provisions of this Clause 14 shall not excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this Concession Operator Contract prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure or obligations not affected by the event of Force Majeure. A Party excused from performance by the occurrence of Force Majeure shall continue its performance under this Concession Operator Contract when the effects of the event of Force Majeure are removed.

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15 SUSPENSION

- 15.1 The Concessionaire may suspend the operations and/or activities under this Concession if in the reasonable opinion of the Concessionaire or the Concessor there is a risk to public safety or the safety of the Concessionaire's or Operator's staff or the safety of other operators, whether arising from natural events such as earthquake, landslip, volcanic activity, storm or flood, or whether arising in any other way including the activities of the Operator, its clients or invitees. If in the opinion of the Concessionaire and/or Concessor the hazard can be remedied or isolated then the Operator shall be given a reasonable opportunity, within a reasonable timeframe to remedy the situation to the satisfaction of the Concessionaire and/or Concessor before any suspension is affected.
- 15.2 If in the opinion of the Concessionaire or the Concessor the activities of the Operator, its clients or invitees are having or may have an adverse effect associated with or stemming from the Concession activity on the environment; and the Concessionaire is of the reasonable opinion that the effect can be avoided, remedied, or mitigated to an extent satisfactory to the Concessionaire and/or Concessor, then the Concessionaire may suspend this Concession until the Operator remedies, avoids or mitigates the adverse impact to the satisfaction of the Concessionaire and / or Concessor, provided that the Concessionaire shall give the Operator such reasonable notice as the circumstances allow, to remedy the situation which is causing the adverse effects.
- 15.3 During any period of temporary suspension (which shall be a reasonable period) the Concession Fee payable by the Operator shall abate in fair proportion to the loss of use by the Operator of the Concession Area.
- 15.4 The Concessionaire and / or the Concessor shall not be liable to the Operator for any loss sustained by the Operator by reason of suspension of the Concession under this Clause.

16 BREACH

16.1 Termination by the Concessionaire for Fault of Operator

- 16.1.1 The Concessionaire shall have the right to terminate this Concession Operator Contract upon the occurrence of any of the following events:
 - 16.1.1.1 the Operator commits a material breach of this Concession Operator Contract; or
 - 16.1.1.2 any other provision of this Concession Operator Contract expressly entitling the Concessionaire to terminate this Concession Operator Contract.
- 16.1.2 The Concessionaire shall, prior to exercising its rights to terminate this Concession Operator Contract under this Clause 16.1 send a written notice to the Operator notifying it of the event giving rise to such right and requesting the Operator to remedy the event. If said event is not remedied before the expiry of the Remedy Period of 60 (sixty) Business Days for general breaches and 20 (twenty) Business Days for non-payment of the Concession Fee, or any agreed longer period, the

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Concessionaire may, upon expiry of the Remedy Period, terminate this Concession Operator Contract upon written notice to the Operator.

16.1.3 If such events are not remedied by the Operator by the expiry of the Remedy Period or the relevant event does not require a Remedy Period the Concessionaire may terminate this Concession Operator Contract forthwith by notice in writing to the Operator.

16.1.4 Upon any termination pursuant to Clause 16.1.3 above, the following provisions shall apply:

16.1.4.1 the Concessionaire shall be entitled to claim an amount equal to:

16.1.4.1.1 the cost and expense incurred or to be incurred in the reinstatement of the Concession Area to the standards required by the Concessor's Requirements as well as those specified in the EIA and EMP as at the date of termination; and

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

16.1.4.1.3 all costs and expenses incurred and/or reasonably expected to be incurred in restoring or remedying Material Damage to the environment caused by the Operator and/or any Person for whom it is legally responsible; and

16.1.4.1.4 all reasonably foreseeable economic losses suffered or reasonably expected to be suffered by the Concessionaire or the Concessor as a result of the breach or breaches by the Operator of this Concession Operator Contract which resulted in termination of this Concession Operator Contract pursuant to Clause 16.1.3.

16.1.5 Should the Concessionaire not exercise its rights to terminate pursuant to Clause 16.1.3, the Operator shall compensate the Concessionaire for all damages suffered and costs and expenses incurred by the Concessionaire or the Concessor as a result of the events set forth in Clause 16.1.1.

16.2 Termination by Operator

16.2.1 The Operator shall have the right to terminate this Concession Operator Contract if:

16.2.1.1 the Concessionaire commits a material breach in respect of the performance of any of its obligations hereunder; or

16.2.1.2 any parts of the Concession Area that are used under the Concession Rights and/or the Concession Assets are nationalised, compulsorily acquired, or expropriated from the Operator by the State, which results in a material impairment of the Concession Rights; or

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- 16.2.1.3 any action by any Relevant Ministry renders the performance by the Operator or the Concessionaire of all or substantially all of their respective obligations hereunder illegal or impossible; or
- 16.2.1.4 factors outside the control of the Operator make the operation of the Concession not economically viable.
- 16.2.2 Upon any termination pursuant to Clause 16.2.1.1 above, the following provisions shall apply:
 - 16.2.2.1 the Operator shall be entitled to claim an amount equal to:
 - 16.2.2.1.1 an amount equal to all damages caused by the Concessionaire and recoverable at law; and
 - 16.2.2.1.2 all reasonably foreseeable economic losses suffered or reasonably expected to be suffered by the Operator as a result of the breach or breaches by the Concessionaire of this Concession Operator Contract which resulted in termination of this Concession Operator Contract pursuant to Clause 16.2.1
- 16.2.3 The Operator shall, before exercising its rights to terminate this Concession Operator Contract pursuant to Clause 16.2.1, give written notice to the Concessionaire requiring the Concessionaire to remedy the event referred to in Clause 16.2.1. If said event is not remedied before the expiry of the Remedy Period of 60 (sixty) Business Days or any longer period agreed by the Parties, the Operator may, upon expiry of the Remedy Period, terminate this Concession Operator Contract upon written notice to the Concessionaire.
- 16.2.4 Should the Operator not exercise its rights to terminate pursuant to Clause 16.2.3, the Concessionaire shall compensate the Operator for all damages suffered and costs and expenses incurred by the Operator as a result of the events set forth in Clause 16.2.1.
- 16.2.5 Notwithstanding the above, any inability of the Concessionaire to fulfil its obligations in terms of this Concession Operator Contract, due to any conduct or omission by the Concessor or any Relevant Ministry, shall not constitute a breach of contract by the Concessionaire.
- 16.2.6 For the avoidance of doubt, the Operator shall have no claims against the Concessionaire under this Clause 16.2 if the Concessionaire's inability to meet its obligations originates from any conduct or omission of the Concessor or any Relevant Ministry. In such event the Concessionaire shall have the obligation to enforce its rights and remedies against the defaulting parties, in terms of the Head Concession Contract and in law.

16.3 Effect of Termination

- 16.3.1 On the expiry or termination of this Concession Operator Contract and/or the Concession Period for whatever reason and without prejudice to any rights of the Parties hereto (subject as herein provided):

- 16.3.1.1 this Concession Operator Contract (other than Clauses 14, 16 and 17) shall cease to have effect, subject to all rights and obligations of the Parties existing prior to such termination;
- 16.3.1.2 such rights as the Operator may have over the Concession Area, the Concession Assets, and all other immovable property thereon shall terminate;
- 16.3.1.3 the Operator shall forthwith relinquish any interest in any immovable property within the Concession in favour of the Concessionaire;
- 16.3.1.4 the Operator shall within a period of 60 (sixty) Business Days remove all of its movable equipment and assets and reinstate the Concession Area to the standards required by the Concessionaire and / or the Concessor's Requirements as well as those specified in the EIA and EMP;
- 16.3.1.5 the Operator shall deliver all Project documentation to the Concessionaire.
- 16.3.2 Upon termination of this Concession Operator Contract, the Concessionaire shall have the right to:
 - 16.3.2.1 enter and take immediate operational control of the Concession Area used under the Concession Rights; and
 - 16.3.2.2 select and substitute a new operator for the Operator.
- 16.3.3 The provisions of this Clause 16.3 shall be suspended pending the final outcome of any legal proceedings (which includes the dispute resolution proceedings in terms of this Agreement) between the Parties concerning the validity of the termination of this Concession Operator Contract.

16.4 Other Rights and Remedies

No Party shall have any rights or remedies against any other Party arising on termination save for the rights and remedies specified in this Concession Operator Contract.

17 GOVERNING LAW AND RESOLUTION OF DISPUTES

17.1 Governing Law

This Concession Operator Contract shall be governed by the laws of the Republic of Namibia.

17.2 Resolution of Disputes

17.2.1 Any dispute between the Parties in regard to:

the interpretation of;

the effect of;

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the Parties respective rights and obligations under;

a breach of;

any matter arising out of this Concession Operator Contract shall:

17.2.1.1 in the first instance, be referred to the Joint Management Committee, which shall attempt to resolve the dispute amicably among themselves within 20 (twenty) Business Days of the dispute arising, and if the dispute is still unresolved, then

17.2.1.2 in the second instance, be referred to the Permanent Secretary of the Concessor and the Chairperson of the Concessionaire, and the Chief Executive Officer of the Operator, who shall attempt to resolve the dispute within 20 (twenty) Business Days, and if it still remains unresolved, then

17.2.1.3 as a last resort, be submitted to arbitration by either party in the manner set out in Clause 17.2.2.

17.2.2 The said arbitration shall be held subject to the provisions of this Clause:

17.2.2.1 at Windhoek;

17.2.2.2 informally;

17.2.2.3 otherwise in accordance with the provisions of the Arbitration Act 42 of 1965 as amended and the Professional Arbitration and Mediation Association of Namibia;

17.2.2.4 it being the intention that if possible it shall be held and concluded within 20 (twenty) Business Days after it has been demanded.

17.2.3 The arbitrator shall be, if the question in issue is -

17.2.3.1 primarily a legal matter, a practising attorney of no less than 10 (ten) years experience agreed upon between the Parties;

17.2.3.2 any other matter, a suitably qualified and experienced independent person agreed upon between the Parties.

17.2.4 If the Parties cannot agree upon a particular arbitrator in terms of Clause 17.2.3 above within 10 (ten) Business Days after the arbitration has been demanded, the nomination in terms of Clauses 17.2.3.1 or 17.2.3.2, as the case may be, either Party shall have the right to approach the President of the Law Society of Namibia or the Chairperson of the Professional Arbitration and Mediation Association of Namibia to appoint an arbitrator.

17.2.5 The Parties irrevocably agree that the decision in these arbitration proceedings:

17.2.5.1 shall be binding on them;

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17.2.5.2 shall be carried into effect; and

17.2.5.3 may be made an order of any Court of competent jurisdiction.

17.3 Obligations during Arbitration

Pending any attempt at amicable settlement or any award of an arbitral panel, both Parties shall continue to perform their obligations hereunder unless otherwise agreed in writing.

17.4 Costs of Arbitration

The costs of arbitration shall be paid as determined by the arbitrator in his or her sole discretion. The arbitrator may direct that the Parties share the costs of arbitration or that either Party bear all the arbitration costs, or that the Parties pay unequal parts of the arbitration costs, as the arbitrator deems fit in the circumstances.

18 SUPPORT

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

19 MISCELLANEOUS PROVISIONS

19.1 Primacy of the Concession Operator Contract

19.1.1 Subject to the Head Concession Contract between the Ministry and the Concessionaire, this Concession Operator Contract shall govern all aspects of, and all contractual relationships relating to the Project as agreed between the Parties. In the event of conflict between this Concession Operator Contract and any Associated Agreement on a matter affecting the Parties, including all questions of interpretation, this Concession Operator Contract shall prevail.

19.1.2 The Annexures attached hereto shall be deemed a part of this Concession Operator Contract and shall have binding effect. If the content of any of the Annexures is in conflict with the content of this Concession Operator Contract, the content of this Concession Operator Contract shall prevail.

