

# BUSINESS AND TOURISM ENTERPRISE TRAINING

## *Module 2.1: Participant's Manual* **JOINT VENTURE TOURISM DEVELOPMENT**



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## ABOUT MODULE 2.1: JOINT VENTURE TOURISM DEVELOPMENT

<p><b>OBJECTIVES:</b> People who receive training in MODULE 2.1 will gain knowledge on:</p>	<ol style="list-style-type: none"> <li>1. Current joint venture (JV) models in Namibia</li> <li>2. Identifying and assessing JV site opportunities</li> <li>3. Preparing the conservancy for JV tourism</li> <li>4. Approaches for finding a JV partner</li> <li>5. Assessing the JV proposal</li> <li>6. The community equity contribution</li> <li>7. The leasehold process</li> <li>8. JV negotiations</li> <li>9. The JV Agreement process and content</li> <li>10. The Environmental Management Plan</li> <li>11. The Joint Management Committee (JMC)</li> <li>12. The annual business review</li> <li>13. The JV financial 'dashboard'</li> </ol>
<p><b>COMPETENCIES:</b> People who receive training in MODULE 2.1 will be able to:</p>	<ol style="list-style-type: none"> <li>1. Identify different JV models</li> <li>2. Understand the key factors affecting lodge performance</li> <li>3. Describe the different processes for finding a JV partner</li> <li>4. Know what to look for in the business/financial proposal</li> <li>5. Be confident in moving from proposal to agreement</li> <li>6. Understand basic negotiation skills</li> <li>7. Know what the legal requirements are in setting up a JV lodge</li> <li>8. Understand the rights and responsibilities of all partners</li> <li>9. Know why a JMC is needed and how to establish one</li> <li>10. Conduct an annual business review</li> </ol>
<p><b>MODULE 2.1 is intended for:</b></p>	<p>Conservancy Manager and the Conservancy Committee (and Enterprise Committee/JV Reference Group, if it exists)</p>
<p><b>Duration of MODULE 2.1:</b></p>	<p>The training for this Module will usually last 3.5 days</p>



The training of this **MODULE 2.1** will generally follow this schedule:

TOPIC 1:	Current joint venture (JV) models in Namibia
TOPIC 2:	JV site/opportunity identification and assessment
TOPIC 3:	Preparing the conservancy for JV tourism
TOPIC 4:	Approaches for finding a JV partner
TOPIC 5:	Assessing the JV proposal
TOPIC 6:	The community equity contribution
TOPIC 7:	The leasehold process
TOPIC 8:	JV negotiations
TOPIC 9:	The JV Agreement process and content
TOPIC 10:	The Environmental Management Plan
TOPIC 11:	The Joint Management Committee (JMC)
TOPIC 12:	The annual business review
TOPIC 13:	The JV financial 'dashboard'
SELF-ASSESSMENT:	Assessing participants' understanding of this Module (Handout #25)



## KEYWORDS and ACRONYMS for this MODULE

<b>AGM</b>	Annual General Meeting
<b>CC</b>	Conservancy Committee
<b>CEq</b>	Community equity
<b>CfP</b>	Call for Proposals
<b>EIA</b>	Environmental impact assessment
<b>EMC</b>	Enterprise Management Committee
<b>EMP</b>	Environmental Management Plan
<b>HWC</b>	Human wildlife conflict
<b>JMC</b>	Joint Management Committee
<b>JV</b>	Joint venture
<b>KPI</b>	Key performance indicators
<b>MET</b>	Ministry of Environment and Tourism, Namibia
<b>MOU</b>	Memorandum of Understanding
<b>NGO</b>	Non-governmental organisation
<b>PTO</b>	Permission to occupy
<b>TA</b>	Traditional authority

*A full list of definitions can be found at the end of this manual*

**NOTE:** Throughout this Manual we have tended to use the word 'lodge' when discussing JV tourism development opportunities in Namibian conservancies. However it should be remembered that conservancies may also develop tented camps and campsites too, so the word 'lodge' should be assumed to cover these other enterprises as well.



## INTRODUCTION

**UNDERSTAND:** *The objectives of Module 2.1.*

Objectives of this workshop: *you will gain knowledge on –*

1. Current joint venture (JV) models in Namibia
2. Identifying and assessing JV site opportunities
3. Preparing the conservancy for JV tourism
4. Approaches for finding a JV partner
5. Assessing the JV proposal
6. The community equity contribution
7. The leasehold process
8. JV negotiations
9. The JV Agreement process and content
10. The Environmental Management Plan
11. The Joint Management Committee (JMC)
12. The annual business review
13. The JV financial 'dashboard'

**UNDERSTAND:** *The competencies of Module 2.1.*

People who receive training in Module 2.1 will be able to:

1. Identify different JV models
2. Understand the key factors affecting lodge performance
3. Describe the different processes for finding a JV partner
4. Know what to look for in the business/financial proposal
5. Be confident in moving from proposal to agreement
6. Understand basic negotiation skills
7. Know what the legal requirements are in setting up a JV lodge
8. Understand the rights and responsibilities of all partners
9. Know why a JMC is needed and how to establish one
10. Conduct an annual business review

**NOTE:** *Refer to Definitions at the end of the manual if some terms are not clear.*



## ASK: What is a joint venture partnership?

**UNDERSTAND:** A **joint venture (JV)** is a business activity undertaken by two or more partners for their mutual benefit. Partners in a conservancy joint venture will be:

- **Rural people**, who have user rights to the natural resources occurring in a community utilisation area (communal conservancy), and
  - **Established private sector companies** (investors/operators) that recognize the area's potential for business development.
1. The private sector partner is sometimes referred to as an 'investor' or 'operator' (or both). For the purpose of this training, we will use the term 'operator' unless otherwise stated.
  2. Growth in tourism has coincided with the development of conservancies, as well as legislation that provides the rights for registered conservancies to benefit from tourism.
  3. The spectacular scenery, rich cultures and burgeoning wildlife populations in many Namibian conservancies have attracted increased private sector interest and investment, and in turn this has brought larger numbers of tourists to these conservancies.
  4. By far the most lucrative source of income and benefits to conservancies is from JV tourism lodges and camps, in which conservancies negotiate a mutually beneficial agreement with an operator.
  5. In JV agreements, both parties are bringing something of value to the table and partnerships are structured in such a way as to maximise benefits to both parties. In general JV agreements include:
    - a. The **conservancy**, bringing the tourism development rights; a commitment to actively manage the natural resources (especially wildlife); community members interested in employment; and a desire and willingness to learn and become involved in the tourism industry.
    - b. The **operator**, bringing capital, expertise in tourism and access to the market.





## TOPIC 1: Current joint venture (JV) models in Namibia

**UNDERSTAND:** As a result of experiences elsewhere in the southern Africa region, the predominant joint venture model in Namibia has been a so-called “build, operate and transfer” (BOT) approach. The lessee (operator) builds (or renovates) a lodge or camp, operates the facilities for a period of time, and then transfers them to the lessor (community/conservancy).

Three existing JV models have been developed in Namibia to date, i.e.:

- a. 100 per cent private sector investment.
- b. 100 per cent community investment.
- c. Joint shareholding.

**STUDY:** *Handout #1 (comprising 3 pages) the three different JV models that have been developed in Namibia, their advantages and disadvantages, as well as conditions and implications.*

**NOTE:** These models are only models, and should not develop a high degree of complexity, thus undermining commercial viability, or competitiveness with direct deals with government and deals on private land.

**REFER TO:** *Handout #2 (2 pages).*

**SUMMARISE/LINK:** This is the initial topic of this training module which looked at models for JV that are currently in use in Namibian conservancies. The next topic, will look at how to identify and assess JV sites and opportunities.



## TOPIC 2: JV site/opportunity identification and assessment

### Session 1: Tourism plans

**NOTE:** The aim of the first session in Topic 2 is to gain a good **understanding of how tourism potential and opportunities are identified.**

**UNDERSTAND:** Prior to identifying specific sites for JV lodges or other tourism opportunities, it is important to have a good understanding of how these fit into the 'bigger picture' with regards to tourism development. This requires us to obtain an understanding of current tourism opportunities (including existing facilities and activities) as well as identifying future opportunities for tourism business development. This can be achieved through the development of **tourism plans**, which can be produced for different 'land units' and with different levels of detail:

- a. National
- b. Regional
- c. National Park
- d. Conservancy
- e. Concession Area

**ASK: What is a national park, a conservancy, and a concession?**

*Refer to definitions at end of manual.*

**ASK: What should be done to obtain optimal tourism development in these three areas?**

**UNDERSTAND:** A **Tourism Plan** is a document that:

- Identifies **tourism development opportunities** within a given area.
- Identifies existing tourist attractions, infrastructure and tourism facilities.
- Identifies a range of tourism opportunities to maximise tourism potential of a given area.
- Identifies larger areas that may be zoned for particular land-use activities, e.g., photographic safaris, hunting, adventure tourism, 4x4 use, livestock, settlement etc.
- Represents a **process that should be participatory and involve all stakeholders**, with a strong emphasis on involving communities.



