

Ultimate Safaris - JMA Joint Venture Agreement

**TEMPORARY PRIVATE SEMI-PERMANENT TENTED CAMP JOINT VENTURE
AGREEMENT**

For the

Ultimate Safaris Temporary Private Semi-Permanent Tented Camp

Made and entered into by and between:

JOINT MANAGEMENT AREA MANAGEMENT COMMITTEE
(Herein after referred to as "JMAMC")

REPRESENTED BY

SORRIS SORRIS CONSERVANCY

Herein represented by RHODELLA D. Eichas

UIBASEN CONSERVANCY

Herein represented by Raymond A. Geisel

DORO INAWAS CONSERVANCY

Herein represented by LOURENS HOESEB

AND

Ultimate Safaris (Pty) Ltd.
Registration No. 2008/0117

Herein represented by Mr Tristan Cowley
in his capacity as Managing Director
(Herein referred to as the "the Operator")


(Joint herein referred to as "the Parties")

[Handwritten initials: RDE, RAG, and a signature]

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ANNEXURES:

Annexure A: Operator's Proposal & Camp Location Map


Annexure B: Operator's Environmental Management Plant

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Whereas

- a) The JMAMC (Joint Management Area Management Committee) has the objective of conserving the natural and cultural heritage of the Joint Management Area (JMA) for the benefit and enjoyment of its residents and visitors.
- b) The JMAMC wishes to generate income and community benefits from tourism developments and activities within the JMA by making tourism sites and traversing areas available to appropriate and reputable tourism operators.
- c) The JMAMC has accepted the Operator's business proposal to implement a joint venture tourism partnership and has allocated to the Operator an Exclusive Zone and access to other Multiple Use Traversing Areas in association with the Site.
- d) The Operator has expertise in the development and operation of tourism infrastructure, tourism services and activities for visitors and in the marketing of tourism products.
- e) The Operator will develop and operate the Temporary Ultimate Safaris Camp (TUSC) on the site (Annexure A) areas as agreed upon with the JMAMC.
- f) The operator has submitted a proposal (Annexure A) to the JMAMC for the purpose of operating the temporary Ultimate Safaris Camp and utilizing the Exclusive Area and Traversing Areas, and the tourism area.
- g) The JMAMC will apply, if deemed necessary, for the right of leasehold over the Camp area in terms of the Communal Land Reform Act (2002) and the Operator will support the lease application.
- h) The Parties wish to implement this Agreement to achieve the commercial objectives of the Operator whilst simultaneously achieving the conservation, tourism and community related objectives of the Conservancy referred to in (a) and (b) above.


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NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the meanings hereby assigned to them when said terms are used with a capitalised first letter.

"Agreement"	shall mean this Private Campsite Joint Venture Agreement and any Annexure hereto.
"Clause"	Shall mean a paragraph of this Agreement being referenced to herein.
"JMACM"	shall mean the Joint Management Area Management Committee acting through its duly appointed Committee.
"JMA"	shall mean the geographic area registered as Joint Management Area (Sorris Sorris, Uibasen and Doro INawas Conservancies being the signatories).
"Day"	shall mean any calendar day including a week-end day and a public holiday.
"Effective Date"	shall be the 1 st January 2023 (noting this is back dated) and determines when the rights and obligations of this Agreement become binding on the Parties.
"Exclusive Area"	shall mean the area within the JMA where the right to develop and operate tourism facilities is restricted to the Operator.
"Financial Year"	shall mean the annual accounting period used by the Operator to provide information on the financial achievement and position of the Private Campsite and associated activities.
"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 on the date of signing this Agreement, This specifically but not exclusively includes, war, floods, storm, earthquake, contamination which directly causes either Party to be unable to comply with all or a material part of its obligation.
"Income Statement"	shall mean a report on the income and expenses performances of the Private Campsite and associated activities, to determine the profit or loss for a specific financial period.
"TUSC"	shall mean the Temporary Ultimate Safaris Camp constructed on the Site within the JMA.
"Campsite"	shall mean the area on which the temporary camp can be developed.