19.2 Confidentiality

19.2.1 Each of the Parties shall at all times use their best endeavours to keep confidential any information which it has acquired or may acquire in relation to this Concession Operator Contract save for any information:

19.2.1.1 which is publicly available or becomes publicly available through no act or default of the Party which acquired the information; or

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19.2.1.2 which was in the possession of that Party prior to its disclosure otherwise than as a result of any breach by a Party of any obligation of confidentiality owed to the other Party whether pursuant to this Concession Operator Contract or otherwise; or

19.2.1.3 which is disclosed to that Party by a third party which did not acquire the information under an obligation of confidentiality; or

19.2.1.4 which is independently acquired by that party as a result of work carried out by a person to whom no disclosure of such information has been made;

and shall not use or disclose such information except with the consent of the other Party or in order to obtain professional advise from its advisors who shall also be bound by the terms of this confidentiality Clause, or in accordance with an order of a court of competent jurisdiction or in order to comply with any law or governmental regulations by which the Party concerned is bound.

19.3 Variations in Writing

All additions, amendments, variations and any consensual cancellation of this Concession Operator Contract shall be binding only if in writing and signed by duly authorised representatives of both Parties.

19.4 Entire Agreement

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

19.5 No Waiver

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

19.6 Time and Indulgence

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

19.7 No Third Party Beneficiaries

This Concession Operator Contract is made exclusively for the benefit of the Operator and

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the Concessionaire and no third party shall have any rights hereunder or deemed to be a beneficiary hereof, except as may be expressly provided for herein, and with regard to the obligations of the Parties toward each other and with regard to the Concessor's functions in terms of the law and rights and obligations in terms of the Head Concession Contract.

19.8 Language

This Concession Operator Contract has been drawn up and shall be construed in the English language.

19.9 Notices and domicilia

19.9.1 Any notice or correspondence to be given under this Concession Operator Contract shall be in writing in English unless otherwise agreed and shall be delivered personally or sent by registered or certified mail, return receipt requested, or sent by fax followed by the original delivered by hand or sent by registered or certified mail, return receipt requested.

19.9.2 Any notice, demand or other communication properly addressed by any Party to another Party at the latter's *domicilium* in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 10th (tenth) business day following the date of posting thereof.

19.9.3 The *domicilium* addresses of the Parties for Notices are as contained in Annexure 4 hereto.

19.9.4 Either Party may change its nominated address to another address in the Republic of Namibia by prior written notice to the other Party.

19.10 Severability

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

19.11 Representatives

19.11.1 The Operator shall be represented by the representative specified in Annexure 4 hereto, or such other representative as shall from time to time be notified to the Concessionaire.

19.11.2 The Concessionaire shall be represented by the representative specified in Annexure 4 hereto, or such other representative as shall from time to time be notified to the Operator.

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19.12 Consent

The Concessionaire shall not unreasonably withhold or delay the giving of any consent, approval or expression of satisfaction referred to in this Concession Operator Contract, and shall exercise its rights to consent, approve or express satisfaction promptly, reasonably and fairly. In any circumstance where consent or approval is required to be given by the Concessionaire in terms of this Concession Operator Contract, such consent or approval shall not be unreasonably withheld or delayed.

19.13 Transactional taxes

All Concession Fee payable in terms of this Agreement are exclusive of Value Added Tax (VAT) and any other transactional taxes. Should the Concessionaire be required in future to charge VAT or other transactional taxes, such amounts shall be added to Concession Fees outlined in this Agreement.

20 REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties by the Operator

The Operator hereby represents and warrants to the Concessionaire as follows:

- 20.1.1 The Operator is duly organised under the laws of the Republic of Namibia with all requisite juristic power to carry out its obligations under this Concession Operator Contract and to execute and deliver this Concession Operator Contract.
- 20.1.2 This Concession Operator Contract has been duly authorised by all necessary legal and administrative action, is legally valid and binding upon itself and does not require approval in any form in order to give full effect thereto.
- 20.1.3 The Operator is not prevented or restrained legally, commercially or otherwise from entering into and undertaking the provisions of this Concession Operator Contract in accordance with its terms.
- 20.1.4 The Operator has fully familiarised itself with all aspects of the Project and has all the knowledge, experience, ability (particularly financial ability) to carry out the Project in accordance with the terms of this Concession Operator Contract.
- 20.1.5 The Operator has reviewed and checked as an expert the Concession Area and its surroundings, and the physical condition of such parts of the Concession Area over which this Concession Operator Contract grants Concession Rights and their surroundings and is fully familiar with the terms of all relevant laws and regulations including without limitation all laws and regulations relating to the Concession Area and the Concession and its rights and obligations thereunder and hereunder, and pursuant to such review the Operator finds the Concession Area and the Concession Rights suitable for the fulfilment of its obligations and undertakings under this Concession Operator Contract, including without limitation, the completion of the design and construction of the Concession Assets and the Project. The Operator further acknowledges its willingness to enter into this Concession Operator Contract with full awareness of, among other things, the

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rights and obligations derived from the physical position of the Concession Area, the provisions of this Concession Operator Contract and its ability to fulfil all of its obligations under this Concession Operator Contract adequately and in a timely manner.

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

20.2 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Operator as follows:

- 20.2.1 In executing the Concession Operator Contract for the purposes of accepting the benefits hereof and the granting of the Concession Rights, the conservancy chairpersons act for and on behalf of the Concessionaire and in accordance with law.
- 20.2.2 The Concession Operator Contract is legally valid and binding upon the Concessionaire and enforceable in accordance with its terms.

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R.m.k.
A.B.

21 COUNTERPARTS

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

IN WITNESS WHEREOF, the undersigned representatives of the Parties, being duly authorised thereto, have signed this Agreement in duplicate in the English language.

EXECUTION ON BEHALF OF THE CONCESSIONAIRE (ANABEB CONSERVANCY):

Signed at Palmwag lodge on this 21 day of August 2012



WITNESS



For and on behalf of **THE CONCESSIONAIRE**
(who warrants their authority hereto)

C GANASEB

WITNESS

EXECUTION ON BEHALF OF THE CONCESSIONAIRE (SESFONTEIN CONSERVANCY):

Signed at Palmwag on this 21 day of August 2012



WITNESS



For and on behalf of **THE CONCESSIONAIRE**
(who warrants their authority hereto)

Aawusab.

WITNESS

BIR *M-H* *w.w.m.*  *CG* *el* *JR* *AK* *UN*

EXECUTION ON BEHALF OF THE CONCESSIONAIRE (TORRA CONSERVANCY):

Signed at Palmwag on this 21st day of AUGUST 2012


WITNESS


For and on behalf of **THE CONCESSIONAIRE**
(who warrants their authority hereto)

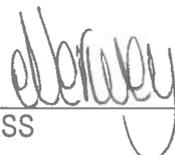

WITNESS

EXECUTION ON BEHALF OF THE OPERATOR:

Signed at Palmwag on this 21st day of AUGUST 2012


WITNESS


For and on behalf of **THE OPERATOR**
(who warrants their authority hereto)


WITNESS

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LIST OF ANNEXURES

- Annexure 1: Head Concession Contract
- Annexure 2: Operator's Proposal
- Annexure 3: Associated Agreements
- Annexure 4: Terms and Conditions
- Annexure 5: Concession Assets
- Annexure 6: Environmental and Development Guidelines
- Annexure 7: Traversing Conditions and Protocols for Skeleton Coast Park
- Annexure 8: Format for the Performance Bond

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B.R. M.H. W.W.M. R.M.J.C. C.G. J.R. U.N.

ANNEXURE 1 – HEAD CONCESSION CONTRACT

By reference the Head Concession Contract is incorporated herein and forms part of this Concession Operator Contract. The original Head Concession Contract is available at the offices of the Concessor and the Concessionaire.

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ANNEXURE 2 – OPERATOR'S PROPOSAL

By reference the Operator's Proposal dated 5th September 2011, including its amended proposal dated 17th January 2012 and correspondence between the Parties dated 4th February 2012, 6th February 2012 and 10th February 2012, is incorporated herein and forms part of this Concession Operator Contract. The original Operator's Proposal, amended proposal and correspondence between the Parties is available at the offices of the Operator and the Concessionaire.

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ANNEXURE 3 – ASSOCIATED AGREEMENTS

1. Head Concession Contract (between the Concessor and Concessionaire)
2. Service contract for preparation of the EIA and EMP between the Operator and a consultant to be identified in accordance with the Environmental Management Act (2007).
3. Relevant financing or grant agreements.
4. Construction Contracts (between the Operator and the Contractor).
5. Agreement between the Etendeka concessionaire and operator, and the Palmwag Concessionaire and Operator regarding the Operation, Management and Maintenance of the Palmwag airstrip, which is located in the Etendeka concession.
6. Agreement between the Concessor, Concessionaire and Operator regarding the payment of Concession Area Entry Fees by tourism operators and members of the public to access designated attractions and zones within the Concession Area for tourism purposes.
7. Agreement between the Concessor and Concessionaire regarding future tourism development allowed within the Concession Area.
8. Any other agreement entered into by the Concessionaire and / or its appointed Operator to carry out all or part of its design, financing, development, Operation, Management and Maintenance obligations under the Head Concession Contract or this Concession Operator Contract.

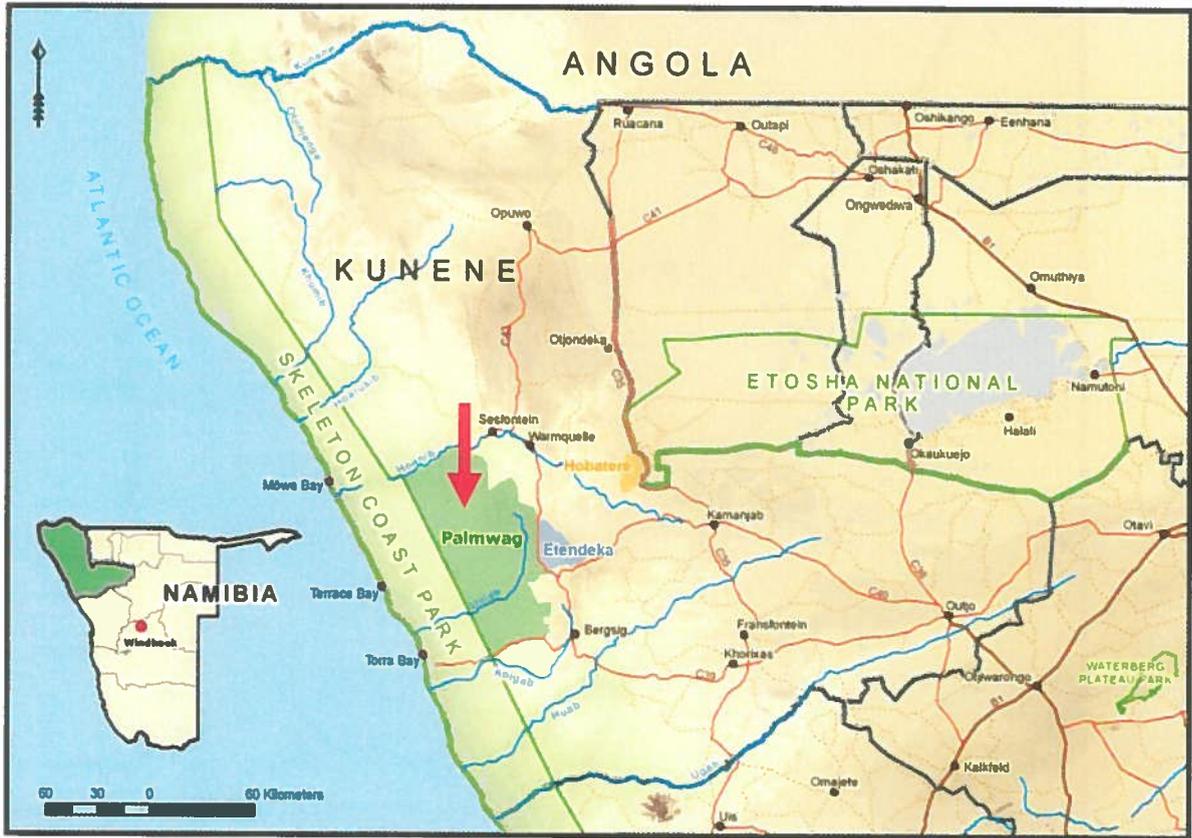
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ANNEXURE 4 – TERMS & CONDITIONS

1. CONCESSION AREA

1.1. The Concession Area is demarcated as “Palmwag Concession” in Map 1 and Map 2 of this Annexure 4;

Map 1: Location of the Palmwag Concession.