**UNDERSTAND:** Why do we need a **Tourism Plan?**:

- It provides all stakeholders with a framework within which support can be provided.
- It assists in deterring uncontrolled and unplanned developments.
- It allows resources and support to be focused on the Tourism Plan recommendations.

**STUDY:** Handout #3 and respond to these questions.

1. **What information does the poster give us?**
2. **Why is this information important?**
3. **Why the proposed enterprises are called 'Options'?**
4. **Is there any information missing?**
5. **Why do we need Tourism Plans?**
6. **How can we use Tourism Plans in our work?**
7. **Has a Tourism Plan been developed for your region/conservancy?**
8. **Which is the main ministry involved in developing a Tourism Plan?**

**UNDERSTAND:** Tourism Plans need to be incorporated into management plans, thereby forming an integral part of the overall **Conservancy Management Plan**. Here are the various sections of such a Conservancy Management Plan:

1. Zonation (land-use planning)
2. Habitat Management and Rehabilitation (including Fire Management)
3. Rebuilding Game Populations
4. Tourism Development
5. Natural Resource Harvesting
6. Law Enforcement
7. Human Wildlife Conflict (HWC) Mitigation
8. Infrastructure Development
9. Monitoring for Adaptive Management
10. Human Resource Development
11. Community Awareness
12. Research



## Session 2: Site assessment

**NOTE:** The aim of the second session in Topic 2 is to **gain a good understanding of how a JV tourism site is selected.**

**UNDERSTAND:** In many instances, a conservancy may have already identified what they believe to be a good site for JV tourism. It is often on this basis that a request will be made by the conservancy for assistance in developing a lodge or campsite. Many potential sites look attractive initially, but they are often not suitable as feasible tourism sites for a number of reasons. To assist in our assessment of a site and its suitability, we should look at the aspects highlighted below.

- Even if the registered conservancy, community, concession holder or JV partner has all the appropriate rights and capacities (duly appointed and competent committee and staff) to allocate a site, it still does not necessarily make it a feasible site.
- Too often, 'land owners', conservancies and development agencies look at a site merely from the perspective of the land 'owner' or community, and forget that a tourism operator and tourists are the ones who choose where they want to go. So unless the available site is at least equal – or preferably better – than other sites in a particular tourism region, it will most likely not be feasible.
- It is therefore important that someone with an understanding of the **needs and interests of potential tourists and tourism markets** does an initial assessment of any potential sites.

**STUDY:** Handout #4 and assess whether the tourism concept is feasible.

**UNDERSTAND:** The **eight-point plan to determine feasibility of a tourism concept** once participants have had a chance to discuss them together:

### 1. Regional context

Before a site can be chosen, it is important that the regional context be fully understood as the success of a lodge is largely dependent on the environment within which it is located. As much as the attractions of a region and/or a particular site are important, the landscape, the economics, the political dispensation and the local people of the region may all have an impact on its potential success. Competing land uses, accessibility, infrastructure and service support are also important considerations.

### 2. Objectives

It is similarly important to obtain clarity (agree) on the primary purpose of establishing a lodge. Here, the conservancy needs to be very clear about its priorities and what it wants most to get out of a JV tourism development. For example, is the objective to:



- Enhance conservation - through an improved field presence that will assist in monitoring wildlife and act as a deterrent to potential poachers?
- Create tourism-related jobs for local communities?
- Create income for the conservancy?
- Develop skills and capacity?
- Create economic benefit for the region?
- Protect cultural heritage?

It is important that the key objectives are clear and that they are agreed on at an early stage in the planning and assessment process.

### 3. Tourism Plans

The selection of a site should also be done within the framework of existing tourism policies, strategies and other tourism, economic, or regional development plans and should also show awareness of any other infrastructure plans or projects contemplated in the area that may have an influence on the proposed lodge/campsite.

Certain projects planned for an area may be conflicting or competing (e.g., mines, clinic) with the intended lodge/campsite or, conversely, may create new opportunities. **NB:** Refer back to the previous session.

### 4. Legal status

It is important to know who has rights over a particular piece of land, and what form these rights take. In the case of a registered conservancy, government policy states that the conservancy has user rights over wildlife and tourism. However, in some cases there may still be a need to ensure agreement with the traditional authorities, who remain the custodians of State Land in communal areas.

A conservancy is the appropriate signatory for all tourism and wildlife utilisation enterprises but it is necessary to ensure that the CC driving the process has the necessary decision-making powers and the executing powers. In addition, it is important to ensure there are no other land-use rights that could have a negative impact on the development of a lodge or campsite – for example mining rights, land re-allocation, or existing land-use rights (e.g., old 'Permission to Occupy' certificates).

**NOTE:** Refer to Topic 7 of this Manual for more detail or refer to the MET website for copies of policies driving the process:

<http://www.met.gov.na/Pages/PoliciesandLegislations.aspx>



## 5. Market potential

It is important to have an overall understanding of the market potential for the proposed product in a particular location at a particular site, and at a particular time. This means – what type of tourist will visit, how many will come, when are they going to visit the lodge and how long will they stay? The evaluation team therefore needs to contain someone who understands tourism in Namibia and the current trends and potential for new developments. He/she also needs to know the existing competitors in the local area.

## 6. Site potential

If, after all of the above steps have been carried out, it seems likely that the area can host a tourist development as proposed (e.g., a lodge), it would be wise for the host community to check that the site identified by them does not have better potential for another type of tourism product, or even for another type of land use altogether. In other words, other options must also be considered.

If the site has potential for the proposed product, it is essential to do a full analysis of the site. It is more appropriate for the JV partner to undertake this analysis as they are the ones who know what is needed for the development of the tourism product.

## 7. Market demand

It is essential to do a proper tourism demand analysis to verify market feasibility. However, in most cases this is something that the operator has to complete as part of their business planning process.

The following elements should be analysed before a picture can be formed of realistic market demand for a specific site:

- International and national trends (arrivals, trends, estimated numbers etc.).
- National industry indicators (regional vs. national occupancies, access, trends, etc.).
- Markets (level, volume, growth, attractions, projected regional demand, projected site demand etc.).
- Assessment of proposed site within industry (market pitch, attractions, likes, concerns, dislikes).
- Best concept/s

## 8. Feasibility

Once the preferred concept – based on all seven of the former steps – is quite clear, a detailed Feasibility Study should be done (by the operator). It is also advisable to test the concept with the larger tourism operators in the region. Their response should give a good idea whether the JV concept is reasonably on



track, regardless of what the financial projections say. Do however remember that not all operators would be interested in the same type of concept, so make sure to only ask those that would normally operate, or use, a similar product. When an operator is negative, it is important to find out why.

**SUMMARISE/LINK:** In Topic 2, we have looked at how to identify and assess JV sites and opportunities. In the next topic we will explore the process of preparing the conservancy for JV tourism.



### TOPIC 3: Preparing the conservancy for JV tourism

**UNDERSTAND:** It is absolutely essential that the participating community, as well as any other participating stakeholders, have the capacity to make informed decisions related to a JV opportunity and that they are allowed to fully participate in the process from the outset. If required, training should take place before commencing with the JV process.

- At the beginning of the JV process, each key stakeholder should be identified, their legal standing and their role should be determined, and their ability and/or capacity to participate meaningfully should be evaluated.
- Where communities are involved, it is important that a democratically elected and legally constituted **representative body** such as a conservancy exists, which has the institutional capacity to undertake a project of this nature.

**NOTE:** It is very useful to create a conservancy '**JV Reference Group**', which is a group of people identified by the conservancy who will represent them throughout the entire JV process. For the sake of **continuity**, keeping the same JV Reference Group members is of the utmost importance and should be stressed from the outset.

**ASK: Who are the main stakeholders in the JV process? What role do they play?**

*The authority the various stakeholders have.*

Role player	Typical role	Authority
Conservancy	Landlord, lessor, possible shareholder and beneficiary	Allocation of usage rights
Regional council	Processing of application for right of leasehold	Endorses application
NGOs	Assist with planning, training, technical advice, logistical support, project management and resources	Management of technical team and resources
GRN departments (land board)	Approval of application for Leasehold Certificate and support during tendering process	Granting of leasehold rights
Transaction advisor/consultant	Advising and project managing the concept development and tendering processes	Supervision over technical team
Trainers	Provide training to role players	None
Technical team	Tourism, legal, financial, marketing, environmental and construction advice and support	None
MET Concession Unit	Support conservancies with allocation of Head Concession Rights and tendering of sites	Facilitates

**UNDERSTAND:** In order to understand a JV opportunity, it is important that the conservancy JV Reference Group has a good knowledge of the basic business





and financial definitions, as well as how the financial projections for a lodge/campsite are put together.