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- "No-Hunting Area" shall mean the areas in the Conservancy in which no trophy or subsistence hunting takes place, unless otherwise agreed upon with the Operator.
- "Parties" shall mean the Conservancies jointly or nominee and the Operator or nominee.
- "Operating Fee" shall mean the amounts payable for the rights to operate a tourism business by the Operator to the JMAMC in terms of Annexure A.
- "Traversing Areas" shall mean the TUSC Site, Exclusive Area, No Hunting Areas, and any other areas, as agreed to in writing by the Parties, where the Operator has the right to operate the TUSC and traverse for tourism purposes.

- 1.2 Words in this Agreement that reference to a particular gender shall include the other gender.
- 1.3 Words in this Agreement that reference to the singular shall include the plural and vice versa;
- 1.4 Words in this Agreement that reference to natural persons shall include the legal persons and vice versa.
- 1.5 Headings and sub-headings in this Agreement are for ease of reference only and shall not be used in the interpretation of this Agreement.

2 FRAME WORK

2.1 Right to Utilisation

Subject to the terms of this Agreement, the JMAMC makes available to the Operator for conducting agreed upon tourism activities, the Traversing Areas the entire JMA.

2.2 Effective Date and Agreement Period

- 2.2.1 The Effective Date shall be the 1st January 2023, subject to the fulfillment of all suspensive conditions in Clause 19.
- 2.2.2 This Agreement shall start on the Effective Date and continue for a period of ONE [1] year, unless sooner terminated as provided herein.

2.3 Renewal

- 2.3.1 Renewal will be by mutual agreement for a further period.
- 2.3.2 The Operator shall be obliged to give written notice to the JMAMC at least one [1] month before expiry whether it intends to exercise its option to negotiate the renewal of this Agreement with the JMAMC as outlined in Clause 2.3.1.

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2.4 Expiry of the Agreement

- 2.4.1 Should it be agreed not to renew this Agreement for a further period, the expiry date of the Agreement shall be on the first [1st] anniversary of the Effective Date.
- 2.4.2 The Operator shall at all reasonable times during the last two [2] months of the Agreement, allow prospective partners of the JMAMC to enter and review all parts of the TUSC and Exclusive Area.
- 2.4.3 At the end of the Agreement, including any renewals hereto, or at such earlier time as may be provided herein, the Operator shall vacate the TUSC Site, Traversing Areas and Exclusive Area and leave such areas, and improvements thereon, clean and in such condition as otherwise agreed to in writing by the Parties.
- 2.4.4 It is recorded that all of the infrastructure to be installed by the Operator shall be fully mobile and removable. The Operator shall remove all the infrastructure of the TUSC at the end contract period. The provisions of section 40 of the Communal Land Reform Act 5 of 2002 do therefore not apply to the TUSC and the Operator shall not be prevented from removing any of its TUSC infrastructure.

2.5 Right of Leasehold



- 2.5.1 The JMAMC shall acquire in terms of the Communal Land Reform Act, 2002 the Right of Leasehold in its own name, if necessary.
- 2.5.2 The Operator shall do everything within its power to support the JMAMC's application to the appropriate authorities for acquiring the Right of Leasehold.

2.6 Operator's Capital Contribution

- 2.6.1 The Operator shall provide all the capital required for the development and operation of the TUSC and associated activities as outlined in the Operator's Proposal, Annexure A.

2.7 Operating Fee Payment

- 2.7.1 The Operator shall start paying the Operating Fee as of the Effective Date, regardless of the date of signature.
- 2.7.2 The Operating Fee is stipulated in Annexure A.
- 2.7.3 If a Party is to pay taxes, levies or other fees ("New Taxes") to a relevant state authority, which the Party was not obliged to pay at the Effective Date, and the payments of the New Taxes have the effect of rendering the commercial objectives of either Party unviable, the parties shall meet forthwith to consider

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the situation and seek in good faith to renegotiate and amend this section 2.7 and the corresponding section of Annexure A, to give relief to the Party obliged to pay the New Taxes.