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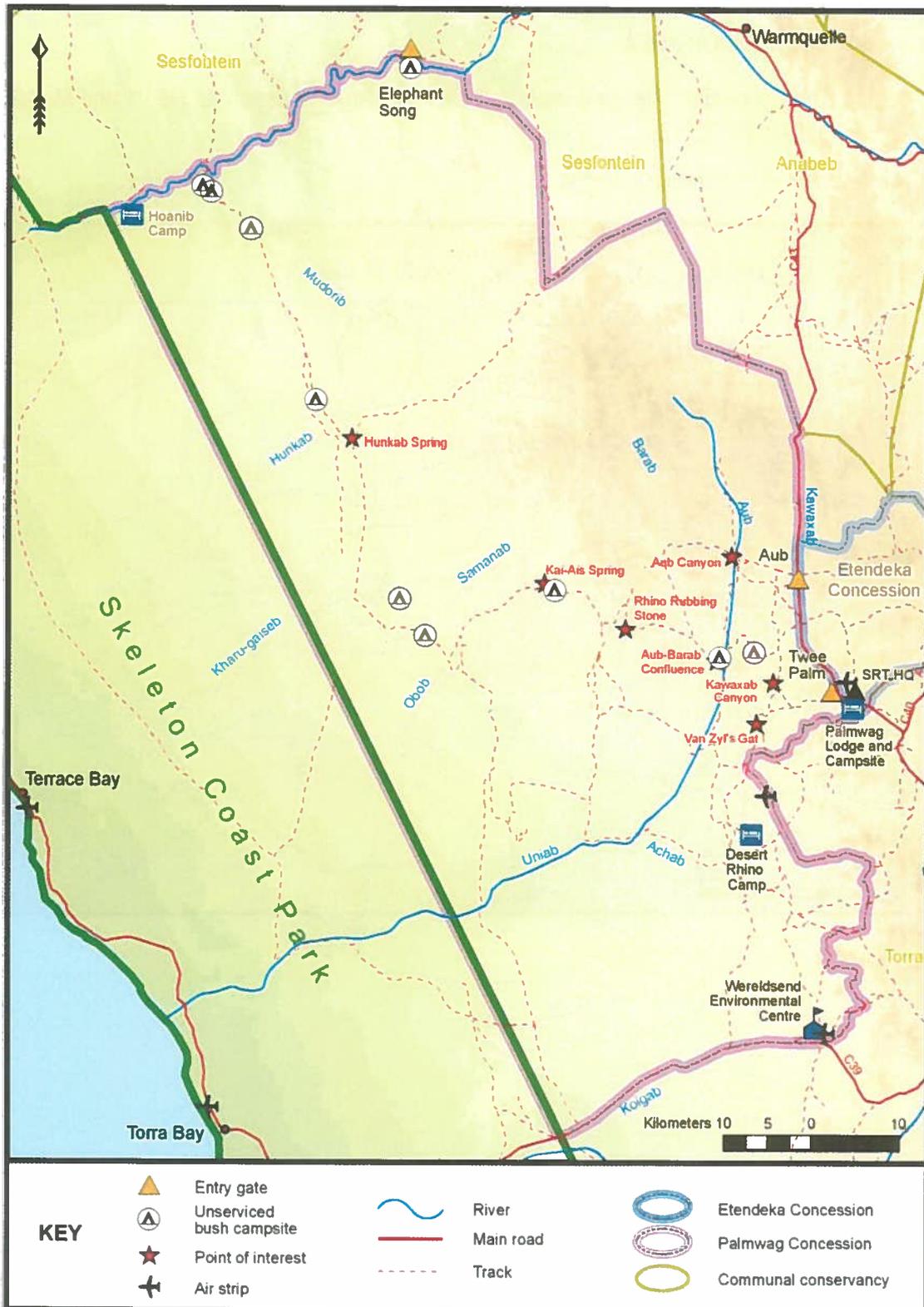
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Map 2: The Concession Area



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- 1.2. The size of the Concession Area is approximately 582,622ha (five hundred and eight two thousand, six hundred and twenty two hectares):
 - 1.2.1. The **northern boundary** runs along the north bank of the Hoanib River from the Skeleton Coast Park boundary in the west to GPS position S19.22550 E13.51314 in the east;
 - 1.2.2. The **southern boundary** follows the veterinary cordon fence from the Skeleton Coast Park boundary in the west to the Wêreldsend veterinary gate in the east;
 - 1.2.3. The **eastern boundary** runs from the north bank of the Hoanib River in the north; along the south-western boundaries of Sesfontein and Anabeb conservancies along the base of the mountains to the point known as Gomakukous; from there south along the C43 road to the Palmwag veterinary gate; and from there south along the veterinary cordon fence to the Wêreldsend veterinary gate in the south;
 - 1.2.4. The **western boundary** follows the Skeleton Coast Park boundary from the northern bank of the Hoanib River in the north to the veterinary cordon fence in the south.
- 1.3. Within the Concession Area, there are two exclusive use areas where the Operator shall have the exclusive rights described in paragraph 3 below:
 - 1.3.1. The **Hoanib Portion** as illustrated in Map 3: the northern boundary follows the north bank of the Hoanib River from the Skeleton Coast Park boundary to the Hoanib / Tsuxab River junction, and then the southern bank of the Hoanib River from the Hoanib / Tsuxab River junction to the west bank of the Mudorib River; the eastern boundary follows the so-called Western Tour Route south to the Hunkab Springs; the southern boundary runs from the Hunkab Springs west to the Skeleton Coast Park boundary; and the western boundary follows the Skeleton Coast Park boundary north to the Hoanib River. For the avoidance of doubt, the Western Tour Route itself and the associated unserved bush-camping sites are not part of the Hoanib Portion.
 - 1.3.2. The **Desert Rhino Portion** as illustrated in Map 4: the northern boundary follows the north bank of the Uniab River from the Skeleton Coast Park boundary in the west to the veterinary cordon fence in the east; the eastern and southern boundaries coincide with the boundaries of the Concession Area, and the western boundary follows the Skeleton Coast Park boundary from the veterinary cordon fence in the south to the Uniab River in the north.

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R. M. K.

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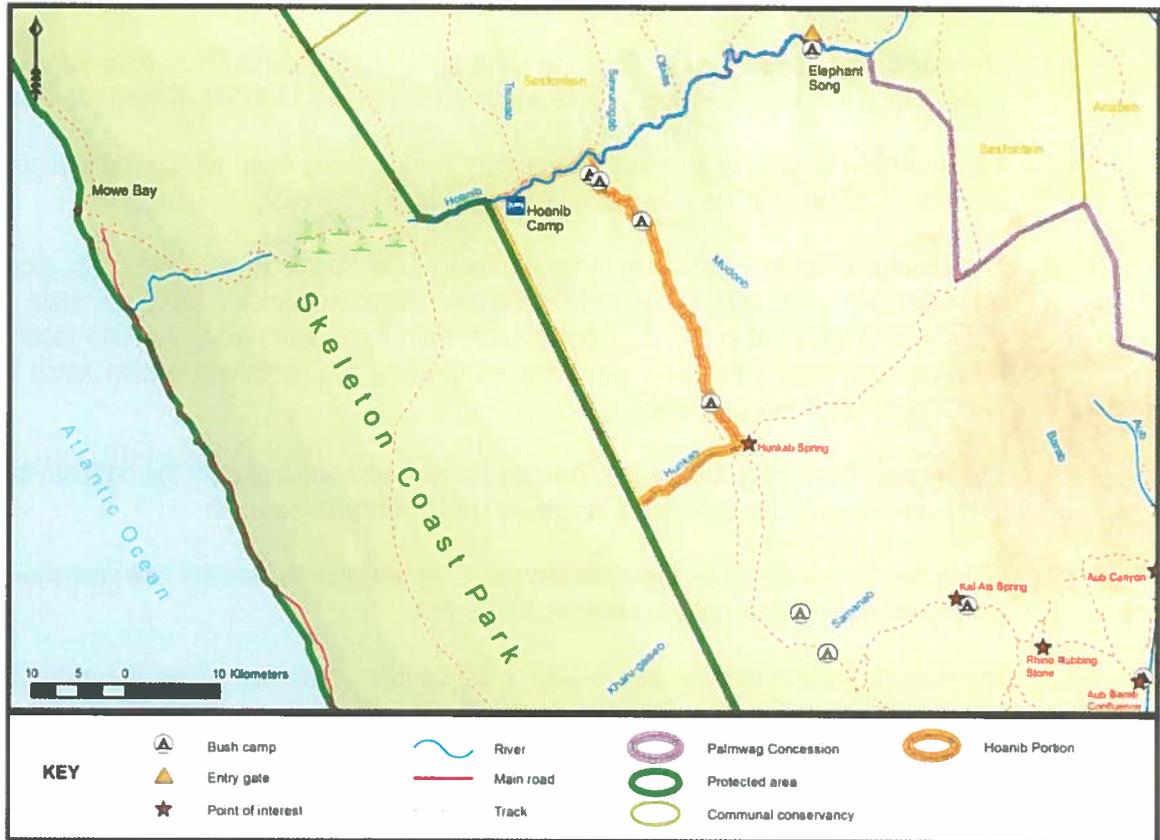
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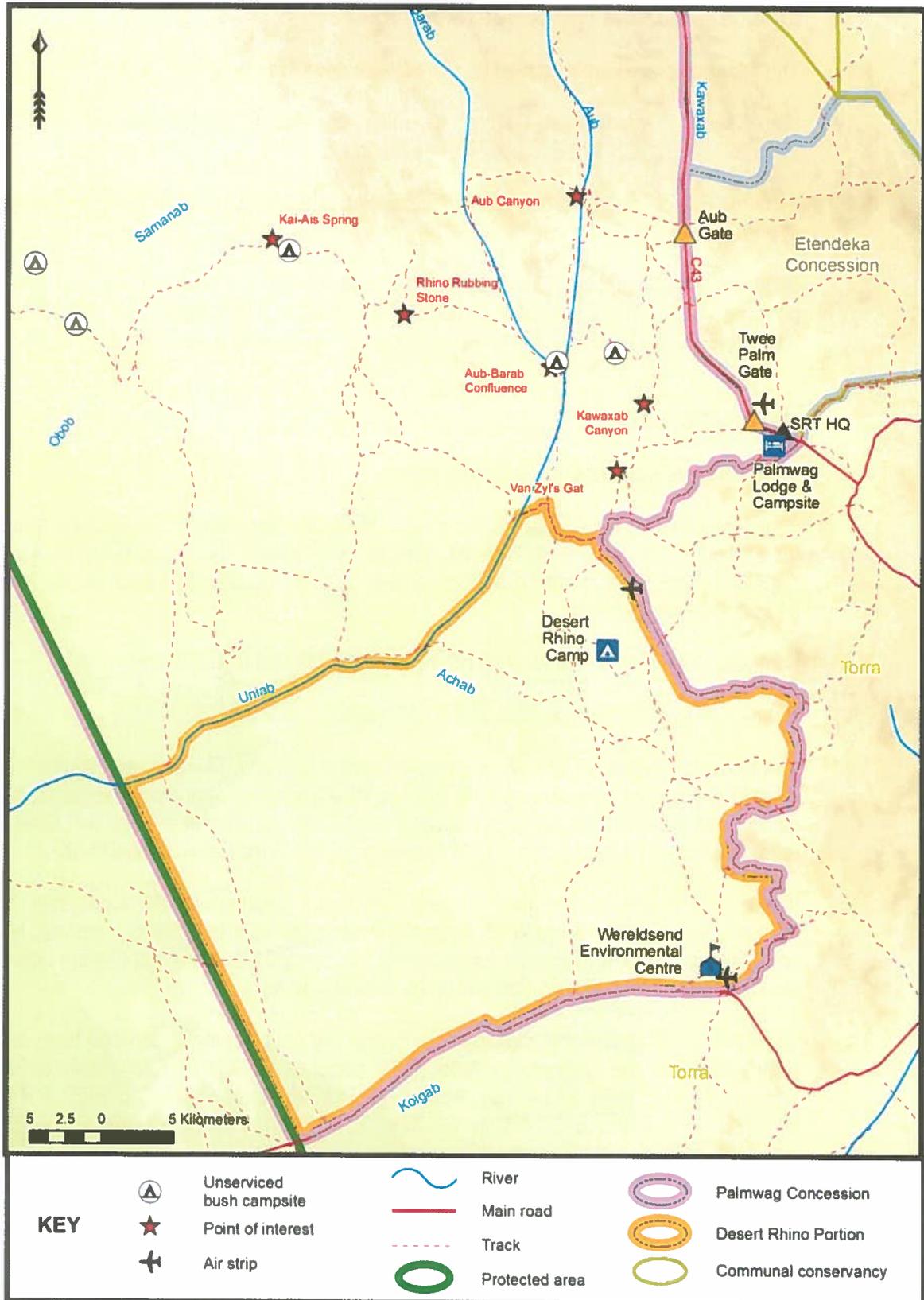
Map 3: The Hoanib Portion of the Concession Area



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- MAH
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- B.M.K.
- CG
- AS
- K.K.