**NOTE:** A full list of all definitions is found at the end of this manual.

**UNDERSTAND:** In order to assist in our understanding of how **lodge business plans/financial projections are developed**, we will follow the process step by step:

1. **Market assessment:** a full market survey needs to be undertaken in order to assess the demand for the proposed lodge product. This will help the operator to move from an initial 'idea' to a concrete business proposal, and to more clearly define the product.
2. **Describe the product:** a detailed description of the accommodation (number, appearance and type of rooms/beds, the orientation, views, accessibility, construction materials, dimensions, vehicle access) and activities (game drives, walking, boat trips etc.). The product must be matched to the demand that has been demonstrated in the market assessment.
3. **Price:** the correct price for the product being offered. This will be determined by the type of product, costs and competition from similar lodges offering a similar product.
4. **Occupancy:** how many tourists will come and how this number will change over time as the lodge grows. The actual measure of occupancy used is 'beds' or 'bed-nights' – this is because one tourist could stay for more than one night and what we actually need to measure are the number of bed-nights sold, not just the number of individual tourists who have visited. Occupancy levels are determined by looking at the number of bed-nights as a proportion (percentage) of the total number of possible bed-nights available.

**NOTE:** Bed-nights are literally calculated on the number of 'beds' and NOT 'rooms' sold. A lodge might have 12 rooms but 24 beds. Thus calculating bed-nights uses the numbers of beds and not rooms.



## What is the 'Rack Rate'?

The price or 'rate' for accommodation offered to a tourist is called the '**Rack Rate**'. This is the rate that would be paid if a tourist went directly to the lodge for a price quotation, without using a booking agent.

Lodge operators will have a 'discounting and commission structure' that will offer different rates to different partners. They also have to pay Value-added Tax (VAT) at a rate of 15 per cent on all accommodation and activities, as well as a 2 per cent levy to the Namibia Tourist Board (NTB) on accommodation (or 1 per cent on the fully inclusive rate).

Although a lodge may advertise a rack rate of N\$1000, once the commissions, VAT and NTB levy have been paid out, the lodge may only receive N\$625 or 63 per cent of the original Rack Rate. This is called the '**Achieved Rate**'.

**REFER TO:** Handout #5 (2 pages) when needing to work out achieved rate and occupancy rate.

### ASK: How do we calculate the income for a lodge?

The Conservancy income is calculated as follows:

1. **Lodge turnover (income):** income may come from a variety of sources, e.g.:
  - Accommodation (at least bed and breakfast).
  - Bar.
  - Meals (often lunch and dinner are charged separately).
  - Curios (most lodges have gift shops where crafts and curios can be purchased).
  - Activities – game drives, walking, boat trips, horse-riding, mountain-biking, elephant/rhino tracking, cultural visits.
  - Other services – laundry, telephone, transport, internet etc.
2. **Lodge expenditure:** this is normally cost of sales, operational costs and cost of capital.
3. **Profit:** a lodge must also declare its profits to government, which will charge company tax. This means from the total gross turnover/income figure, deductions are made for:
  - a. Commissions, VAT and NTB levy.
  - b. Expenditure – cost of sales, operational costs (staff, vehicles, etc.) and cost of capital (interest on bank loan).



c. Tax – payable on declared amount of profit.

**UNDERSTAND:**

- When analysing the lodge financial projections, and in particular the proposed payments to the conservancy, it is therefore important that we understand how the lodge operates from a business and financial point of view. This will allow us to negotiate based on **the reality of how the lodge is expected to perform** rather than how we think it should perform.
- In negotiating the payment to the conservancy, it is important to understand the amount of money that actually 'gets to the operator' (i.e., achieved income) and the amount of profit that is made after all expenditure has been deducted. This ensures that payments to the conservancy are calculated based on what is reasonable and fair for both the lodge operator and the conservancy.

**UNDERSTAND:** There are **many types of financial arrangements between conservancies and their private partners when negotiating JV tourism (or hunting) agreements**. Negotiating the financial deal can be difficult, because the terms used are often unfamiliar to communities. Some options and tips on how these financial arrangements can be negotiated will now be discussed. There are basically two approaches for financial management.

**UNDERSTAND:** There are various implications relating to the **lease fee and equity arrangements options**.

**STUDY:** *Handout #6 when deciding on whether to go for a lease fee or equity option.*



### Implications: lease fee and equity arrangements

The choice depends on:

- The degree of risk the community wants to take. Equity is generally more risky: profits may be good, but might not.
- The community's financial experience. Equity shares can be empowering and profitable, but not for conservancies that don't know what equity and dividends are, and aren't able to prevent 'profit-hiding' by their partner.
- How long the partnership is expected to last, and how much independence the community and company want from each other. When a lease arrangement is finished, the community can find another partner for the next contract, and the private company can go and invest elsewhere. An equity share binds them together until the shares are sold or the company closes.
- The legal and institutional situation. Equity is only possible where the community contributes physical or financial resources to the capital investment, or where such investment is made by another party (local government/donor) on their behalf. It can be particularly appropriate inside a park or reserve, where the state controls the land but wants to involve the community in a tri-partite venture with an investor. A lease is only possible where the community has clear tenure rights over the resources and the right to sub-let them. Where the community's contribution is less tangible, some other fee is needed.

**STUDY:** Handout #7 on fixed and variable fees.

**UNDERSTAND:** The choice depends partly on the community's trade-off between low risk and high income, and between incomes now versus income in the future.

- At one extreme, fixed fees (e.g., land rental of so many thousand dollars per year) offer low risk and immediate income, but probably at low levels. At the other extreme, a share of revenue (like an equity share) offers the chance of high income if and when profitability is high.
- For a contract lasting more than one year or two, a flat fee on its own is usually not a good idea, but is useful in combination with a variable fee. A small fixed fee can guarantee a minimum income from the start, while the variable fee grows with the enterprise.

**NOTE:** Neither equity nor lease arrangements guarantee community involvement in decision making, so additional specific measures to enhance this are needed (e.g., training, regular consultations).

**SUMMARISE/LINK:** Topic 3 looked at the process of preparing the conservancy for JV tourism and in particular explored how lodge business plans/financial projections are developed, how income to the conservancy can be calculated, and the two types of financial arrangements that relate the JV partnerships with conservancies.

The topic that follows will be investigating approaches for identifying JV partners.



## TOPIC 4: Approaches for finding a JV partner

### Session 1: Process of finding a JV partner

**NOTE:** The aim of the first session in Topic 4 is to **gain a good understanding of the value of sites** and the process to follow when looking for a JV partner.

**UNDERSTAND:** Several different approaches are used in Namibia to attract potential JV partners – with varying degrees of success. Experience tells us that there is no single approach alone that we should be using. The approach used to attract an operator will vary from place to place, and will **depend mainly on the value of the site on offer**, as follows.

<b>High potential</b>	The site is near iconic areas, e.g., it is adjacent to (or inside) a national park/heritage site or major attraction such as Twyfelfontein rock art, or Spitzkoppe.	} Adopt a ' <b>Call for Proposals (CfP)</b> ' in the form of a formal competitive bidding (tendering) process. This could be an 'open' or 'closed' CfP depending on the likely level of interest. This will encourage competition between potential operators, which should help to obtain the best offer for the site.
<b>Unknown</b>	The potential value of a site is unknown – there is no previous experience of tourism development in the area and it is not clear what the demand will be.	
<b>Limited</b>	The site is assessed to have limited potential, or has been previously put out for a CfP with no bids received or interest shown.	An operator-initiated approach may be preferable to a CfP, responding to interested operators on a case-by-case basis or approaching operators who may be interested in the opportunity directly. In this instance, we are not expecting that a CfP will help us to get a better offer. An operator-initiated process could be quicker than a competitive bidding process and can still result in a good offer to the conservancy.

**NOTE:** Regardless of the chosen method of finding suitable JV partners (operators) it is important that the entire process is completely transparent with all parties involved held accountable. It is also important to use a facilitator who has the technical expertise that the conservancy might lack, and to use the same facilitator throughout the entire process.

**ASK: Why is it important to use a clear process when trying to find a JV partner?**

**UNDERSTAND:** A clear process should be used when looking for a JV partner for the following reasons:

- It puts the conservancy **in control**.