3 THE JMAMC'S OBLIGATIONS

3.1 JMAMC Support

- 3.1.1 The JMAMC shall do everything within its power to prohibit and prevent any activities of its members and their livestock and of "self-drive" tourists within the Exclusive Area. The Operator in consultation with the JMAMC may erect signs demarcating the TUSC and Exclusive Area for restricted access only.
- 3.1.2 The JMAMC shall do everything within its powers to support any application brought by the Operator for the granting of all licenses or other authorities as may be required by the Operator to use the TUSC and Exclusive Area. Notwithstanding this provision, the Operator shall be responsible for obtaining all such licenses or authorities at its sole risk and cost.
- 3.1.3 The JMAMC shall do everything within its powers to support all other such things and steps as may be open to them and necessary for putting into effect the terms and conditions of this Agreement.

3.2 JMA Management

- 3.2.1 The JMAMC will take responsibility for the management of the JMA in a manner that will support the operations of the Operator as contemplated in this Agreement.
- 3.2.2 It shall be responsible for the on-going management of wildlife and other natural resources in the Exclusive Area, and in particular shall:
 - 3.2.2.1 Integrate the Zonation Schedule and any rules of use developed by the Joint Management Committee into the JMA's management and utilization plan.
 - 3.2.2.2 Prohibit any form of hunting at the TUSC or within the Exclusive Area and No – Hunting Areas, except in the event that an animal is sick, injured or wounded, or declared a problem animal, in which case the Operator must be informed by the JMAMC prior to the hunt taking place.
 - 3.2.2.3 Inform the Operator of all hunting activities that are taking place in the JMA.
 - 3.2.2.4 Undertake problem animal control within the JMA with due consideration for the tourism activities of the Operator.

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- 3.2.2.5 Develop and implement a management strategy for excluding new settlements, cattle and other domestic animals and reducing the impact of tree cutting, burning and ploughing or any other agreed activities which could have a negative impact on the success of this TUSC development within the TUSC and Exclusive Area.
 - 3.2.2.6 Implement and enforce, within its authority, the JMA management and utilization plan covering the entire JMA.
 - 3.2.3 The JMAMC shall undertake to do everything within its authority to provide the Operator with unimpeded and free access to the TUSC within the JMA.
 - 3.2.4 The JMAMC shall monitor compliance by the Operator to its Environmental Management Plan.
- 3.3 **Tourism Control**
- 3.3.1 The JMAMC undertakes to:
 - 3.3.1.1 Assume responsibility for controlling tourism activities within the JMA as enabling legislation becomes available.
 - 3.3.1.2 Reject other operators and / or private individuals from building and operating tourism facilities or conducting tourism activities within the TUSC and Exclusive Area during the current contract period starting from the Effective Date.
 - 3.3.1.3 Refer to relevant tourism plan, policies and guidelines when planning new tourism developments in the JMA.
 - 3.3.1.4 Discuss with the Operator any proposal for future tourism related developments in the JMA. This should ensure that such development will not undermine the existing partnership between the JMAMC and Operator.
 - 3.3.1.5 Unless otherwise mutually agreed upon in writing, the JMAMC shall not support any new accommodation developments or Rhino Tracking or guided walks or any other tourism activities in the JMA for the entire contract period starting from the Effective Date.

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4 THE OPERATOR'S OBLIGATIONS

4.1 Operator's Support

4.1.1 The Operator shall do everything within its power to support all other such things and steps as may be open to them and necessary for putting into effect the terms and conditions of this Agreement.

4.2 Reporting

4.2.1 The Operator shall on a monthly basis prepare a report detailing the number of guests that were accommodated at the TUSC and the number of guests that participated in the Rhino Tracking during the period reported on. Payment shall be made monthly 30 days in arrears to a nominated JMAMC account.