Map 4: The Desert Rhino Portion of the Concession Area



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 R.M.K.
 AB.
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 J.R.
 K.K.
 C.G.

2. EXCLUSIONS FROM THE CONCESSION AREA

- 2.1. The following places are excluded from the Concession Area:
 - 2.1.1. Wêreldsend Environmental Centre, including its airstrip (GPS positions: S20.225000 E13.899444; S20.227222 E13.900278, see Maps 2 and 4;
 - 2.1.2. Save the Rhino Trust head quarters (GPS position: S19.868333 E13.935000, see Maps 2 and 4; and
 - 2.1.3. Elephant Song Camping Site, operated by Hoanib Camp Safaris (4.2ha site with GPS positions: S19.21955 E13.45559; S19.21916 E13.45620; S19.21302 E13.45651; S19.21776 E13.45629; S19.21880 E13.45437 S19.21729 E13.45398, see Maps 2 and 3.

3. CONCESSION RIGHTS

Tourism Development and Operating rights

- 3.1. In accordance with the Operator's Proposal contained in Annexure 2, the Operator shall have the exclusive right to develop, Operate, Manage and Maintain the following tourism lodges in the Concession Area, including their associated support infrastructure such as staff housing and other service facilities:
 - 3.1.1. Palmwag Desert Rhino Camp (GPS position: 20.038889 E13.831667); and
 - 3.1.2. Hoanib Camp (GPS position: S19.37102 E13.15233).
- 3.2. The Operator shall have the exclusive right to erect, Operate, Manage and Maintain 2 (two) temporary (i.e. fully reversible with no use of cement) satellite camps on a seasonal basis at locations to be agreed in advance between the Concessor, Concessionaire and Operator, 1 (one) of which shall be in the Hoanib Portion and 1 (one) in the Desert Rhino Portion.
- 3.3. If permitted in the tourism development plan being prepared by the Concessor for the Concession Area, the Operator shall have the exclusive right to develop, Operate, Manage and Maintain any new tourism accommodation, support infrastructure and tourism activities in the Hoanib and Desert Rhino Portions of the Concession Area.
- 3.4. The Operator shall have the obligation to manage and maintain the unserviced bush-camping sites located in the Concession Area (GPS positions: S19.7625 E13.60904; S19.80808 E13.46628; S19.76982 E13.43965; S19.56398 E13.34972; S19.3871 E13.2805; S19.34212 E13.2285; S19.34417 E13.2295; S19.833289 E13.78791; and S19.827628 E13.82639) as part of its obligation to allow use of agreed areas and routes by members of the public and tourism operators as stipulated in paragraph 4 of this Annexure 4.
- 3.5. The Operator shall have the exclusive right to Operate, Manage and Maintain the existing Palmwag Desert Rhino Camp airstrip (GPS position: S19.96833 E13.83583) and related support infrastructure there.

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- 3.6. The Operator shall have the non-exclusive right to use the existing Palmwag airstrip located within the Etendeka concession (GPS position: S19.87586 E13.94141). Operation, Management and Maintenance of this airstrip will be subject to a written Associated Agreement between the Etendeka concessionaire and operator, and the Concessionaire and Operator to be entered into within 60 (sixty) Business Days from the Effective Date;
- 3.7. The Operator shall furthermore have the non-exclusive right to use the airstrips at Wêreldsend (GPS position: S20.227222 E13.900278), Torra Bay (GPS position: S20.296111 E13.228611), Terrace Bay (GPS position: S19.971944 E13.025278) and Möwe Bay (GPS position: S19.388611 E12.743889);
- 3.8. The Operator shall have the exclusive right to retail trade (including but not limited to the selling of fuel, craft, meals, food, beverages and firewood) in the Hoanib and Desert Rhino Portions of the Concession Area;
- 3.9. The construction of any New Concession Assets and/or major re-development of Existing Concession Assets must be proposed by the Operator and confirmed in writing with the Concessionaire and Concessor before they are implemented. Such improvements will be subject to the Detailed Design, EIA and EMP procedures outlined in this Agreement.

Special Provisions for Palmwag Lodge and Campsite

- 3.10. The Operator shall have the exclusive right to Operate, Manage and Maintain the Palmwag Lodge and Campsite, including the existing fuel station (GPS positions: S19.885833 E13.936667; and S19.88459 E13.94739), from the Effective Date until 31 October 2012, after which the Operator Parties shall either renew the appointment of the Operator by written agreement or the Operator shall vacate the site and facilities and hand them over free of charges, liens, claims or encumbrances of any kind whatsoever, free of any liabilities and in good condition to the Concessionaire. The Operator shall not be entitled to payment of any compensation in connection therewith.
- 3.11. The Concessionaire reserves the right to appoint a third party selected by the Concessionaire in accordance with the Head Concession Contract to develop, Operate, Manage and Maintain the site, facilities and associated activities at the Palmwag Lodge and Campsite.

Activity Rights

- 3.12. In the Hoanib and Desert Rhino Portions of the Concession Area, the Operator shall have the exclusive right to conduct guided sight-seeing and game-viewing drives, guided walks, camel treks, mountain bike excursions, overnight hikes and bush-camping at temporary fly-camps, provided such activities conform to the Environmental and Development Guidelines, Concession Area Rules and the Management Plan;
- 3.13. In the rest of the Concession Area (i.e. in the Concession Area excluding the Hoanib and Desert Rhino Portions), the Operator shall have the non-exclusive right to conduct guided sight-seeing and game-viewing drives, guided walks, camel treks, mountain bike excursions, overnight hikes and bush-camping at temporary fly-camps, provided such activities conform to the Environmental and Development Guidelines, Concession Area Rules and the Management Plan. Such activities shall not restrict the use of agreed areas and routes by members of the public and other tourism operators (including the future operator of Palmwag Lodge and Campsite) as stipulated in paragraph 4 of this Annexure 4. The rights granted in

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- 4.4. It is specifically recorded that the Concessor has reserved the right to revise the areas designated for research, Conservation Management, education and other non-tourism purposes from time to time, and in so doing will be guided by the Management Plan and tourism development plan for the Concession Area. Any revisions will be done following due consultation with the Concessionaire and the Operator. Revisions that involve an expansion of research, Conservation Management, education and other non-tourism activities in the Concession Area will be done in a manner that does not affect the commercial viability of the Concession Rights.
- 4.5. The Operator is obliged to Operate, Manage and Maintain the existing Concession Area entry gates at the following locations (see Maps 2, 3 and 4):
 - 4.5.1. Twee Palm (GPS position: S19.881111 E13.911667);
 - 4.5.2. Aub (GPS position: S19.754722 E13.870556);
 - 4.5.3. Elephant Song (GPS position: S19.217414 E13.45408).
- 4.6. The function of the Concession Area entry gates is to regulate and monitor access to the Concession Area, provide visitor information to tourists and tour operators, and to maintain access records for the Concession Area.
- 4.7. If required, the Operator may request assistance from the Concessionaire with enforcing Concession Area Rules, regulating access, and monitoring of tourist activities such as unauthorised camping, littering etc.
- 4.8. The Concessor, Concessionaire and Operator may agree on new Concession Area entry gates that become necessary for effective management of the Concession Area, and the Operator shall be responsible for the construction, Operation, Management and Maintenance of such entry gates.

Concession Area Entry Fees

- 4.9. The Operator may collect Concession Area Entry Fees from tourism operators and members of the public that access designated attractions and zones within the Concession Area for tourism activity purposes. The purpose of charging Concession Area Entry Fees is to cover the Operator's direct costs of managing public access to the Concession Area. Concession Area Entry Fees shall be agreed between the Concessor, Concessionaire and Operator within 60 (sixty) Business Days from the Effective Date and will thereafter become an Associated Agreement, which may be amended from time to time by written agreement between the Parties and the Concessor.

5. CAPACITY LIMITS

- 5.1. The operating capacity limits for the tourism accommodation products within the Concession Area are as follows:
 - 5.1.1. Palmwag Lodge & Campsite shall consist of no more than 30 (thirty) guest rooms and 1 (one) campsite consisting of 20 (twenty) individual camping areas, and at any one time may operate

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no more than 6 (six) four-wheel-drive game-viewing vehicles with a maximum net mass of 3 (three) ton and maximum passenger capacity of 16 (sixteen) excluding the driver.

5.1.2. Palmwag Desert Rhino Camp shall consist of no more than 12 (twelve) guest rooms, and at any one time may operate no more than 4 (four) four-wheel-drive game-viewing vehicles with a maximum net mass of 2 (two) ton and maximum passenger capacity of 9 (nine) excluding the driver.

5.1.3. Hoanib Camp shall consist of no more than 12 (twelve) guest rooms, and at any one time may operate no more than 4 (four) four-wheel-drive game-viewing vehicles with a maximum net mass of 2 (two) ton and maximum passenger capacity of 9 (nine) excluding the driver;

5.1.4. The unserviced bush-camping sites for use by self-guided tourists and tour operators shall remain at 9 (nine);

5.1.5. Seasonal satellite camps erected on a temporary basis will consist of not more than 6 (six) guest rooms.

5.2. The Detailed Design, EIA and EMP procedures required may propose changes to these capacity limits. Any such changes shall be agreed by the Parties and such agreement shall be based on the expert recommendation of the architect and/or independent environmentalist contracted by the Operator to prepare the Detailed Design, EIA and EMP.

6. EFFECTIVE DATE AND CONCESSION PERIOD

6.1. The Effective Date shall be on the fulfilment of the suspensive condition specified in paragraph 13 of this Annexure 4.

6.2. This Concession Operator Contract shall be valid for a period of 20 years commencing on the Effective Date.

7. RENEWAL

There is no right of renewal associated with this Concession Operator Contract. At the end of the Concession Period or at such earlier time as may be provided herein, the Operator shall hand over its rights or interest in the Concession Assets to the Concessionaire free of charges, liens, claims or encumbrances of any kind whatsoever, free of any liabilities and in good condition. The Operator shall not be entitled to payment of any compensation in connection therewith.

8. FINAL EXPIRY DATE

The final expiry date of the Concession Operator Contract shall be 20 years from the Effective Date.

9. CONCESSION FEE

9.1. From the Effective Date until the Operator vacates Palmwag Lodge and Campsite, the Concession Fee shall be the greater of

10% (ten percent) of Gross Revenue associated with the Hoanib and Desert Rhino Portions of the Concession Area PLUS 8% (eight percent) of Gross Revenue associated with Palmwag Lodge and Campsite

J.R. [Signature] DLR [Signature] w.w.m. [Signature] [Signature] CG [Signature] R.K. [Signature] [Signature] R.M.K. [Signature] [Signature]

OR

the Minimum Concession Fee as per the table below.

9.2. Once the Operator vacates Palmwag Lodge and Campsite, the Concession Fee shall be the greater of

10% (ten percent) of Gross Revenue [on the DRC and Hoanib],

OR

the Minimum Concession Fee as per the table below.

9.3. The Concession Fee shall be calculated quarterly and payable quarterly in arrears before or on the 10th (tenth) Business Day of the month following the quarter for which payment is due.