- It encourages a professional response from **reputable operators**.
- It **clarifies what is required from all stakeholders** and allocates responsibility for the different roles.
- It ensures **transparency** – all stakeholders can see what is going on, who is involved, and what is being offered by both the conservancy and the operators.
- It ensures **accountability** – by getting information, discussions and proposals down on paper there will be less disagreement regarding what has been said or agreed.
- It creates a high standard and ensures that all potential JV agreements are **consistent with national and regional benchmarks**.
- It makes it easier to obtain **structured support** from NGOs and GRN as they can build in the required support according to an agreed schedule of dates and resource availability.
- It **creates confidence** in all stakeholders, especially government and the private sector.

**UNDERSTAND:** In addition to the potential value of the site, it is also important to take into consideration the experience and track record of the operator. Providing it is not a high-potential site, if approached by an experienced operator with a sound track record, it may be better for the conservancy to adopt an operator-initiated approach and begin negotiations directly.

**UNDERSTAND:** The different approaches used to find a suitable JV partner.

Appropriate uses	Call For Proposals <i>regular</i>	Call For Proposals <i>complex</i>	Call For Proposals <i>limited</i>	Operator-initiated	Existing lodges
New developments where value of site and demand are not known	✓				
Where the value of a site and the demand for that site is known to be high (concession areas, protected areas)		✓			
Where key operators are known to be interested in a site and have a good track record			✓		
New developments in most conservancies where value of site and demand is not known, or known to be limited				✓	
Where lodges were developed and have operated prior to the formation of a conservancy					✓

**Examples of the different approaches:**

Call for Proposal - regular:	Sesfontein
Call for Proposal - complex:	Tsiseb, Nyae Nyae, Doro !Nawas, Uukwaluudhi
Call for Proposals - limited:	Kwando
Operator-initiated:	Sorris Sorris, Puros
Existing lodges:	Mayuni, Mashi, Kasika, Impalila, Marienfluss



## Session 2: The operator-initiated process

**NOTE:** The aim of the second session of Topic 4 is to look at **finding a partner for a limited-potential site**, located far away from the main tourist attractions.

**UNDERSTAND:** For some limited-potential sites, we do not need to compare many different proposals (i.e., by utilising the CfP process), but we can **negotiate with just one potential operator** and still get a good deal for both parties.

- Once operators have identified suitable sites, they will often contact one or all of the following: the local TA, conservancy, NGO or MET, and begin to negotiate. In the past when this has happened (without proper process) it has often led to poor agreements and unhappy partners.
- In negotiating a JV agreement, this is also an opportunity for the conservancy to take control of the process. Instead of merely responding to an operator who has initiated discussions, it is best if the conservancy takes control and drives the process itself.

In order to make sure that the negotiations remain transparent and all parties are held accountable, it is important that a process is followed and that there should be clear steps in this process. Since there is only one potential operator, it is likely that the process can move more quickly and will be simpler, but we should still adapt and use some of the steps that form part of the CfP as follows:

1. **Agree on a schedule** for the process, to include all key dates for each step in the process (when doing this, make sure that the schedule will fit in with the tourism cycle of the potential operator).
2. Agree on **who will be responsible** for each step, who should be included in the process of each step, and how will the process be funded.
3. **Clarify all key steps** in the process and the methods to be used for each: how will the proposal be assessed during adjudication, what will be the key selection criteria, will there be a 'scoring system' and how will this work?
4. **Develop written material** (similar to the CfP 'package').
5. **Send out the written material** to the interested operator.
6. **Provide feedback and clarification** to the interested operator if required.
7. **Facilitate a visit to the site** to allow the potential operator to see the site and meet the conservancy.
8. **Receive the proposal.**
9. **Adjudicate the proposal** according to a pre-agreed method.
10. Decide if the proposal is good enough to continue on to a negotiating stage. If yes, **present the proposal to the conservancy**, explaining clearly how the adjudication took place and why various recommendations regarding the proposal have been made.
11. Agree with the conservancy to **move forwards into negotiations** with the operator.



12. **Commence negotiations** around any issues that are not satisfactory to either partner.
13. **Draft JV Agreement.** When all outstanding issues from the proposal have been negotiated and addressed.
14. Ensure both parties **fully understand the content** and meaning of the agreement.
15. **Finalise and sign the agreement.**

**UNDERSTAND:** The time it takes to find a JV partner will vary from place to place. For a high-value JV opportunity there will be more interest and the process could be completed quite quickly (6-9 months). If the JV opportunity is less attractive, it could take quite a bit longer (12-24 months).

These timeframes only refer to the amount of time taken from starting the process of finding a partner to signing an agreement. Obtaining a Leasehold Certificate and Environmental Clearance Certificate could add considerably to the time it takes before the JV business becomes operational.

### Session 3: Call for Proposals (CfP)

**NOTE:** The aim of the third session in Topic 4 is to gain a good **understanding of a CfP** and what is required, when will it take place, and who is responsible when following the CfP process.

**UNDERSTAND:** A **Call for Proposals (CfP)** essentially means that a JV opportunity will be described and advertised publicly (sometimes to a few operators but often to any operators who wish to respond), and the proposals that are received are then compared with each other to find the most suitable investment proposal and partner.

**NOTE:** A CfP is also sometimes referred to as the following: 'Call for Expressions of Interest', 'Tender', or 'Request for Proposals'.

Once a decision has been made by the conservancy and other partners (NGOs, MET etc.) to undertake a CfP, the actual process itself needs to be agreed upon. This means that we need to decide **what steps in the CfP process are required, when will they take place, and who is responsible.**

A CfP process will vary from site to site, depending on the type of land (conservancy, concession, national park), the investment potential (high or low), and any specific legal requirements that may exist (e.g., in national parks there may be a requirement to involve the government Tender Board and their existing tender process). In Namibia, there have been several different





approaches used, with varying levels of complexity, but the overall process is very similar.

**UNDERSTAND:** A typical **Call for Proposals process** could be as follows:

1. Agree on **approach** required for a particular site – regular/complex/or limited.
2. Agree on a **schedule** for the process, to include all key dates for each step in the process. When doing this, make sure that the schedule will fit in with the tourism cycle of potential operators – don't provide deadlines that fall within the main tourism season (June-October) or you are unlikely to attract much interest.
3. Agree on **who will be responsible for each step**, who should be included in the process of each step (writing the CfP document, adjudication, negotiations etc.), and how will the process be funded.
4. **Clarify all key steps** in the process and the methods to be used for each (e.g., how will the different proposals be assessed during adjudication, what will be the key selection criteria, will there be a 'scoring system', and how will this work etc?).
5. **Develop written material** or CfP promotional 'package' to include background information about the JV opportunity (include brief overview of conservancy/concession and purpose of seeking a JV partner).
6. **Operator conference** (optional) – held to provide information and clarify the process to potential operators.
7. **Advertise the JV opportunity.** Depending on the site potential, choose the media to be used and geographic coverage required carefully – could include the development of a dedicated website, use of existing investment websites, trade and travel magazines, newspapers, trade fair attendance etc. This is a very specialised area of expertise and will require external assistance to get the best mix.
8. **Send out the CfP 'package'** to interested operators on request (i.e., when they respond to the advertisement). If it is an open CfP it is also a good idea to send it to any existing known operators.
9. During a given period (as advertised in the schedule), **provide feedback and clarification** to potential operators if required (advise on content of their proposal, more information about the site, the conservancy and expectations etc.).
10. **Facilitate a visit to the site** to allow potential operators to see the site and meet the conservancy. Some operators will do this on their own, though it is probably fairer to all if the visit is facilitated.
11. **Receive all proposals** and register them formally, giving a 'receipt' to the operator to confirm their participation in the process.



- 12. **Adjudicate the various proposals** according to a pre-agreed method (key criteria, 1-5 scoring, weighted scoring.)
- 13. **Select the 'preferred' proposal/operator** and get the participants in the adjudication process to 'sign-off', confirming their agreement of this selection.
- 14. **Present the preferred proposal** to the conservancy (this may include a presentation by the operator), explaining clearly how the adjudication took place and why this is the preferred proposal.
- 15. **Agree** with the conservancy to move forwards into negotiations with the preferred operator.