4.3 Rights to Inspect

4.3.1 The JMAMC shall have the right, at all reasonable times, through its duly authorized agent, to inspect the TUSC. The JMAMC shall give written notice to the Operator of its intention to exercise this right, subject to the Operator agreeing on the time and date of such inspection, which agreement shall not be unreasonably withheld.

4.4 Environmental Management Plan

4.4.1 The Operator undertakes to:

4.4.1.1 Take responsibility for the disposal of any waste associated with, or resulting from, the construction and operation of the TUSC.

4.4.1.2 Adhere to any Zonation Schedule and relevant sections of the JMA Management and Utilization Plan.

4.4.1.3 Develop and adhere to a written Environmental Management Plan covering the operation of the TUSC and management of the TUSC and Exclusive Area that conforms to established best practice.

4.4.1.4 The Operator shall provide a copy of the Environmental Management Plan to the JMAMC within six months of the Effective Date of this Agreement.

4.4.1.5 The Operator shall submit written reports on the implementation of the plan to the JMAMC at regular intervals, but no less than once per year.

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4.5 Maintenance

- 4.5.1 All maintenance and repair of the improvements within the TUSC and Exclusive Area shall be the responsibility of the Operator. The Operator shall be required to keep the facilities in proper working order, and maintain all structures in line with generally accepted industry standards and recognized level of maintenance.
- 4.5.2 In the event that pursuant to 4.5.1 major renovations are deemed necessary the Operator may request the JMAMC prior to any renovations for a full or partial suspension of fee payments for a reasonable duration of the renovation. The written request should not be withheld unreasonable by the JMAMC. Any disagreement as the viability of the written request shall be resolved in terms of the dispute resolution procedure outlined under Clause 8.
- 4.5.3 Maintenance of access roads to and from the TUSC as well as game drive tracks in the Exclusive Area shall be the responsibility of the Operator.

4.6 Insurance and Liabilities

- 4.6.1 The Operator shall be obliged, at its own cost to take out and keep in force for the duration of this Agreement, an insurance policy as customarily carried by a tourism activities operator that shall include amongst others cover for the risks associated with the activities offered by the Operator and third party liability. The Operator, when called upon to do so, shall furnish the JMAMC with a copy of the insurance policy.
- 4.6.2 The Operator shall undertake not to breach the insurance contract or do anything willingly that will annul the terms of the insurance coverage.
- 4.6.3 The Operator shall not have any claims of any nature against the JMAMC for any loss, damage or injury which the Operator, its guests or invites, patrons or employees may suffer in the JMA, howsoever arising (whether out of *vis major* or *casus fortuitus* or any other cause beyond the JMAMC's control).
- 4.6.4 The JMAMC or any of its members shall not have any claims of any nature against the Operator for any loss or damage which the JMAMC or any of its members, relatives or guests may suffer in the JMA, arising out of negligent or accidental action by the management, a staff member or guest of the Operator beyond the Operator's control.

4.7 Material Change in Partnership

- 4.7.1 The Operator shall notify the JMAMC as soon as practically possible before any significant change to its business or ownership of the Operator or claim against the Operator or its business which is reasonably likely to have a material effect on the partnership between Operator and JMAMC.

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5 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