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9.4. The Minimum Concession Fee specified in the table below shall escalate annually in accordance with the official National Consumer Price Index (NCPI) published by the Bank of Namibia (<https://www.bon.com.na/>) (or such measure as may replace it), and the adjusted amount shall be compounded annually for the duration of the Concession.

	Projected Gross Revenue (excluding Palmwag Lodge & Campsite)		Concession Fee		
	<u>Inflation included</u>	<u>Without inflation</u>	<u>Annual % of GR</u>	<u>Annual amount</u>	<u>Minimum Concession Fee*</u>
	A	B (in Yr1 N\$)	C	D (D=B*C)	E
Year 1	12 986 992	12 986 992	10,0%	1 298 699	1 200 000
Year 2	14 041 536	13 713 149	10,0%	1 371 315	1 200 000
Year 3	16 202 831	15 410 733	10,0%	1 541 073	1 200 000
Year 4	18 111 524	16 799 107	10,0%	1 679 911	1 200 000
Year 5	20 206 922	18 297 046	10,0%	1 829 705	1 200 000
Year 6	23 405 978	20 710 938	10,0%	2 071 094	1 200 000
Year 7	26 469 967	22 911 423	10,0%	2 291 142	1 200 000
Year 8	28 868 457	24 466 497	10,0%	2 446 650	1 223 325
Year 9	31 484 475	26 152 174	10,0%	2 615 217	1 307 609
Year 10	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 11	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 12	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 13	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 14	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 15	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 16	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 17	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 18	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 19	34 337 766	27 980 100	10,0%	2 798 010	1,399,005
Year 20	34 337 766	27 980 100	10,0%	2 798 010	1,399,005

*Minimum Concession Fee = greater of D*50% or N\$1 200 000. The Minimum Concession Fee shall be escalated annually by the inflation rate in accordance with paragraph 9.4 of this Annexure 4.

10. VALUE OF PERFORMANCE BOND

The Performance Bond, in accordance with the provisions of Clause 3.7 of the Concession Operator Contract and in the format supplied in Annexure 8, shall be issued in favour of the Concessionaire to the amount of N\$500,000 (five hundred thousand Namibia Dollars), which amount shall escalate

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annually by the National Consumer Price Index (NCPI) published by the Bank of Namibia (or such other measure as may replace it) within 60 (sixty) Business Days of the end of each year of the Concession.

11. PENALTY INTEREST RATE

Late payments of any fees due under the Concession Operator Contract shall attract interest at the prevailing current prime lending rate plus 5 (five) percent.

12. COMPLIANCE EVENTS

The following Compliance Events shall take place prior to the start of any Construction Works:

- 12.1. Approval of the Detailed Design by the Concessionaire and Concessor;
- 12.2. Issuing of an Environmental Clearance Certificate for the Project in terms of the Environmental Management Act (2007);
- 12.3. Completion of all necessary Regulatory Provisions and statutory requirements.

13. SUSPENSIVE CONDITION

The Concession Operator Contract is subject to the lodging of a Performance Bond in accordance with the provisions of Clause 3.7 of the Concession Operator Contract and paragraph 10 of this Annexure 4.

14. INSURANCE

The Operator shall take out and keep in force for the Concession Period the following insurance:

- 14.1. Comprehensive insurance of the Concession Assets, including insurance cover of the Construction Works during the Construction Phase of the Project;
- 14.2. Indemnification of the Concessor for public liability and passenger liability to a minimum value of N\$5,000,000 (five million Namibia Dollars);
- 14.3. Casualty insurance, including for emergency evacuation of guests and employees of the Concessionaire;
- 14.4. Business interruption insurance;
- 14.5. Third party liability insurance; and
- 14.6. Employer's liability insurance.

15. CONCESSION ASSETS

- 15.1. A general description of the Existing Concession Assets and New Concession Assets are specified in Annexure 5.
- 15.2. The Operator shall prepare a detailed inventory of Existing Concession Assets and supply this to the Concessionaire within twenty (20) Business Days of the Effective Date.

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- 15.3. The abovementioned inventory shall be confirmed by the Parties and thereafter appended to Annexure 5 of this Concession Operator Contract.
- 15.4. The Operator shall regularly update the abovementioned inventory and provide the Concessionaire a copy together with its annual report, as specified in Clause 8.1.3.

16. ADDRESS FOR NOTICES

Operator representative:

Chief Executive Officer
Wilderness Safaris Namibia (Pty) Ltd
PO Box 6850
Windhoek, Namibia
Telephone: +264 61 274500
Facsimile: +264 61 239455

Concessionaire representative:

Chairperson
BIG 3 Conservancy Consortium
PO Box 462, Khorixas
Torra Conservancy Office
Torra, Namibia
Telephone & facsimile: +264 67 697063

J.P.R. *[Signature]* *BIR* *w.w.m.* *[Signature]* *CG*
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ANNEXURE 5 - CONCESSION ASSETS

The Existing Immovable Concession Assets connected to the Project, as at the Effective Date, consist of the following:

Name:	Description / Location:
1. Accommodation facilities	Palmwag Lodge & Campsite, Palmwag Desert Rhino Camp and Hoanib Camp
2. Support infrastructure such as staff housing and other back-of-house facilities	Palmwag Lodge & Campsite, Palmwag Desert Rhino Camp and Hoanib Camp
3. Services (water reticulation, water heating, sewer, power supply, waste management etc.)	Palmwag Lodge & Campsite, Palmwag Desert Rhino Camp and Hoanib Camp
4. Air strip and support infrastructure	Palmwag Desert Rhino Camp
5. Fuel station	Palmwag Lodge & Campsite
6. Access and game viewing tracks, including signage and entry gates	Throughout the Concession Area
7. Unserviced bush-camping sites	Throughout the Concession Area
8. All other existing immovable property	In the Concession Area

The New Concession Assets to be developed by the Concessionaire for implementation of the Project are summarised in the below table. A detailed description of the New Concession Assets is provided in the Operator's Proposal (see Annexure 2).

Name:	Description / Location:
1. Newly constructed air strip and support infrastructure	At Hoanib Camp in the Hoanib Portion of the Concession Area
2. Renovated / new guest & guide rooms and pathways	At Hoanib Camp in the Hoanib Portion of the Concession Area
3. Renovated / new main building and central guest	At Hoanib Camp in the Hoanib Portion of the Concession Area

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facilities	
4. Renovated / new back of house infrastructure	At Hoanib Camp in the Hoanib Portion of the Concession Area
5. Renovated / new services (water reticulation, water heating, sewer, power supply, waste management etc.)	At Hoanib Camp in the Hoanib Portion of the Concession Area
6. New / renovated game viewing tracks	At Hoanib Camp in the Hoanib Portion of the Concession Area
7. Renovated / new staff housing	At Hoanib Camp in the Hoanib Portion of the Concession Area
8. Any other fixed improvements agreed in writing between the Parties	In the Palmwag Concession Area

J.P.R.

 P.L.R.
 M.H.
 w.l.w.m.

 R.M.K.

 C.G.
 K.K.

ANNEXURE 6 – ENVIRONMENTAL & DEVELOPMENT GUIDELINES

Background:

The Concession Area is arid and thus environmentally very sensitive, and contains species and habitats of high importance due to their scarcity in Namibia and internationally. Major features of this region include the lower reaches of the ephemeral rivers and their numerous tributaries, mountains and gravel plains, lichen fields and a variety of arid environment plants, including the ancient Welwitschia.

The basalt mountains and rocky desert plains here have highly mineralized soils, are traversed by permanently vegetated watercourses, and have many high quality springs, enabling big game species to thrive where the average annual rainfall is less than 100mm. The Palmwag Concession is also the refuge of over 60% of Kunene region's black rhino population and most of its remaining lions. For these reasons, it is undoubtedly the highest priority conservation area in Namibia's northwest.

The Hoanib River has numerous *Faidherbia (Acacia) albida* trees that drop their protein-rich pods in the late dry season, providing crucial, high-protein forage for desert-dwelling elephants. The Hoanib River and other ephemeral rivers provide an attractive route from Etosha and Hobatere to the coast, along an east-west gradient of increasing aridity. Trees extend their range in to the driest areas by virtue of available soil moisture along the river bed and immediate surrounds. Driving along the sandy river beds is permitted, as every time the river flows it removes tracks and no permanent scars are left. Banks are however generally sensitive, hence the need to control and limit entry and exit points.

The landscapes along the Hoanib River are dynamic, changing with every storm flow. Banks are eroded, sand and silt deposited, reed beds periodically "scrubbed", trees uprooted and deposited downstream where they act as silt and sand traps, creating new seedbeds and new channels form. The riverine environment provides scarce food resources, water and shelter to a variety of animal species as aridity increases and plant productivity declines in the surrounding areas.

Tourism activities within the riverine environment must consider this dynamism, and tourism activities should not contribute to accelerated or 'unnatural' changes. The integrity of wetland systems and the coastal dune field should not be threatened by any tourism related activities, especially vehicle impacts. This also applies to areas adjacent to the riverine environment.

Apart from the Hoanib River (especially during Namibian and SA school holidays) and in the vicinity of Palmwag Lodge, this vast Concession Area is still relatively lightly used by mobile safari operators, foreign tourists in hired 4x4s and Namibian or regional visitors in their own vehicles.

Since Namibia's independence, the number of tourists visiting the Kunene region has steadily increased, which is now causing some environmental problems in localized areas. The most obvious of these are the broadening of roads due to their becoming corrugated, off-road driving on sensitive substrates, burying instead of carrying out litter, firewood abuse, harassing of elephants for photographs and camping near water points. The Palmwag Concession experiences all of these problems and the Concessor, NGOs and local leaders now recognize the need to introduce some regulatory measures.

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Site specific guidelines:

Key issues which need further elaboration during the formal EIA process include:

1. Motorised accessibility should be limited, and as far as possible no new roads or tracks should be developed within this Concession Area;
2. Any new access and traversing roads and tracks are to be subjected to the EIA process, and adequate drainage structures are to be provided on all such roads (including humps, mitre drains, where appropriate pipes supported by gabions etc);
3. All vehicles used in the Concession Area (i.e. those of the Concessionaire / Operator and visitors) must be operated with low tyre-pressure to minimise negative impacts on tracks and roads. The Concessionaire / Operator must inform all visitors of this requirement;
4. To limit track damage all vehicles used in the Concession Area will be four-wheel-drive and will be of standard width;
5. The landscapes are rugged with steep slopes, emphasizing the strong need for the strategic location of tracks and a high level of maintenance;
6. Lichen fields and plains with sensitive, compactable soils should be avoided (once compacted by a vehicle, tracks remain for years due to the nature of the soils);
7. The use of graders is to be avoided because they "gouge" roads below the level of the surrounding surface;
8. Many catchments are large, and have low visual absorption capacities, so any development will have relatively high visual impacts. Developments must therefore be especially sensitive in terms of design, location, shape, colour and texture of materials used and, in particular, use of subdued lighting is essential;
9. Natural quiet should be achieved wherever possible (especially away from main routes such as the C43), thus avoiding use of generators at lodges;
10. A first-phase archaeological scoping by a qualified archaeologist must precede any construction activities; should any artefacts be found during construction, an archaeologist should be consulted for further advice;
11. Wherever possible, any new structures or developments should be sited on already impacted areas;
12. During the Construction Works, care should be taken to ensure minimum soil disturbance in the vicinity of any natural springs/seepages;
13. All accommodation and related structures are to be located between 100m and 1km away from any natural springs within the landscape – the exact distance for each development should be confirmed during the Detailed Design, EIA and EMP processes outlined in the agreement;
14. Adherence to rhino viewing protocols (developed by the Concessor and Save the Rhino Trust) is essential;
15. Elephant viewing must be conducted according to recognised or approved conservation protocols;

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16. All physical waste should be removed to an acceptable, managed waste management site;
17. An integrated waste management plan, developed together with neighbouring concessions, is required;
18. Rivers are to be entered and exited only at existing points. No off-road driving is permitted once the river is exited and, no driving in any seasonally inundated areas when flooded or moist;
19. No tourist self-driving is permitted in dune fields in lower Hoanib River area. This area should only be traversed by experienced dune drivers in properly equipped vehicles and along designated routes;
20. No waste of any sort is to be buried in river beds; toilet paper is to be carefully burnt after use;
21. Bush-camping must be at designated sites (refer to Maps 2, 3 and 4);
22. The likelihood of flash floods is very high during the rainy season. Storms in upper catchment areas may not be observed from the mid-lower reaches of rivers, so use of rivers should be avoided during rainy periods;
23. No permanent accommodation structures are to be developed in the Hoanib River or within its riparian zone - only 'pack-up and go' structures should be permitted;
24. EMP's for any developments must emphasize requirements for the decommissioning phase;
25. All tours and activities permitted in the Concession Area must be strictly confined to the form of sight-seeing known as eco-tourism, and none of the tours or activities may be presented, conducted or advertised as a competition or endurance test of vehicles;
26. The Concessionaire shall preserve the Concession Area and its game and botanical species and ensure that all its guests, visitors and employees who enter the Concession Area shall do likewise;
27. No game or plant life or other natural resource and/or occurrences may be disturbed, violated, mutilated, destroyed, killed or removed;
28. The Concessionaire shall provide full cooperation to the officials of the Concessor, especially in respect of protection of the Concession Area and the game therein and the prevention of pollution and environmental damage in the Concession Area;
29. The utilisation and management of wildlife in the Concession Area, including control of problem animals, shall remain the sole responsibility of the Concessor.