This is where the actual Call for Proposal process ends, but the overall process of finalising a JV agreement continues with a few more steps as follows:

- 16. **Commence negotiations** around any issues that are not satisfactory to either partner.
- 17. **Draft JV Agreement.** It is best to wait until all outstanding issues from the proposal have been negotiated and addressed before moving to discuss the agreement.
- 18. Ensure **both parties fully understand** the content and meaning of the agreement.
- 19. **Finalise and sign the JV Agreement document.**

**ASK: What are the advantages and disadvantages of the different approaches used to find a JV partner?**

**REFER TO:** Handout #8 and complete. Refer to tables below to check responses.

Advantages	Call For Proposals regular	Call For Proposals complex	Call For Proposals limited	Operator - initiated
Open, transparent and clear steps	✓	✓	✓	
Encourages competition (helps obtain market value of site)	✓	✓	✓	
Might identify an opportunity that wasn't already known				✓
Documentation is pre-prepared and clear	✓	✓	✓	
Clear timelines exist	✓	✓	✓	
Can compare proposals as they use same format	✓	✓	✓	
Professional, well-organised approach	✓	✓	✓	
Raises profile of sites and conservancy investment		✓		



opportunities				
Ensures all proposals are of high quality			✓	
May be quicker as operators /investors are already known			✓	✓
Cheap				✓
Might be able to develop a business for which there is a limited window of opportunity				✓

Disadvantages	Call For Proposals regular	Call For Proposals complex	Call For Proposals limited	Operator-initiated
Lack of flexibility, and complicated documentation	✓			
High potential for bribery or mismanagement				✓
Expensive (marketing, site visits, conference)		✓		
Not initially driven by conservancy				✓
Complexity may reduce competition		✓		
Reduced competition, therefore reduced offers			✓	
Not competitive				✓
Build first and then hope to be accepted by conservancy				✓

**SUMMARISE/LINK:** Topic 4 looked at the process of finding a suitable JV partner (including the importance of assessing the value of the site in question initially), and also explored the operator-initiated approach for finding a partner for a limited-potential site, as well as the Call for Proposal approach.

In the topic that follows, we will be looking at how we evaluate a JV proposal.



## TOPIC 5: Assessing the JV proposal

**UNDERSTAND:** Now that all the previous steps have been followed and the proposals from operators have been received, it is time to assess them. The process used to evaluate the submissions is called 'adjudication'. Proposals need to be compared to each other but also compared with JV agreements that already exist (this is important when there is only one proposal).

**UNDERSTAND:** Here are the key components of the adjudication process:

**1. Who?** The group (not exceeding 8-10 persons) that undertakes the adjudication should be made up of a combination of members of the JV Reference Group and additional technical experts who can provide advice (if required).

**2. What?** There are many issues that we need to understand and analyse in order to assess whether a proposal is good or not. Basically they fall into three categories:

- a. **Financial and business:** these cover all aspects of financing, developing and operating a tourism lodge.
- b. **Empowerment:** these cover aspects related to people and employment, as well as the relationship between the operator and the conservancy.
- c. **Environment:** these cover all aspects of the potential impact that the lodge may have on the environment and how to mitigate (avoid/reduce) these.

**3. How?** The method of adjudication will vary from one opportunity to another and will depend on the process used for finding a JV partner. If the process is a complex Call for Proposals or tender, the adjudication process will need to be more formal and complex. Alternatively, if the process involves a simple Call for Proposals, is operator-initiated, or involves an existing operator, it is possible to keep the adjudication relatively simple.

- **Complex adjudication:** includes pre-selection, a technical and an evaluation committee, and the use of professional auditors to check the financial proposals. This process is appropriate for high-value sites.
- **Simple adjudication:** the majority of conservancy opportunities can be adjudicated using a simple process requiring a less complicated procedure. This is appropriate to medium-value sites, or sites where only one operator may be interested.

**STUDY:** *The first page of Handout #9.*



**STUDY:** Handout #9 pages 2 – 5, the different factors that need to be taken into consideration during a proposal evaluation. The questions contained on these pages can guide the conservancy in evaluating any JV proposal, or comparing two or more proposals against each other.

**NOTE:** It is very important to undertake a proper analysis and adjudication of the proposal/proposals before starting the process of negotiation and drafting a JV agreement.

**REFER TO:** Handout #10 (3 pages). Study pages 1 and 2 of Handout #10. Once you are clear on the content answer the questions on page 3 within your conservancy.

**SUMMARISE/LINK:** In Topic 5, we have looked at the complex issue of evaluating a JV proposal, or series of proposals, and we examined a number of different factors that need to be taken into consideration during the assessment process.

The topic that follows next will be looking at the equity contribution that the conservancy makes towards a JV partnership.



## TOPIC 6: The community equity contribution

**UNDERSTAND:** There are many different tourism lodge investment opportunities in Namibia, ranging from private land (farms and freeholds in towns and cities) to communal areas and – potentially in the future – national parks. They all carry different levels of opportunity and with it, risk.

**ASK: Why is it risky for an operator to spend millions in setting up a lodge in a communal area?**

### Comparison of risk on different land types

Freehold (farms and town lands)	Communal
<ul style="list-style-type: none"> <li>• Full ownership of land, and rights to build and operate</li> </ul>	<ul style="list-style-type: none"> <li>• Leasehold rights only (often held by conservancy)</li> </ul>
<ul style="list-style-type: none"> <li>• Investment in fixed assets can realize growth and return a profit</li> </ul>	<ul style="list-style-type: none"> <li>• In theory, fixed assets belong to the state and returns must come from profit</li> </ul>
<ul style="list-style-type: none"> <li>• No limit over period of land tenure</li> </ul>	<ul style="list-style-type: none"> <li>• Leaseholds can be limited to 9 years 11 months, often with first right to renew, or by negotiation up to 25 years. Obtaining leasehold can take more than 12 months</li> </ul>
<ul style="list-style-type: none"> <li>• Control over land management issues</li> </ul>	<ul style="list-style-type: none"> <li>• Rely on other partners (conservancy) to manage resources and adjacent land</li> </ul>
<ul style="list-style-type: none"> <li>• Clear shareholding and partner arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Shareholding with community institutions can be difficult and time consuming</li> </ul>
<ul style="list-style-type: none"> <li>• Land and fixed assets can be used as collateral for financial loans</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot use land or assets in communal areas as collateral for financial loans</li> </ul>

**UNDERSTAND:** In order to attract more investors and unlock potential for tourism development in communal areas, it is necessary to create an attractive investment environment, and look at different ways to make it easier to encourage investment as well as maximise conservancy benefits. **We therefore need to look at ways to reduce the disadvantages of investing in communal areas that we have just discussed.**

**UNDERSTAND:** Although the financial markets (banks) operate effectively in Namibia, **obtaining finance for tourism developments can be difficult and costly** and is often limited to larger investors who have access to collateral (other



physical assets e.g., houses, land etc., that can be taken by the bank if their loan is not repaid) or can demonstrate previous business experience in communal area tourism.

1. Currently there are no financial incentives offered to investors, nor are there any financial products that are custom-made for tourism businesses in Namibia. Most JV agreements to date have required the private sector to access all of the capital and initial operational costs – mainly from commercial bank loans.
2. Recently, it has been recognized that in communal areas in particular, grant money can be injected into the tourism sector in order to create incentives for investors. The availability of grant money from government or donors allows the conservancy to explore different ways in which it can leverage investment or partnerships.

**UNDERSTAND:** In the CBNRM Programme, community equity can be called 'match funding', 'shareholding', 'stake in the business', 'community capital contribution', or 'co-ownership' etc.

**Definition: Community equity (CEq)**

**Money made available to organised communities (mainly conservancies) that can be brought to the table as part of a tourism business development in partnership with the private sector. The money is mainly sourced from government or donor grants.**

**ASK: How should community equity be used?**

**UNDERSTAND:** It is generally agreed that the careful and targeted use of community equity funding can unlock potential tourism opportunities, increase local benefits, and promote involvement of local communities in the tourism sector. This could occur on communal land, on commercial land, and in concessions inside and outside of national parks. It could also be used to leverage shareholding in existing lodges/tourism businesses.

It is further agreed that there are two main driving forces (or 'justifications') behind the use of community equity funding – **financial or economic** and **social or political**.

**STUDY:** Handout #11. Be sure you know what **financial and economic factors** are as well as **social and political factors**.



**UNDERSTAND:** Here are some guiding principles for using community equity:

- All business developments that benefit from community equity funding must be able to demonstrate clear market demand and business viability.
- Recipients of community equity funding must be a representative body, such as a conservancy or legally recognized community organisation.
- An improvement in the financial situation (especially seen in a reduction of debt for private sector) must be adequately translated into increased income to the conservancy/community and, if requested, increased involvement in decision making around the business.
- If used for financial/economic reasons, the community equity contribution should result in a good return on the investment (ideally at least better than a high interest bank account).

**UNDERSTAND:** Shareholding in a business comes with risks, which means that the conservancy would potentially be liable for losses as well as profit. Participating conservancies need to be fully aware of all the possible business ownership/partnership arrangements that they could enter into, and the implications of these different options for the conservancy. Once aware and informed, the conservancy can decide for itself what the most suitable business ownership/partnership arrangement is for its particular situation, and if it feels capable of managing the associated risks.

**ASK:** What could be the different shareholding options with regard to fixed and moveable assets, management, training, and capacity building?