- 5.1 Should the TUSC or the Exclusive Area be damaged to an extent which diminishes the Operator's enjoyment thereof, but which falls short of the event contemplated in 5.2 then the following provision shall apply;
- 5.1.1 this Agreement shall not be cancelled,
- 5.1.2 the Operator shall continue to be liable for the fee payment, and
- 5.1.3 the Operator shall at its own cost, repair the TUSC and the Exclusive Area as quickly as is reasonably possible in the circumstances, and shall apply the proceeds of any insurance policy, if any, relating to the TUSC for such purpose.
- 5.2 If as a consequences of *vis major* or *casus fortuitus*, the TUSC or the Exclusive Area should be damaged or destroyed to an extent which renders them commercially unviable, untenable and incapable of beneficial use, then the Operator shall be entitled to terminate this Agreement by written notice to the JMAMC.
- 5.3 Should the Parties not agree on whether the TUSC or the Exclusive Area have been damaged or destroyed to an extent which renders them commercially unviable or incapable of beneficial use, the matter shall be referred to the Joint Management Committee for resolution, and failing which to the dispute resolution procedure in terms of Clause 8 of this Agreement.
- 5.4 The right of termination pursuant in Clause 5.1 must be exercised within sixty [60] Days of the date on which the event giving rise to the right occurs, or determination by the Joint Management Committee or Arbitrator, as the case may be, failing which such right shall lapse. If the Operator exercises its rights to terminate this Agreement under Clause 5.1 then this Agreement shall terminate with effect from the date of the event in question.
- 5.5 If the Operator does not exercise its rights to terminate in terms of Clause 5.1 then the following provisions shall apply:
- 5.1.4 The Operator shall reinstate at its own cost the TUSC and the Exclusive Area as quickly as is reasonably possible in the circumstances, and shall apply the proceeds of any insurance policy, if any, relating to the TUSC for such purpose;
- 5.1.5 The Operator shall not be liable for payments until the damage has been restored, but will continue to be liable for the fee payment under this Agreement once the TUSC and Exclusive Area have been restored;
- 5.1.6 The Agreement period shall be extended by the period during which the Operator was deprived of the use of the TUSC and during which period the fee payment was not payable.

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- 5.6 The Parties shall not have any claims against each other as a result of such cancellation or loss of occupation of the TUSC or the Exclusive Area, unless the damage or destruction was caused by an act or omission for which a Party is responsible in terms of this agreement or in law.

6 FORCE MAJEURE

6.1 "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 Joint Venture Agreement, which specifically but not exclusively includes:

- 6.1.1 war, civil war or terrorism, or floods, storm, earthquake, landslip, volcanic activity or other forces of nature; or
- 6.1.2 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
- 6.1.3 which directly causes either Party to be unable to comply with all or a material part of its obligations hereunder.

6.2 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 8.

6.3 Continuation of Business

6.3.1 Subject to Clause 6.6, the Party claiming the occurrence of an event of Force Majeure shall be excused from performance of its obligations under this Joint Venture Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither Party shall be entitled to:

6.3.1.1 terminate this Joint Venture Agreement on account of such occurrence except in accordance with Clause 6.5 and/or

6.3.1.2 claim damages, penalties or other compensation as a result of such failure to perform except in accordance with Clause 6.5.

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6.4 Insured Events of Force Majeure

To the extent that the consequences of an event of Force Majeure fall within the terms of a possible insurance cover for the TUSC, then the Operator shall forthwith make the appropriate claims there under and shall apply the proceeds as required in terms of the insurance requirements contained in Clause 4.7.

6.5 Consequences of Force Majeure

6.5.1 If the Parties agree or it is determined under Clause 6.2 that an event of Force Majeure has occurred, the JMAMC and the Operator shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

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

6.6 Prior Obligations

The foregoing provisions of this Clause 6 shall not excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this Joint Venture Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure or obligations not affected by the event of Force Majeure. A Party excused from performance by the occurrence of Force Majeure shall continue its performance under this Joint Venture Agreement when the effects of the event of Force Majeure are removed.

7 JOINT MANAGEMENT COMMITTEE

7.1 The JMAMC and the Operator agree to establish a Joint Management Committee and arrange for its first meeting within thirty [30] Days of signing of this Agreement.

7.2 The Parties shall agree on the composition of the Joint Management Committee including the number of representatives to be designated by each Party, the number of representatives from each Party required to form a quorum, and whether the Joint Management Committee should include representatives of other parties operating tourism facilities or conducting hunting activities within the boundaries of the JMA.

7.3 The Joint Management Committee shall not intervene with day to day management activities at the TUSC, except at the request of the Operator.