Refer to the following detailed environmental and development guidelines and environmental management plan template for further guidelines.

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C.G.
J.R.
U.N.
K.V.

General Environmental & Development Guidelines:

The following general Environmental & Development Guidelines shall apply to this Concession.

Design & construction parameters	General Guidelines	Specific Guidelines – Palmwag Concession Area
Visual impact	<ul style="list-style-type: none"> Requirements for particular architectural style, building materials etc. to reduce visual impact should be included in the initial documentation. This should take into account potential future users of the area. Visual impact of support services should also be considered. 	<ul style="list-style-type: none"> Shape, nature, colour and texture of materials used for construction to meld with basalt. Subdued lighting to be used No constructions to break skyline
Construction Activities	<p>Site definition</p> <ul style="list-style-type: none"> The site for development must be clearly defined so the assessment can be made within this area. During construction the site must be well marked, possibly by pegging, so that the limits are clearly understood by all. <p>Environmental management plan</p> <ul style="list-style-type: none"> In the case of new developments an environmental scoping should be carried out prior to the concession being granted. Following the initial acceptance of a proposal, an environmental screening should be conducted, and thereafter if necessary a full environmental impact assessment should be carried out, and this should lead to an environmental management plan (EMP), which will incorporate the issues in this checklist. An Environmental Control Officer (ECO) should be appointed to oversee developments and ensure compliance with the EIA and EMP. <p>Issues during construction</p> <ul style="list-style-type: none"> The EMP should clearly detail what level of disturbance to surrounding areas is permitted and what may be removed or altered (e.g. large trees etc). Penalties should be determined for violations of the EMP, including off-site impacts and trees or features that may be defaced or destroyed. Irreplaceable and/or critical features must be clearly marked. The EMP should specify how construction workers are to be accommodated, and what ablation facilities and other waste management are to be allowed. Give guidelines on use of resources, especially local building supplies. If this is permitted it should be spelt out how such use should be carried out and regulated and whether there should be any fee for it. There may need to be restrictions on the maximum size of vehicle used for construction, and access to the Concession Area may need to be restricted to certain times, for control purposes and to reduce impact on other users. It is possible that there may be chance cultural, historical and/or archaeological finds. A procedure for dealing with these should be detailed in advance. 	<ul style="list-style-type: none"> Prior to construction, exact positions of all intended structures to be pegged and passed by ECO/MET Archaeological phase 1 Screening to precede any construction Adequate accommodation and ablation facilities to be provided for workers Any spring or seepage areas to be fenced off, no activity/encroachment onto this area In the event of chance finding of any archaeological artefacts during construction, construction activities must be suspended, the area to be fenced and a competent archaeologist contacted immediately Penalties for non-compliance to be included in contracts
Buildings and structures	<ul style="list-style-type: none"> In the case of concessions where there are existing buildings it must be specified what changes to them would be permitted and whether a deposit or guarantee is required before structures are damaged, altered or removed. There may be existing 'immovable' assets (pumps, borehole equipment, etc) that fall within the concession area. It should be specified what will happen to these, what use may be permitted, who will maintain them and in what condition they must be in at the end of the concession agreement if the concessionaire uses them. If new structures are to be erected, there may be some restrictions on the types of buildings allowed, including their location within the concession areas. It should be made clear whether fixed structures will be permitted or only temporary structures, and if so how this is defined. Depending on the circumstances and sensitivity of the area it may be necessary to be specific on guidelines such as area, style, height, building material, colour, number of guests and staff, services etc. These are often highly subjective issues, but they must be limited firstly by environmental and cultural factors (water, sewerage, habitat etc) but also on the visitor carrying capacity for the Concession Area and the market niche to be catered for. These issues must be broadly defined in the 	<ul style="list-style-type: none"> Permanent structures of appropriate design and using appropriate construction materials (including local materials sourced from permitted sites-ECO to specify)

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Design & construction parameters	General Guidelines	Specific Guidelines – Palmwag Concession Area
	management plan.	
Roads and Tracks	<ul style="list-style-type: none"> A concession, particularly one covering a substantial area, is likely to require roads and tracks. The road network must reflect the type of product offered and the expected visitor usage. Some of these will be pre-existing, while others may need to be developed. It must be clear who is responsible for maintaining these roads, and if new roads may be constructed, how these will be approved and what type is permitted (single track or built up road). These should all require an EIA that must address the location and the sourcing of any building material from quarries. The cost implications to the MET must be considered if the MET is to maintain the road network since this cost may escalate with increasing usage. It should be specified whether 'off-road driving' may be permitted and if so under what circumstances. 	<ul style="list-style-type: none"> Responsibilities for road maintenance to be clearly specified in all concession agreements No new roads to be constructed before formal management plan in place No off road driving under any circumstances Rivers to be entered and exited using only existing approaches and entrance/exit points Where entrance exit points show signs of erosion, measures must be taken to stabilise these
Support infrastructure		
Electricity/energy	<ul style="list-style-type: none"> Depending on the site, it may be necessary to impose limitations on the type of energy source which may be used and on reticulation to and on the site (for instance whether this can be overhead or should be underground). This will be dependent on noise, air and fuel pollution from diesel or other power generation systems, the visual impact of the power supply and the costs of these systems. It must be clear who will pay for the power supply. 	<ul style="list-style-type: none"> Developers are encouraged to use solar and other innovative sources of energy wherever feasible Any electricity cable to sites to be underground
Water	<ul style="list-style-type: none"> Water is often a major limiting factor in any development and although the risks for finding and supplying this must rest with the concessionaire, the MET should conduct an initial feasibility study to ensure that water is present and is likely to meet the specifications expected for the site. MET must define what may be used by the concessionaire, both in terms of the quantity and source. If information is available on water quality and quantity, this should be supplied, but the concessionaire should conduct tests to verify this before investing. It should be defined who carries the risk if water dries up or quality deteriorates. Meters may need to be fitted, and if so it should be specified at whose cost this will be done, who will read them and what penalties will be applied for overuse. If water resources are to be shared with other users, this will need to be specified, and agreement sought with the other users. 	<ul style="list-style-type: none"> Tests needed to ensure sufficient water of acceptable quality is available (start with existing borehole) Meter to be installed to measure water use (targets for water use to be set and used as benchmark)
Communications	<ul style="list-style-type: none"> Type of communications systems allowed and standards required for safety. Use of overhead lines, masts and towers. 	<ul style="list-style-type: none"> Any masts and towers to be as unobtrusive as possible Any overhead lines to be located unobtrusively and consider possible elephant damage
Waste Management		
Liquid waste and by products	<ul style="list-style-type: none"> Standards may need to be applied for disposal of sewage and wastewater. These will be dependent on the sensitivity of the area, availability of water, and possibility of ground water contamination. Specific conditions may be applied to storage of liquid fuels/solvents/cleaning materials, and there may be limits on type or quantity or storage and containment structures. Conditions should be established for the use of toxic products, including a list of any banned and how will they be handled and managed on the site and transported. Indicate whether there is a policy regarding the use of environment friendly products. 	<ul style="list-style-type: none"> Grease traps to be installed in kitchens, "grey water to be used for any landscaped areas (using only regionally indigenous species) Oil pans to be placed in vehicle parking areas; under and around fuel storage areas; if gas is used, canisters to be housed in Bureau of Standards approved structures; fire extinguishers to be strategically located throughout developed area; used oil to be despatched to appropriate waste facility
Solid Waste	<ul style="list-style-type: none"> System for disposal of solid waste. Policy over reduction at source, recycling and sorting. Storage prior to removal, including specifications and how long it may be stored before it is disposed of in an appropriate site. Transport of waste. Permitted types of containers and preferred route. 	<ul style="list-style-type: none"> All non-organic solid waste to be sorted for possible recycling, and removed to registered landfill site Storage in animal-proof cages prior to removal Organic waste may be buried in suitably designed "animal –proof" deep pits-the EIA will need to provide designs for such

Design & construction parameters	General Guidelines	Specific Guidelines – Palmwag Concession Area
Air emissions	<ul style="list-style-type: none"> Permission for use of incinerators and standards to be applied. 	<ul style="list-style-type: none"> Only incinerators built according to Bureau of Standards specifications may be used.
Environmental Parameters		
Carrying capacity	<ul style="list-style-type: none"> Number of guests and staff permitted to use the area. Determination of carrying capacity is often highly subjective, if it is not clearly defined by environmental constraints. Other users. If they increase as a result of the added marketing and awareness, can the Concession Area infrastructure and management accommodate this additional use? 	<ul style="list-style-type: none"> Broad adherence to zonation guidelines and current tourism planning report
Fauna and flora	<ul style="list-style-type: none"> If there are any rare, endangered or endemic species or habitats that require special attention, conditions to safeguard these organisms or habitats may be required. Policy with regard to introductions of additional species, and/or removal of existing exotics. Water holes and feeding of animals/birds. Is this permitted in any form and if so what are the special conditions which may apply? The general policy regarding water for game in the Concession Area should be addressed in the management plan. Responsibility for dealing with problem animals, especially those presenting a risk to visitors, should be specified. If capture, culling or hunting of wildlife may be carried out in the area it is important to bring this to the attention of the concessionaire and include it in the contract. 	<ul style="list-style-type: none"> Special attention to habitats with sodic soils (erosion risk minimisation); river entrance and exit points; all spring seepage areas; through proper initial location of tourism infrastructure and ongoing monitoring; No introductions or additional water points until Management Plan in place MET to deal with any problem animal cases Capture and relocation of animals deemed excess to carrying capacity may occur periodically Adherence to rhino viewing protocols (when completed)
Footpaths and trails	<ul style="list-style-type: none"> Who will provide these and to what standard? Who will provide and maintain these and to what standard? Who will be responsible for erosion control? 	<ul style="list-style-type: none"> All trails to be included in EIA
Landscaping and gardening	<ul style="list-style-type: none"> Species not permitted and any restrictions in this regard. Specific issues relating to landscaping (water features etc). Use of pesticides, herbicides and fertilizers. 	<ul style="list-style-type: none"> Only local indigenous flora to be used (other than any small areas of lawn that may be required e.g. around pool) Use of fertilisers to be kept to a minimum; only pyrethroid or similar organic-based pesticides to be used if absolutely essential
Permitted Activities	<ul style="list-style-type: none"> Provide a list of permitted activities with definite restrictions if necessary, for example, no off-road driving on gravel plains, protocol for driving in sand sea, rivers and on coast. Detail what may be done, such as hunting, fishing, walking, aircraft safaris etc. 	<ul style="list-style-type: none"> No off road driving River to be used using current track network and current entry and exit points (which will require ongoing monitoring, particularly after each period of flow Other activities to be defined in lease per agreement between concessionaire and MET
Disabled access	<ul style="list-style-type: none"> Requirements to make some or all facilities available for disabled access. 	
Archaeological/cultural and historical	<ul style="list-style-type: none"> Known sites which require special treatment. Policy if chance find is encountered. Any relevant legislation to be brought to the attention of the concessionaire. 	<ul style="list-style-type: none"> As above
Management issues		
Access and exclusivity	<ul style="list-style-type: none"> Regulation and control over access to the Concession Area and the site. Will the concessionaire be the only user of the area or will others also have access and use, possibly during concession period? Will the general public be allowed access to the area or will all other visitors be excluded? Specify how the regulatory aspects will be dealt with regarding access by the public / visitors / tourists to the areas. 	<ul style="list-style-type: none"> Concessionaire responsible for controlling access to and within site Regulation of access to be specified in lease agreement
Gates	<ul style="list-style-type: none"> Responsibility for control of gates. Responsibility of concessionaire for dealing with trespassers in area. 	<ul style="list-style-type: none"> Responsibilities to be defined in concession agreement
Signage	<ul style="list-style-type: none"> How will the concessionaire provide directions to the site? Restrictions on type, colour, logos of signage. 	<ul style="list-style-type: none"> Signage according to current Road and Transport regulations as regards size, colour, location
Domestic Stock	<ul style="list-style-type: none"> Domestic stock, such as horses, elephants or camels for visitor 	<ul style="list-style-type: none"> Horses permitted; strict control of