**REFER TO:** Handout #12 page 1 only. Understand the options shown on the Handout and their advantages.

**REFER TO:** Handout #12 page 2. It should be noted that depending on the aspirations and circumstances of different conservancies the 'advantages' and 'disadvantages' identified may be reversed.

**NOTE:** The different options need to be discussed and clearly understood by the conservancy stakeholders before finalising a JV Agreement document.

**UNDERSTAND:** Different proportions of a joint venture tourism business can be funded by community equity grant funding. Although some of the grant funding sources (donors) for community equity have proposed a limit to the proportion of community equity that should be made available for any one deal (MCA propose 25 per cent), experience in Namibia and elsewhere in the region





suggests that this needs to remain flexible and should depend on the particular circumstances of each business opportunity and the various partners to the agreement.

In particular it is necessary to consider:

1. The **degree to which the operator is committed** – this could be reflected in terms of their capital contribution and some believe that they (the operator) should carry most of the financial risk. This is the thinking behind the MCA limit of 25 per cent community equity – that if the operator is contributing the most in terms of finance (i.e., 75 per cent plus), they are more likely to be committed to business success. Commitment can, however, be measured in many different ways, i.e., not just the financial contribution, so we need to be flexible regarding this.
2. The **degree to which the conservancy has the ability to manage the risk and business responsibilities** of being a majority shareholder.

It is generally agreed that in order to maximise poverty alleviation and achieve the country's development goals, there needs to be maximum flexibility in the way that community equity grant funding is applied. Each situation needs to be looked at separately and there needs to be a thorough process of assessment that takes all of the issues into account before arriving at a final 'package' of support, of which community equity grant funding may be one component.

### **Empowerment – real or token?**

There is some concern that community equity could be used to improve the financial situation of a lodge operator (especially by reducing their debt burden) but that this may not be adequately translated into increased financial returns (income) to the conservancy and (if requested) other benefits such as greater involvement of the conservancy in the business partnership.

In other words, the conservancy should decide for itself what empowerment means for its members. This could range from little or no involvement in the business (but maximising income returns), to full involvement in all aspects of the business.

Certainly, the conservancy will be empowered if they are able to initiate, negotiate and manage their JV Agreement. However, it is probably true that most empowerment will be found in individual staff members (from the community) who are given the opportunity not only to earn a regular wage income, but also to thus increase their knowledge and skills of tourism and potentially progress into more senior positions within the tourism sector.



**STUDY:** Handout #13 (3 pages). Understand that the conservancy needs to decide on the use of CEq, the process, and what tools to use.

**STUDY:** Handout #14 (2 pages). Clearly understand the process.

**SUMMARISE/LINK:** Topic 6 looked in detail at what we mean by community equity, how it can be used in JV partnerships, and the conservancy's options for ownership/partnership/management arrangements, along with their advantages and disadvantages. It also examined the different proportions of a joint venture tourism business that can be funded by community equity grant funding, and how this can affect empowerment and decision-making issues at the conservancy.

The topic that follows will be looking at the process of acquiring leasehold.



## TOPIC 7: The leasehold process

**UNDERSTAND:** In order to operate a tourism business on communal land, the operator used to require a '**Permission to Occupy**' (PTO) Certificate, which was issued by the central Ministry of Lands (which in turn requested input from the Ministry of Environment and Tourism). Very little input was obtained at a local level, and often PTO Certificates would be issued with little or no knowledge by the community of the proposed development.

With the introduction of the **Communal Land Reform Act in 2002**, there was a change in the way land was allocated for the purpose of operating a (tourism) business on communal land. The Act made provision for the establishment of a regional land board in each region (except Khomas).

**ASK: What do you understand by 'Leasehold Certificate' and who issues it?**

**UNDERSTAND:** Leasehold is a form of property tenure where the operator obtains the right to occupy an area (within a conservancy in this instance) for a given length of time in order to conduct a certain kind of business or activity.

In order to operate a tourism business in the communal area, an operator requires a '**Leasehold Certificate**' – this replaces the old PTO Certificate. The land board in each region has been given the responsibility of issuing the Leasehold Certificate. The land boards are made up of local representatives including: the traditional authorities, local government (technical and administrative support), and a representative from the conservancies in that particular region. As part of the government's decentralisation policy, the intention is to ensure that decisions regarding land use and the allocation of (tourism) business rights are made by representatives from each particular region and not by central government.

**UNDERSTAND:** When an application for a Leasehold Certificate is made for a site in a conservancy (or emerging conservancy), the land board is required by law to ensure that the application has the official support of the conservancy and is not in conflict with their management/tourism plans. **This new approach supports the government's policy position that requires all tourism businesses in a conservancy to benefit the conservancy and its members.** If the process of issuing a Leasehold Certificate is followed correctly, this should be a powerful tool that ensures that the conservancy and local people are the main beneficiaries of all tourism developments in communal area conservancies.

**NOTE:** For more information on the *Communal Land Reform Act of 2002* refer to training Manual 1.7 on Policy and Legislation or to a copy of the Act.



The Leasehold Certificate is an important component of JV agreements for the following main reasons:

- It is part of the legal requirements for developing a tourism business in communal areas.
- Issuing a Leasehold Certificate helps to avoid unplanned and inappropriate tourism developments.
- It assists all stakeholders in land-use planning – comparing land use at a local level.
- It secures land-use rights for the conservancy/operator.
- It helps to formalise the relationship with a private sector operator.
- It can be helpful if the operator/investor seeks a loan from the bank as the possession of a Leasehold Certificate can be seen as a form of collateral.

**UNDERSTAND:** In an ideal situation, the conservancy holds the user rights of the resource (land) and should thus hold the leasehold rights over all tourism developments in the entire conservancy. The conservancy would then sub-lease the rights to the JV operator.

- In practice, providing there is a well-drafted agreement in place, and a good relationship between the conservancy and the JV operator, ownership of the Leasehold Certificate should not be that important. The agreement should contain sufficient clauses to ensure that ownership of the Leasehold Certificate does not unfairly advantage either partner.
- However, where the JV operator is not negotiating in good faith or is refusing to negotiate altogether, if the conservancy retains ownership of the Leasehold Certificate it gives them extra leverage in finalising a good agreement.
- Once a specific site has been chosen and finalised by the potential JV operator and this has been agreed by the conservancy, an application for a Leasehold Certificate can be submitted to the regional land board. If a Call for Proposals process is being used, the application for a Leasehold Certificate can only be submitted once a partner has been chosen and a site is finalised.
- The timing of the application could also be influenced by the location of the opportunity, especially in a conservancy where most of the land that is suitable for tourism development has already been utilised for intensive crop farming or may be subject to annual flooding.



**NOTE:** The traditional authority needs to be apprised of the negotiations, development and site selection. The Conservancy Management Plan and the Business Plan need to be part of any Leasehold Certificate application.

**SUMMARISE/LINK:** This topic looked at the leasehold property tenure arrangement as it relates to communal (and therefore conservancy) land, as well as the issuance of the Leasehold Certificate and how ownership can affect the conservancy.

Topic 8 will be looking at the subject of JV negotiations.



## TOPIC 8: JV negotiations

**UNDERSTAND:** When a conservancy meets with the operator to reach an understanding, resolve differences, bargain for advantage, or produce an agreement upon a course of action, it **enters into negotiation**.

**UNDERSTAND:** Negotiation is a process where each party involved tries to gain an advantage for themselves by the end of the process, which often requires a compromise. Everything is negotiable.

**ASK: What are the characteristics of smart negotiators?**

**UNDERSTAND:** With respect to negotiations, each conservancy has its own unique situation to deal with regarding existing agreements, institutional capacity, and its history of joint venture management. This topic is thus only a guideline that should be expanded on.

### Tactics of a smart negotiator:

Smart negotiators understand that the stability of the outcome is important and focus on more than simply maximising the concessions that can be extracted from the other side:

- Focus initially on each side's primary objective – secondary negotiating points can become a distraction in the early stages.
- Be prepared to settle for what is fair – if an agreement is not seen to be equal it is unlikely to be stable. Maintain flexibility in your own demands and interests, this makes it easier for the other side to be flexible as well.
- Listen to what the other side wants and make efforts to meet their requests.
- Compromise on the main issues so that both sides can begin to attain their goals.
- Seek to trade off concessions – so that each side gets something in return for everything they give up.

**UNDERSTAND:** Nearly all negotiations are characterised by four phases:

1. **Preparation** involves information gathering: understanding the supply and demand status and being aware of the strengths and weakness of your negotiating partner.
2. The **opening phase** of a negotiation involves both sides presenting their starting positions to one another. It usually represents the single most important opportunity to influence the other side.
3. In the **bargaining phase**, your aim is to narrow the gap between the two initial positions and persuade the other side that your case is so strong that they



must accept it. In order to do this you should use clearly thought out, planned and logical debate.