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7.4 The purpose of the Joint Management Committee shall be to:

- 7.4.1 Take responsibility for overseeing the implementation of this Agreement and ensuring the commitments of both Parties are met.
- 7.4.2 Negotiate any issues not covered by this Agreement or any amendments to this Agreement, on the understanding that both Parties reserve the right to take such matters back to their members or shareholders for decision.
- 7.4.3 Nominate and / or recommend candidates for employment and to facilitate the resolution of any disputes that might arise between the Parties in relation to the employment of persons in terms of this Agreement, provided that the ultimate decisions regarding such matters are with the Operator and in line with the Labour Act 11 of 2007.
- 7.4.4 Resolve issues of concern to the Parties, such as the movement of tour operators or self drive tourists within the Exclusive Area, and address the conduct of members of the JMAMC when it is in conflict with the tourism activities of the Operator, or the conduct of the Operator's clients and employees when it is in conflict with the JMAMC or community development related objectives of the JMA.
- 7.4.5 Discuss questions and issues relating to the quarterly and annual financial reports of the TUSC. Each of the Parties may nominate a person to represent its interest and to liaise with the other if any matter requires in-depth discussion.
- 7.4.6 Consider and decide upon the use of other areas within the JMA boundaries for tourism activities by the Operator.
- 7.4.7 Air grievances and propose solutions with respect to conflict or disputes arising from this Agreement.
- 7.4.8 Develop rules and regulations for use of the Traversing Areas by the Operator, subject to the provisions of this Agreement.
- 7.4.9 Furnish one another with any information and / or documents deemed necessary for decision making and the smooth implementation of this Agreement.
- 7.4.10 As far as meetings are concerned:
 - 7.4.10.1 The Joint Management Committee shall meet as often as it deems necessary, but not less than once six months.
 - 7.4.10.2 All meetings shall be minuted and minutes shall be kept on file.
 - 7.4.10.3 If deemed necessary by the Parties hereto, meetings of the Joint Management Committee may be facilitated by a mutually acceptable, neutral facilitator.

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8 DISPUTE RESOLUTION

- 8.1 Subject to Clause 8.3 any dispute between the Parties arising out of or in connection with this Agreement, shall first be considered in a meeting of the Joint Management Committee.
- 8.2 Should the Parties acting through their representatives on the Joint Management Committee be unable to resolve the dispute, it shall then be submitted to and decided by arbitration on the following terms and conditions:
- 8.3 The Arbitrator shall be a mutually appointed by the Parties, failing which the President of the Namibia Law Society shall make such an appointment. Preference should be given to an admitted practicing Legal Practitioner, practicing as such for at least 10 years.
- 8.4 The terms of reference of the arbitration will be determined by the Arbitrator.
- 8.5 The decision of the Arbitrator will be final and binding on the Parties.
- 8.6 The costs of such arbitration shall be paid as determined by the Arbitrator in his 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.
- 8.7 This arbitration Clause shall not preclude a Party from seeking urgent relief in a court of appropriate jurisdiction; where grounds for urgency exist.
- 8.8 The provisions of this Clause;
- 8.8.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions,
 - 8.8.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement, and
 - 8.8.3 shall not be applicable if any one of the Parties refuses to subject itself to the dispute resolution procedure as set out in this Clause 9 (the refusing Party) in which event the other Party may proceed to institute legal action in any Court of competent jurisdiction.

9 TERMINATION

9.1 Termination by the JMAMC

- 9.1.1 The JMAMC shall have the right to terminate this Agreement if;
- 9.1.1.1 the Operator defaults in any payments due under this Agreement, or