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Design & construction parameters	General Guidelines	Specific Guidelines – Palmwag Concession Area
	use. • If so any restrictions on enclosures, feeding, importing feed into the Concession Area and removal of waste should be specified.	fodder to minimise risk of introduction of invasive alien plants; • Horses to be treated preventatively as per veterinary directives • Manure may be used for garden composting • Horses to be stabled at night and kept within game fenced stockades
Fire	• Is fire management likely to impact on the concessionaire? • Precautions to be taken by the concessionaire. • Policy on combating wildfires in the Concession Area. • Measure for protecting property and life, including firebreaks, and responsibility for maintenance. • The need for insurance of buildings. • Will the concessionaire be provided with alternative areas if their entire concession area is burnt in a single season?	• Adequate firebreaks to be made and maintained around all constructions • Wildfires to be left alone by concession staff unless life or property is under direct threat
Aircraft and airstrips	• Are these permitted? If so under what conditions? • Construction of strip, approach and take-off, other tourist interference, aerial safaris. • Special species in flight paths.	• No new airstrips without EIA
Resource use	• May local materials be used for any purpose? If so under what conditions and restrictions, and is any payment required? • Is hunting or fishing allowed? Does it take place in the Concession Area currently? Are other users permitted to undertake these activities? Will they impact on the concessionaire?	• Local materials (rock, grass,) may be used for construction under supervision of ECO and within limits defined during site-specific EIA's • No firewood collection; firewood to be bought in from reputable source • Lease agreement to define any hunting or fishing details
Guest activities, staff safety and accommodation	• Emergency procedures, including any special conditions people must be made aware of (heat, dehydration, dangerous game etc). • Staff accommodation, location and standards. Special protection measures such as fencing. • Requirement for concessionaire to enforce Concession Area Rules on guests and staff. • Any guiding standards or qualifications required, minimum requirements for vehicles or buildings to meet special requirements etc.	• Rules to be specified in agreements • Fire extinguishers to be located within all structures and serviced regularly
Marketing	• Can logos and reserve names be used in marketing? • Joint marketing of reserve and product.	• To be specified in agreements
Supervision and monitoring	• Who will do this, and who is responsible for what? • Are regular meetings required? • How will concessionaire be managed? • If there are other concessionaires it may be useful to create a forum to agree jointly on operations? • Code of conduct and site development manual.	• MET to monitor and enforce all rules and concession guidelines • ECO to carry out monitoring as per the EMP emanating from the site-specific EIA process • Independent expert to conduct annual compliance audit
General compliance with responsible tourism development	• Has the proposal taken sufficient account of the following elements: • Avoid waste and over-consumption; • Use local resources sustainably; • Maintain and encourage natural, economic, social and cultural diversity; • Be sensitive to the host culture; • Involve the local community in planning and decision-making ; • Assess environmental, social and economic impacts as a prerequisite to developing tourism; • Ensure communities are involved in and benefit from tourism; • Market tourism that is responsible, respecting local, natural and cultural environments; • Monitoring impacts of tourism and ensure open disclosure of information; • Safety and security of employees and clients.	

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Template environmental management plan:

The following template EMP shall be used by the Concessionaire.

ISSUE	ACTION	RESPONSIBILITY	AUDIT CONTROL
PRE-CONSTRUCTION PHASE			
Hydrology			
<ul style="list-style-type: none"> • Flooding • Disruption of local hydrology 	<ul style="list-style-type: none"> • These are 'killers' and pre site inspection must assess any risks; no construction within any defined wetlands or within 1:100 year floodline 		
Soil			
<ul style="list-style-type: none"> • Soil erosion • Soil compaction 	<ul style="list-style-type: none"> • No construction or activities within areas containing highly erodible dispersed, fine-particle, sodic etc soils 		
Flora and fauna			
<ul style="list-style-type: none"> • Damage to vegetation • Protected species 	<ul style="list-style-type: none"> • Presence of protected, rare or endangered plant species requires approved conservation/recovery plan, or such sites preferably to be avoided • Avoid any sites with nests, burrows, dens etc of protected species. 		
Aesthetic and Visual			
<ul style="list-style-type: none"> • Visual Impact 	<ul style="list-style-type: none"> • Large catchments with low visual absorption capacities require sensitive location and construction of facilities, or avoidance 		
CONSTRUCTION PHASE			
Soil			
<ul style="list-style-type: none"> • Soil erosion 	<ul style="list-style-type: none"> • All necessary measures should be taken to limit soil erosion and construction guidelines should be adhered to at all times. • It is important that adequate measures are taken to prevent water runoff from concentrating in any one area and to prevent the compaction of soil through excessive heavy vehicle movements or destruction of protective vegetation. 		
Vegetation			
<ul style="list-style-type: none"> • Protection of vegetation 	<ul style="list-style-type: none"> • Adhere to construction guidelines and ensure that only permitted access roads and paths are used by construction workers and vehicles at all times. • Special attention to any protected, endemic, rare or endangered species, 		
<ul style="list-style-type: none"> • Alien invasives 	<ul style="list-style-type: none"> • Landscaping will be negligible and no exotics or plants that do not occur locally will be planted. 		
Sewage and Waste Water			
<ul style="list-style-type: none"> • Ecological impact • Odours 	<ul style="list-style-type: none"> • NB All facilities must be located a minimum of 50m from any water body or source. • Fat/grease traps to be installed at kitchen outlets • Adequate temporary ablutions to be provided for workers 		
Energy			
<ul style="list-style-type: none"> • Energy efficiency • Generator 	<ul style="list-style-type: none"> • Maximum use of solar energy, gas • Energy saving measures (lights, etc) • Efficient, modern, silenced generator only 		
Building Materials			
<ul style="list-style-type: none"> • Soil and other contamination 	<ul style="list-style-type: none"> • The mixing and use of concrete and cement must be carefully managed so as not to contaminate the sites in any way. . 		
<ul style="list-style-type: none"> • Soil erosion • Surface runoff 	<ul style="list-style-type: none"> • Any gravel or stone that may be required for building purposes (including roads) will be obtained from environmentally acceptable and permitted sources and quarries may not be dug without formal registration/permission. 		
Fire			
<ul style="list-style-type: none"> • Human and animal safety • Ecological 	<ul style="list-style-type: none"> • All normal safety precautions will be taken during the construction phase. 		
Construction Plan			

Handwritten signatures and initials:
 J.S., BZR, W.W.M., R.M.K., C.G., K.K., M.H., A.B.

<ul style="list-style-type: none"> Mitigation of construction impacts 	<ul style="list-style-type: none"> The sequencing of construction events is an important part of managing any potentially negative impacts arising from the construction phase: The site boundaries should be demarcated and movement of construction crew must be within these at all times. A suitably positioned stock piling and mixing area should be chosen and demarcated. This should ideally be located in an area that is already transformed or disturbed. Access routes from the stockpiling areas to the building sites should be demarcated and used. Existing roads should be used for these purposes. Once all construction work has been completed then the site should be suitably rehabilitated. 		
Construction Guidelines			
<ul style="list-style-type: none"> Mitigation of construction impacts 	<ul style="list-style-type: none"> The contractor and his employees shall adhere to any rules and regulations that the MET may prescribe at all times. The contractor must ensure the proper supervision of employees at all times and their abidance to any rules and regulations. Access to the site must be restricted to contractor's employees only. All employees must be educated to the need to refrain from the destruction of plants and animals, as well as from indiscriminate defecation, waste disposal and or pollution of soil and water resources. All mixing of cement and other materials should be done in such a way that it is properly contained and that contaminated water may not run off into the area. The building envelope shall be demarcated to ensure that building activities are contained within its perimeter and that no undue environmental damage or disturbance occurs outside of this perimeter. The contractor is to take all precautions to prevent the outbreak and spreading of fires and is to ensure all his employees are aware of the necessary precautions. All earthworks, berms, channels, spoil and borrow areas are to be worked in such a way as to minimise the possibility of erosion. Any water pipes shall be routed so as to minimise the disturbance to vegetation and minimise the chance of erosion. 		
<ul style="list-style-type: none"> Mitigation of construction impacts 	<ul style="list-style-type: none"> The contractor will provide a suitable, animal proof receptacle to contain all, daily refuse. Refuse will be disposed of regularly at a suitable designated location and in an environmentally appropriate manner. The contractor will ensure that all equipment is in good working order and will not contaminate soil or water resources with diesel, petrol, oil or any other foreign substances. All building materials will be stockpiled in designated areas within the building envelope. All building rubble is to be removed from the area and disposed of in a suitable and legal location in an environmentally acceptable manner. The contractor shall ensure that all vehicles stick to designated roads at all times. The greater area around building sites should be searched for snares during and after the construction phase is complete. 		
OPERATIONAL PHASE			
Vegetation			
<ul style="list-style-type: none"> Alien invasives Use of plants, firewood 	<ul style="list-style-type: none"> The area will be kept free of any alien vegetation that may inadvertently be introduced. No picking of plants, collection of firewood or any other damage permitted 		
Fauna			

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<ul style="list-style-type: none"> Interaction with wildlife 	<ul style="list-style-type: none"> Guests should still be sensitised to the need to be aware of wildlife and of the appropriate way to interact with wildlife. Trained guides to escort guests at all times, no self-drive or walking other than in accepted designated areas Adherence to any special requirements including adherence to accepted rhino-viewing protocols 		
	Water		
<ul style="list-style-type: none"> Water conservation 	<ul style="list-style-type: none"> Water conservation must be actively promoted, including installation of meters, low-flow showerheads etc. 		
<ul style="list-style-type: none"> Water pollution and toxic effects 	<ul style="list-style-type: none"> The use of biodegradable and eco-friendly soaps and detergents should be encouraged. 		
	Waste		
<ul style="list-style-type: none"> Soil and water pollution Health Animal safety 	<ul style="list-style-type: none"> All waste bins will be covered and secured. If a central waste collection depot is needed, this area should be fenced and secured and it should have a concrete floor to ensure that it can be suitably maintained and no ground seepage will occur. If possible and appropriate, glass will be stored on site in suitable containers until there is sufficient to be transported for recycling. If possible and appropriate, tins, cans and foil will be stored on site in suitable containers until there is sufficient to be transported for recycling. If possible and appropriate, plastics will be stored on site in suitable containers until there is sufficient to be transported for recycling. If possible and appropriate, paper and cardboard may be stored on site in suitable containers until there is sufficient to be transported for recycling. All waste that cannot be recycled or sold must be disposed of at a permitted waste site; organic waste may be deep-buried; limited amounts of packaging may be incinerated in an approved (Bureau of Standards) incinerator. 		
	Sewage		
<ul style="list-style-type: none"> Soil and water pollution Health and Safety 	<ul style="list-style-type: none"> Septic tanks and soak-aways MUST be adequate for peak periods, properly installed and maintained. Regular monitoring of water for E coli contamination is required 		
	Energy		
<ul style="list-style-type: none"> Energy efficiency and metering 	<ul style="list-style-type: none"> Energy use to be metered, benchmarked and efficiency striven for 		
	Fire		
<ul style="list-style-type: none"> Danger to human and animal life 	<ul style="list-style-type: none"> Fire extinguishers to be installed and maintained, all normal safety precautions will be taken during the operational phase. 		
DECOMMISSIONING PHASE			
	Buildings and Equipment		
<ul style="list-style-type: none"> Human and animal safety Soil and water pollution Visual and aesthetic impacts 	<ul style="list-style-type: none"> All structures will be completely removed to the satisfaction of MET. Construction guidelines will apply during this phase to ensure that this phase of operations is properly managed and limited environmental impact results. In the case of sewage systems, septic tanks will need to be drained and removed and the area (including the soak away) will need to be filled, preferably with rubble or with fill from an environmentally acceptable source. 		
	Vegetation		
<ul style="list-style-type: none"> Soil erosion Alien plant invasion 	<ul style="list-style-type: none"> The site will be suitably re-vegetated or if this is not appropriate then it will be covered with scrub to ensure that soil erosion does not result and to provide protection for reseeded vegetation. Follow ups will be done to ensure that alien or invasive plants and weeds have not flourished. 		