4. The **closing** of a negotiation represents the opportunity to capitalise on all of the work done in the earlier phases.

### **Session 1: The JV negotiations: preparation phase**

**NOTE:** *The aim of the first session in Topic 8 is for to gain a **good understanding of what preparations need to be completed before meeting to negotiate with the operator.***

**UNDERSTAND:** The preparation phase should take into account all the key partners: the CC, the traditional authority, the operator(s), and secondary partners such as the land board and MET.

- All partners will need to be fully prepared if an optimal outcome to the negotiation process is to be achieved. If any of the partners are not prepared for the stakeholder workshop and follow-up direct negotiations, then this will only serve to put the negotiation process and final outcome in jeopardy.
- The conservancy might opt to engage the services of a facilitator with good negotiation skills, e.g., a consultant or NGO. It should then be made clear to all stakeholders that this specific facilitator will lead negotiations on behalf of the conservancy.
- The roles and responsibilities of the working group (facilitator, CC and representatives of the traditional authority) need to be clarified. This should be sketched onto a poster and displayed in the conservancy office, or wherever the meetings are held, as a reference point for the duration of the process of negotiation.

**UNDERSTAND:** There will be a need to develop some **baseline land-use mapping to be used as a point of reference for negotiation.**

- This should include looking at options for exclusive buffer zones around lodges and/or camps, trophy hunting zones, general tourism development zones, agriculture, and settlement zones.
- All this will have a bearing on the final negotiations as there will need to be agreements reached on key issues such as, for example, grazing rights in the exclusive buffer zones in times of emergency, and the right to water access.

**NOTE:** The conservancy will need to develop draft plans for how they propose to 'enforce' the land-use zones.



**UNDERSTAND:** The facilitator, JMC and conservancy must prepare the following in preparation for their negotiations, and provide explanations where necessary:

1. **Tourism Management Plan** (and the need for coordinated efforts at the conservancy, local and regional levels).
2. Strategies for proportionally-based **revenue sharing** for the community and its inhabitants.
3. The **strategic plan** for coordinated and united land-use for communal/conservancy land between key local partners – and in particular between the traditional authority, the CC and the land board.
4. **Different strategies for dealing with different operators** based on their history, types of agreements and associated legal obligations, willingness to negotiate, and general vision.
5. Identification and benefit/impact/conflict analysis of **available conservancy land-use options**, such as tourism joint ventures, trophy-hunting joint ventures, community campsites, agriculture, crafts and others – and the preparation of a strategy of negotiation based on these factors.

**STUDY:** Handout #15.

## Session 2: JV negotiations: opening, bargaining and closing phases

**STUDY:** Handout #16 and understand what needs to be done during the **opening phase of the negotiation process**.

**STUDY:** Handout #17 and understand what needs to be done during the **bargaining phase of the negotiation process**.

**STUDY:** Handout #18 and understand what needs to be done during the **closing phase of the negotiation process**, which represents the last opportunity to capitalise on all of the work done in the earlier phases.

**SUMMARISE/LINK:** Topic 8 looked at the characteristics of an effective negotiator. It looked at the different stages of the negotiating process for JV partnerships, including making sure that the conservancy is well prepared when its representatives come to the negotiating table.

Topic 9 will be looking at the process of drawing up a JV contract or agreement, and what the document should contain.





## TOPIC 9: The JV Agreement process and content

**UNDERSTAND:** A JV Agreement (or 'Contract', or 'Memorandum of understanding', MOU) is **a written document that sets down what has been agreed between two JV tourism parties**. It should clarify who does what and when, where, and for how long. In addition, it should state clearly what each party must and must not do, and what will happen if the parties do not comply with the agreement.

The parties to an agreement are the people who sign it. In the case of a JV lodge, for example, this could include the following:

- The **JV Agreement** should be signed by the conservancy Chairperson (or nominated representative) and the operator (or nominated representative).
- An **Employment Agreement** should be signed by each lodge staff member and the operator.
- If goods or services are being purchased by the lodge from local suppliers, a simple **Supply Agreement** should be signed by the supplier and the operator.

**ASK: Taking all the things we have learned in the previous topics into consideration, when do you think the JV Agreement should be drafted?**

**UNDERSTAND:** A JV Agreement is drafted after proposals have been assessed and negotiation has taken place. It is the JV Agreement that puts the 'legal wording' around what has been offered in the proposal from the operator, and what the conservancy has agreed to undertake.

- It is best to use a template agreement with the assistance of an NGO, consultant or government. The final document needs to be approved by a lawyer who would ensure that the agreement is legally binding.
- Once the JV Agreement has been finalised, it is a good idea to hold a formal Signing Ceremony in the conservancy so that members can see for themselves that the JV Agreement has been finalised. At the ceremony it is helpful if a summary of the main parts of the JV Agreement is given to the conservancy members in simple terms.

**ASK: What do you think should be the main components of the JV Agreement?**

**UNDERSTAND:** The component parts (or sections) of a typical Namibian JV Agreement document. (**NB:** Add any that might be necessary.)



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## JV Agreement main content

Title page	6. Damage to or destruction of improvements
Introduction/Pre-ambule	7. Joint Management Committee
1. Definitions	8. Dispute resolution
2. Framework	9. Domicilia and notices
2.1 Land availability	10. Whole agreement
2.2 Leasehold	11. Non-waiver
2.3 Use	12. Warrant of authority
2.4 Development and maintenance	13. Sale, cession, sub-letting and encumberment
2.5 Operating fee	14. Prospective tenants/purchasers
2.6 Termination	15. Order of precedence
3. Breach	16. Replacement of earlier Agreement
3.1 Breach by the operator	17. Operator's successors in title
3.2 Breach by the conservancy	18. Good faith
4. Conservancy's obligations	Signing page
4.1 Legal rights	
4.2 Conservancy management	
4.3 Tourism control	
5. Operator's obligations	
5.1 Local empowerment	
5.2 Environmental management	
5.3 Auditing	
5.4 Right to inspect	
5.5 Maintenance	
5.6 Insurance and liabilities	
5.7 Material change in partnership	

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**UNDERSTAND:** Each **JV Agreement** should be developed around the **specific circumstances in which that particular lodge/campsite is being developed**. Differences between agreements are most commonly found in the following areas:

- Zonation – size of Exclusive Use Zones.
- Whether the lodge is new or existing.
- Lodge development – number of rooms, design, building materials etc.
- Duration of Agreement.
- Conditions of renewal or extension of Agreement.
- Transfer of 'physical' improvements, or payment for improvements.
- Financial offer – how much, how calculated, etc.
- Payment arrangements – how paid and when?



- The financial projections and growth potential (low, medium, high).
- Leasehold ownership – conservancy or operator?
- Additional benefits – staff transport, accommodation etc.
- Human resources/empowerment – number of staff, conditions of employment, training plans etc.
- Joint Management Committee – composition and mode of operation.
- The viability of the lodge – financial projections and growth potential.
- Competition – if the lodge is in an area where there are other competing businesses.
- Experience and resources of investor/operator – existing or new and inexperienced operator.

**NOTE:** A template JV Agreement is included in this manual. This can be adapted by each conservancy according to their needs.

**SUMMARISE/LINK:** This last topic examined the subject of the JV Agreement and other associated agreements. It also listed the many component parts that go into the JV Agreement and discussed how the content of a number of these can vary somewhat from conservancy to conservancy, depending on the individual circumstances of each.