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- 9.1.1.2 the Operator commits a material breach of its terms in this Agreement in any other way.
- 9.1.2 The JMAMC shall not have the right to terminate this agreement unless it has given written notice to the Operator of the alleged breach or default giving rise to the right to terminate and having granted the Operator at least 60 days to remedy the breach.
- 9.1.3 The Operator shall furthermore be deemed to be in breach of this Agreement in the event that it commits an act of insolvency, being voluntarily or otherwise liquidated, being placed under judicial management, or a civil judgment being obtained against it and such judgment remains unsatisfied by the Operator for longer than thirty [30] Days. In such an event the JMAMC will be entitled to cancel the Agreement without any notification to the Operator.
- 9.1.4 Clause 9.1.1 and 9.1.3 shall not be construed as excluding the ordinary lawful consequences of a breach of this Agreement by the Operator and in particularly any right of cancellation of Agreement on the ground of material breach going to the root of this Agreement.
- 9.1.5 In the event of the JMAMC having cancelled this Agreement justifiably but the Operator remaining in occupation of the land, with or without disputing the cancellation and continuing to tender payments of operating fee and any other amounts which would have been payable to the Conservancy but for the cancellation, the JMAMC may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on accounts of the damages suffered by the JMAMC by reason of the unlawful holding over on the part of the Operator.

9.2 Termination by the Operator

- 9.2.1 The Operator shall have the right to terminate this Agreement if;
- 9.2.1.1 the JMAMC commits a material breach in respect of the performance of any of its obligations under this Agreement, and
- 9.2.1.2 the JMAMC fails to remedy such default within thirty [30] Days or any other agreed period after receiving a written demand that it be remedied.
- 9.2.2 The Operator shall not have the right to terminate this agreement unless it has given written notice to the JMAMC of the alleged breach or default giving rise to the right to terminate and having granted the JMAMC at least 60 days to remedy the breach.
- 9.2.3 The JMAMC shall furthermore be deemed to be in breach of this Agreement in the event that it commits an act of insolvency, being voluntarily or otherwise liquidated, being placed under judicial

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Ultimate Safaris - JMA Joint Venture Agreement

management, or a civil judgment being obtained against it and such judgment remains unsatisfied by the Operator for longer than thirty [30] Days or if the Ministry of Environment & Tourism deregisters it as a JMA. In such an event the Operator will be entitled to cancel the Agreement without any notification to the JMAMC.

- 9.2.4 Upon termination pursuant to Clause 9.2.1 the Operator shall be entitled to recover from the JMAMC damages for default or breach including all reasonable foreseeable economic losses suffered by the Operator and other costs and expenses incurred as a result of the termination.

9.3 Effect of Termination or Expiry

- 9.3.1 Upon termination or expiry of this Agreement for whatever reason and without prejudice to any rights of the Parties hereto:

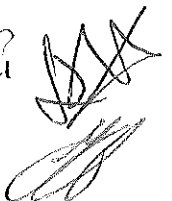
9.3.1.1 All rights as the Operator may have been granted by the JMAMC under this Agreement shall cease to have effect.

9.3.1.2 The Operator shall within a period of thirty [30] Days remove all of its movable assets and reinstate the TUSC to the acceptable standards.

- 9.4 The provision of Clause 9.3 shall be suspended pending the final outcome of any arbitration or legal proceedings between the Parties concerning the validity of the termination of this Agreement.

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Handwritten signatures and initials, including a large signature that appears to be 'RAB' and another signature below it.

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10 DOMICILIA AND NOTICES

10.1 Parties choose as their *domicilia citandi et executandi* the addresses mentioned in Clause 10.2 below.

10.2 Addresses

JMAMC:

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

The Operator:

Ultimate Safaris (Pty) Ltd

P.O Box 9970

Windhoek

Namibia

Tel /Fax 061 – 248 137

e-mail: tristan@ultimatesafaris.na

10.3 Any notice, demand or other communication properly addressed by an Party to another Party at the latter *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 14th Day following the date of posting thereof.

10.4 Any notice, demand or other communication properly addressed by an Party to another Party at the latter *domicilium* in terms hereof for the time being and sent by fax or electronic mail (e-mail) shall be deemed to be received by the latter on the 3rd Day following the date of sending thereof.