ANNEXURE 7 – TRAVERSING CONDITIONS & PROTOCOLS FOR SKELETON COAST PARK

1. Traversing Rights

- a) The Concessionaire grants to the Operator the following rights (the "Traversing Rights") to enter and use Skeleton Coast Park for tourism purposes:
 - i) The exclusive right to enter and exit Skeleton Coast Park via existing vehicle tracks in and adjacent to the Hoanib River; and
 - ii) The exclusive right to conduct guided, vehicle-based tourism activities with guests via existing tracks in and adjacent to the Hoanib River between the Hoanib Camp and Möwe Bay inside the Skeleton Coast Park (refer to Map 3 in Annexure 4).
- b) Notwithstanding the right granted in paragraph 1 a) of this Annexure 7, the Concessor has reserved the right to award similar rights over the same tracks to the Sesfontein and Puros Conservancies via a separate concession agreement. In terms of the Head Concession Contract, the Concessor will award such rights after due consultation with the Concessionaire, and will ensure that the general public is not permitted access to this area for tourism purposes.

2. Track development & maintenance

- a) Track planning and development in the Skeleton Coast Park shall be the responsibility of the Concessor, and shall be guided by the management plan and tourism development plan for the Skeleton Coast Park.
- b) The Operator may make proposals to the Concessor regarding its requirements for new tracks inside the Skeleton Coast Park.
- c) Tracks assigned for the Operator's exclusive use will be maintained by the Operator at the Operator's own cost and risk, but under supervision of the Concessor. If in future third parties are permitted by the Concessor to use the same tracks for tourism purposes, the maintenance obligation referred to in this paragraph 2 will be reviewed and possibly shared.
- d) In planning and developing vehicle tracks the Concessor will be guided by the challenge of meeting the needs of the Concessionaire and Operator while also ensuring that the conservation and other Skeleton Coast Park objectives are not compromised. This challenge will be met by the Concessor through a process of consultation with the Concessionaire and Operator.

3. Capacity Limits

- a) The Operator shall be permitted to operate a maximum of 4 (four) four-wheel-drive game-viewing vehicles in the Skeleton Coast Park at any one time, each with a passenger limit of no more than 9 (nine), excluding the driver.
- b) This limit may be revised from time to time subject to new information about the environmental impact of these activities.

4. Skeleton Coast Park Rules

- a) The Operator shall abide by the park rules for Skeleton Coast Park, as stipulated in the Nature Conservation Ordinance No. 4 of 1975, as amended, or succeeding legislation and regulations that may repeal and replace these laws.
- b) Where the Skeleton Coast Park rules are inconsistent with the conditions outlined in this Annexure 7, the conditions outlined in this Agreement shall have precedence.

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5. Skeleton Coast Park Entry Fees

- a) The Operator shall pay park entry fees for each guest and staff member accompanying guests that enter the Skeleton Coast Park. Staff members entering the Skeleton Coast Park for track maintenance activities approved by the Concessor shall be exempt from such fees.
- b) The amount payable shall be in accordance with the statutory fees as published from time to time by the Concessor in the Government Gazette.
- c) Park entry fees shall be payable by the Operator at a location and in a manner to be advised in writing by the Concessor.
- d) Payments of park entry fees shall be accompanied by a summary of vehicle and guest entry numbers, including a description of vehicle type and nationalities of guests.
- e) Delays in payment shall incur the Penalty Interest Rate stipulated in Annexure 4.
- f) Payment procedures may be reviewed from time to time and amended by mutual agreement between the Operator and the Concessor.

6. Vehicle specifications

- a) Game-viewing vehicles shall not exceed a net mass of 2 (two) metric tons.
- b) Game-viewing vehicles shall be four-wheel-drive and of standard vehicle width.
- c) Game-viewing vehicles shall be licensed according to the appropriate statutory requirements for Namibia.
- d) Game-viewing vehicles shall be properly converted / modified in accordance with Best Industry Practice.
- e) All game-viewing vehicles shall be maintained in accordance with Best Industry Practice.
- f) All vehicles must be operated with low tyre-pressure to minimise negative impacts on tracks and roads.
- g) The Concessor may stipulate detailed vehicle specifications at a later stage.

7. Guide / driver specifications

- a) All guides and / or drivers of the Operator conducting activities in Skeleton Coast Park shall be trained in accordance with Best Industry Practice.
- b) All guides and / or drivers of the Operator conducting activities in Skeleton Coast Park shall be licensed according to the appropriate statutory requirements for Namibia and / or any specific requirements for Skeleton Coast Park as stipulated by the Concessor.

8. Activity guidelines

- a) The Operator's activities inside Skeleton Coast Park must cease between 20h00 and 05h00, and during this period the Operator, its staff, guests and equipment must vacate Skeleton Coast Park.
- b) No off-road driving shall be permitted in Skeleton Coast Park.
- c) Use of spot-lights shall only be permitted in accordance with Best Industry Practice.

9. Environmental guidelines

- a) The Environmental and Development Guidelines (Annexure 6) shall be applicable, where appropriate, to the Traversing Rights.
- b) The EIA and EMP conducted by the Concessionaire for this Concession shall also include the Traversing Rights within its scope of work.
- c) The Concessor may provide supplementary environmental guidelines from time to time.

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ANNEXURE 8 – FORMAT FOR THE PERFORMANCE BOND

PART A: FORMAT FOR THE PERFORMANCE BOND

To be provided to the Conservancies having their principal place of business at (hereinafter called **“the Concessionaire”**):

Address of the Concessionaire:

.....
.....
.....
.....
.....
.....

Whereas:

- (a) The Concessionaire has awarded a Concession Operator Contract for the Palmwag Concession (hereinafter called the **“Concession Operator Contract”**) to Wilderness Safaris Namibia (hereinafter called the **“Operator”**); and
- (b) The Operator is obliged by the terms of the Concession Operator Contract to provide this Bond to the Concessionaire to secure the performance of its obligations under the Concession Operator Contract.

We, the undersigned

_____ and _____
(Name) (Name)

acting herein as

_____ and _____
(Position) (Position)

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

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

1. The Bank shall pay amounts not exceeding N\$ _____
_____ Namibian dollars) in aggregate (the **“Maximum**

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Amount”) without delay, and not later than ten (10) Business Days of receipt by the Bank of the first written demand of the Concessionaire that the amount is due and payable and without proof of any breach or other default. The Bank shall pay such amount(s) to the Concessionaire within ten (10) Business Days of receipt of a certificate in the form attached (the “**Certificate**”) signed by an authorised representative of the Concessionaire certifying that the Concessionaire is entitled to draw on this Bond pursuant to the provisions of the Concession Operator Contract. The Concessionaire may make partial and/or multiple demands under this Bond provided that the aggregate of amounts paid under this Bond shall not exceed the Maximum Amount.

2. The demand for payment together with this Bond (or a certified copy hereof) and the Certificate shall constitute prima facie proof of the Bank’s indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
3. Neither the failure of the Concessionaire nor of the Operator respectively to enforce strict or substantial compliance by the Operator or any contractor or sub-contractor with their respective obligations nor any act, conduct, or omission by the Concessionaire or Operator prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Operator, any contractor or sub-contractor or any other person or by amendment to or variation or waiver of terms of the Concession Operator Contract, any sub-contract or any ancillary or related document (the “Underlying Documents”) will discharge the Bank from liability under this Bond. For the avoidance of doubt, the Bank’s liability under this Bond will not be discharged notwithstanding the winding up, dissolution or judicial management of the Operator, any contractor or sub-contractor or any other Person and the Bond shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents.
4. This Bond shall:
 - 4.1 remain in full force and effect from the date hereof, and shall expire on the earlier of:
 - 4.1.1 the issuance of a replacement Bond in accordance with the terms of the Concession Operator Contract;
 - 4.1.2 60 (sixty) Business Days after the expiry or earlier termination of the Concession Operator Contract; or
 - 4.1.3 the date when the Bank has paid to the Concessionaire an amount which is equal to (or amounts which in aggregate total) the Maximum Amount;
 - 4.2 exist independently of the Concession Operator Contract or any amendment, variation or novation thereof;
 - 4.3 not be ceded, assigned or otherwise transferred by the Concessionaire, or otherwise dealt with in any manner whatsoever (save for the purposes and in the manner referred to above) which has or may have the effect of transferring or encumbering or alienating the Concessionaire’s rights hereunder;

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- 4.4 be returned to the Bank on its expiry, cancellation, withdrawal or this Bond being fully drawn; and
- 4.5 be governed by the laws of the Republic of Namibia.
- 5. The Bank shall deposit any payment made under this Bond into an account designated by the Concessionaire.
- 6. The Bank shall make any payment demanded under this Bond free, clear of and without any deduction, withholding, counterclaim or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to the Concessionaire equal the amounts that would have been paid to the Concessionaire had no such deduction or withholding been made or been required to be made.
- 7. The obligations of the Bank under this Bond shall not in any way be affected by the invalidity, illegality or unenforceability for any reason of the obligations of the Operator.
- 8. The Bank shall have no right of recourse or claim of whatever nature against the Concessionaire arising out of its obligation to pay or arising out of actual payment under this Bond to the Concessionaire.
- 9. Escalation:
 - 9.1 The value of this Performance Bond shall escalate annually by the official National Consumer Price Index (NCPI) published by the Bank of Namibia within 60 (sixty) Business Days of the end of each year of the Concession;
 - 9.2 Upon occurrence of a breach of the Agreement, the Concessionaire may impose a 5% (five percent) increase of the Performance Bond's value, and shall so inform the Bank in writing.
- 10. Addresses and Notices:
 - 10.1 The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this Concession Operator Contract as follows:
 - The Concessionaire: _____
 - Telefax: _____

 - The Bank: _____
 - Telefax: _____
 - 10.2 Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of Namibia, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

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- 10.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's *domicilium* for the time being.
- 10.4 Any notice required or permitted to be given under this Bond shall be valid and effective only if in writing.
- 10.5 A notice sent by one party to another party shall be deemed to be received
 - 10.5.1 on the same day, if delivered by hand;
 - 10.5.2 on the same day of transmission, if sent by telefax with a receipt confirming completion of transmission.
- 10.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

SIGNED ON _____ 2011

AT _____ (Place)

SIGNATURE _____

SIGNATURE _____

[NAME]

[NAME]

[TITLE]

[TITLE]

WITNESS 1 _____

WITNESS 2 _____

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PART B: FORM OF CERTIFICATE

To: **[Name and address of Bank]**

Attention:

From: The Concessionaire

Address:

Dated:

Dear Sirs

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

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

The Concessionaire is entitled to call on this Bond under the Concession Operator Contract and we demand payment of the sum of N\$[.....] under the Bond. Payment is to be made in accordance with the provisions of the Bond.

Payment must be made within ten (10) Business Days of receipt hereof to **[The Concessionaire bank account details]**.

Yours faithfully,

.....

for and on behalf of The Concessionaire

w.w.m.

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