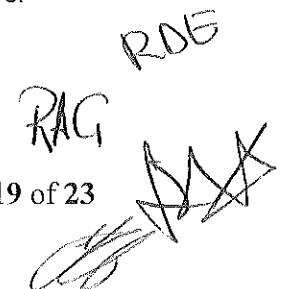
10.5 Any Party may change its nominated address to another address in the Republic of Namibia by prior written notice to the other Party.

11 WHOLE AGREEMENT

11.1 This is the entire Agreement between the Parties.

11.2 Neither Party relies in entering into this Agreement on any warranties, representations, discourse or expressions of opinion which have not been incorporated into this Agreement as warranties or undertakings

11.3 No variation or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.

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12 NO WAIVER.

Neither Party shall be regarded as having waived, or precluded in any way from exercising, any right under or arising from this Agreement by reason for such Party having at any time granted any extension of time for, or having shown any indulgence to the other Party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right or action against the other Party.

13 WARRANTY

13.1 The person signing this agreement on behalf of the parties expressly warrants their authority to do so.

14 SALE, CESSION, SUBLETTING AND ENCUMBERMENT

14.1 The Operator shall not be entitled, except with the prior written consent of the JMAMC, which cannot be unreasonably withheld nor delayed:

14.1.1 To change substantially its ownership structure in relation to the operation of the TUSC, which would result in a change in entity or person holding majority ownership of the Operation.

14.1.2 To cede all or any of its rights under this Agreement.

14.1.3 To let or give up possession of the TUSC or Exclusive Area, in whole or part, any third party or

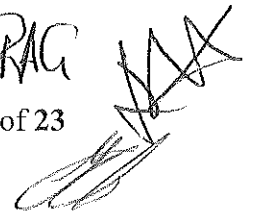
14.1.4 To encumber the TUSC or Exclusive Area or any portion thereof or any right arising out of this Agreement in any manner whatsoever or use same as security for any of the obligations of the Operator unless otherwise agreed to in writing by the Parties.

15 PROSPECTIVE TENANTS / PURCHASERS

15.1 Should the Parties not agree to extend the Agreement for a further period, the Operator shall at all reasonable times during the last two [2] months of the Agreement period, allow prospective tenants or purchasers of the improvements, to enter and view the interior of the improvements.

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16 ORDER OF PRECEDENCE

16.1 Where discrepancies exist between this Agreement and its Annexure, the Agreement shall take precedence.

17 REPLACEMENT OF EARLIER AGREEMENTS

17.1 At the date of signing this Agreement replaces all earlier agreements between the Parties and between the Operator and the JMAMC in relation to the TUSC, Exclusive Area and Traversing Areas.

18 SUCCESSORS IN TITLE

18.1 This Agreement shall be binding on the Operator's creditors, liquidators, successors in title, heirs, legates, executors, administration and beneficiaries

18.2 This Agreement shall be binding on the JMAMC successors in title and heirs.

19 CONFIDENTIALITY

19.1 Each of the Parties shall at all times use its best endeavours to keep confidential any information which it has acquired or may acquire in relations to this Agreement, except with consent of the other Party.

20 GOOD FAITH

20.1 The parties to this agreement acknowledge that at all times they will act in the spirit of cooperation, fairness and good faith to enable the underlying principles and objectives in this document to be successfully achieved.

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Ultimate Safaris - JMA Joint Venture Agreement

The undersigned representatives, being duly authorised thereto by their respective institutions, have signed this Agreement.

SIGNED AT Khorixas ON 16 Feb 2023

AS WITNESSES

1. Hendrik Afrikaner for 2. _____
Adams-TIA
2. Selma Brandt for _____
Adams-TIA R. S. Eicher
For and on behalf of the JMAMC

SIGNED AT Khorixas ON 16 February 2023

AS WITNESSES

1. Hendrik Afrikaner for
2. Selma Brandt for _____
Adams-TIA _____
For and on behalf of the Operator

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ANNEXURES

Annexure A: Operator's Proposal & Camp Location Map

Annexure B: Operator's Environmental Management Plan

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