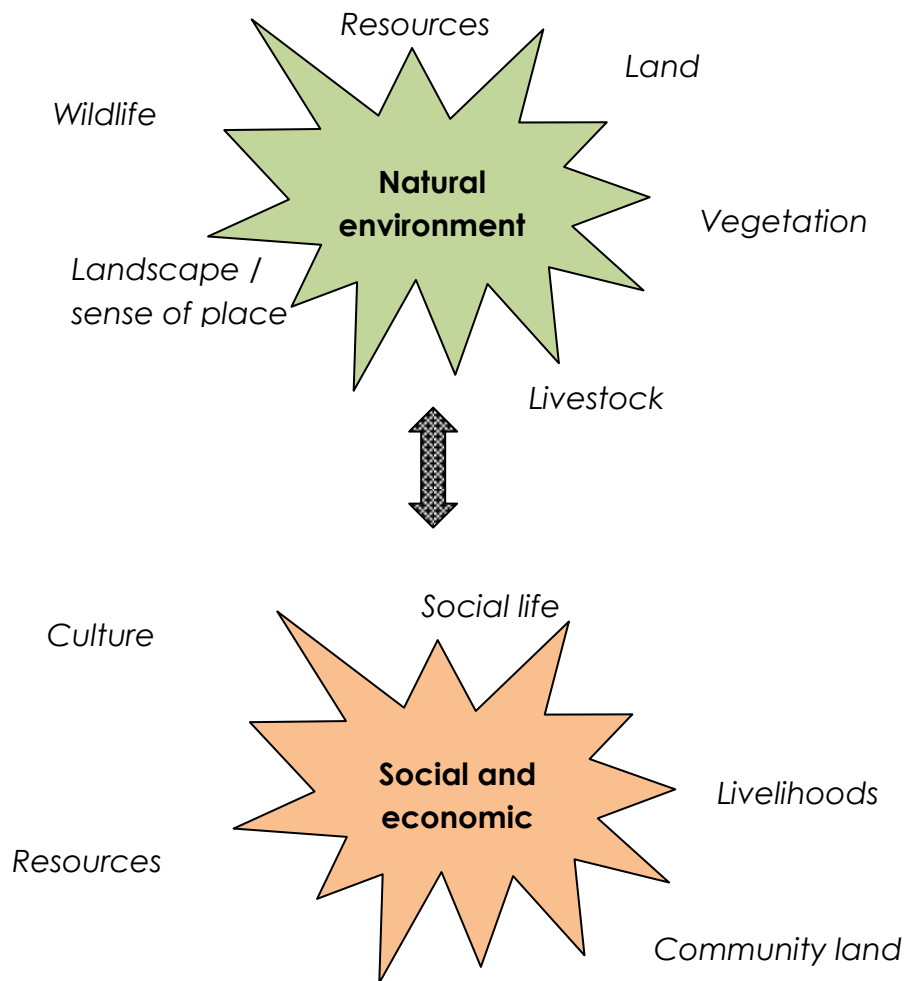
The next topic will be looking at the Environmental Management Plan.



## TOPIC 10: The Environmental Management Plan

**ASK:** What are the important environmental issues to be considered when planning a lodge?

**UNDERSTAND:** What would encompass the **natural environment** with regard to the establishment of a lodge. Be clear about the **social and economic factors** when building a lodge.



**UNDERSTAND:** Tourism developments should only be considered if they are **environmentally, ecologically, socially and economically sustainable**. All tourism developments in communal areas should involve and benefit local communities. Once a specific operator has been selected and a JV Agreement has been signed, the operator will be responsible for ensuring that the proposed lodge development and all activities meet the *Environmental Management Act* requirements. (Contact the Directorate of Environmental Affairs [DEA] within the Ministry of Environment and Tourism for detailed information on current requirements).



**STUDY:** Handouts #19 and #20. Understand the various environmental and social impacts of a lodge construction.

**ASK: What is sustainable tourism?**

**UNDERSTAND:** There are many ways of describing sustainable tourism but for the purposes of this training we will say that sustainable tourism is tourism attempting to make a **low impact on the environment and local culture**, while helping to **generate future employment for local people**. The aim of sustainable tourism is to ensure that development brings a positive experience for local people, tourism companies, and the tourists themselves.

**UNDERSTAND:** Poorly-planned tourism can have significant negative impacts on the environment.

1. In order to ensure that the natural, social and economic environments in the area are maintained or improved by the new developments, it is required that an **Environmental Screening Questionnaire** for tourism projects is completed. This should be completed prior to the development of the lodge, particularly where significant infrastructure (building work) is planned.
2. The Environmental Screening Questionnaire will be assessed and it may be further required that an **environmental impact assessment (EIA)** be completed for the tourism development if it is anticipated that there is likely to be a significant environmental impact.
3. An **Environmental Management Plan (EMP)** on the other hand, considers all of the above but also drafts a set of guidelines for how environmental impacts should be managed when the lodge is operational, e.g., sewerage and refuse disposal, water supply.

**UNDERSTAND:** The **Environmental Screening Questionnaire** for tourism projects:

- Is a short and simple questionnaire which must be completed by the project developer/operator and submitted to the Environmental Assessment Unit (EA Unit) of the Directorate of Environmental Affairs (DEA) within the Ministry of Environment and Tourism (MET).
- Provides the authorities with important information about the proposed development.
- Determines if the project is likely to result in any major environmental impacts.

**UNDERSTAND:** The **environmental impact assessment (EIA) process**. The EIA:

- Is a planning process.



- Identifies and assesses the potential environmental impacts of a development, both positive and negative.
- Identifies mitigation measures, which are steps that can be taken to reduce negative impacts.
- Provides for the involvement of interested and affected parties.
- Assists decision makers in choosing the best alternative for the development.
- Develops Environmental Management Plans for the construction and operational stages of the development.

**UNDERSTAND:** It is the responsibility of the operator to contract a suitably qualified consultant or NGO to complete the EIA/EMP. This should be paid for by the operator unless the parties have agreed otherwise.

**STUDY:** Handout #21 and understand the EIA process.

**NOTE:** Conservancies should, for example, monitor the number and types of tourists, vehicle tracks and road conditions, water use, refuse removal, and impact on cultural sites.

**SUMMARISE/LINK:** Topic 10 looked at the need for there to be a formal process for assessing environmental, social and economic aspects of any JV development at the conservancy, before any actual work is done at the site. We saw how the EIA process looks at both positive and negative impacts, as well as mitigation measures (where necessary).

Topic 11 will be looking the role of the Joint Management Committee.



## TOPIC 11: The Joint Management Committee (JMC)

**UNDERSTAND:** Once the JV Agreement has been signed, it is crucial that the conservancy and operator continue to communicate with each other on a regular basis. The **Joint Management Committee** is formed to allow this to happen. The **JMC is there to manage the implementation of the JV Agreement only** and not the direct management or operations of the lodge.

**UNDERSTAND:** The JMC should consist of representatives from both the conservancy and the lodge operator. For the JMC to work effectively, it is important to develop a relationship of trust and honesty – to see both the conservancy and the operator as real partners that are both important for the success of the JV lodge. The JV Agreement will include a section that describes how the JMC should be structured and operate. It is important that the conservancy and operator agree on this as it will become legally binding as part of the JV Agreement.

**STUDY:** *Handout #22 (2 pages) and understand all the logistics needed to set up and manage a JMC.*

**ASK: Why is a JMC important?**

**UNDERSTAND:** The JMC provides a forum and opportunity:

- Where regular feedback can be provided and information can be exchanged.
- To obtain feedback regarding the performance of the lodge and the conservancy.
- For discussion of issues related to the JV Agreement.
- Where disputes related to the JV Agreement can be resolved.
- Where both parties can get a better understanding of issues affecting each other.
- The conservancy can nominate conservancy members for potential employment.
- Both parties can make suggestions that could improve the JV Agreement.
- For the discussion of new tourism development opportunities within the conservancy.
- To develop rules and regulations related to tourism operations within the conservancy.
- To share information that may be helpful to either JV partner.



**ASK: Can we identify what the JMC is not?**

Consider the following statements and understand why they are true or false.

Statement	True	False
A JMC is set up to manage the day-to-day operations of the lodge.		x
It is the responsibility of the operator to manage the day-to-day operations of the lodge.	x	
It is the right of the conservancy to intervene regarding who the operator employs at the lodge.		x
JMC meetings should be used by the conservancy to capture important data related to the performance of the JV lodge.	x	
A JMC is there to build relationships and to ensure a strong JV partnership.	x	
The JMC is a forum to obtain feedback regarding the performance of the lodge and the conservancy.	x	
All CC members need to attend JMC meetings.		x

**SUMMARISE/LINK:** Topic 11 looked at the roles and functions of the Joint Management Committee in respect to JV tourism development and conservancy management. We identified together what the JMC does and – perhaps just as importantly – what it does not do.

The second-to-last topic of our training will look at the annual business review process.





## TOPIC 12: The annual business review

**UNDERSTAND:** When the conservancy operates a business or is a partner in a JV Agreement, it is important to know how well the enterprise is performing. Although the conservancy should be **monitoring what is happening** on a regular basis through the Joint Management Committee (JMC), it is a good idea to spend some time once a year looking back at what happened and also looking forward at what you want the business to achieve, by developing a plan for the coming year.

The **annual business review should take place at the conservancy site**, where all the relevant data, information, and key participants (EMC, JMC members) are readily available.

**UNDERSTAND:** Undertaking an **annual business review** allows all interested stakeholders:

- To come together to reflect on the business performance of the JV lodge.
- To get an opportunity to share information about the business and to make decisions regarding the future of the business.
- To find out that nothing is being hidden and that both the operator and the conservancy are being open and transparent about their operations.
- An opportunity for the conservancy and the operator to make sure that they have all their monitoring and data collection material up to date.

**REFER TO:** *Handout #23 (first page) and understand 'Look backwards':*

1. Review business performance of the JV lodge by analysing available data and information (e.g., number of visitors, occupancy, net turnover, expenditure, payments to the conservancy, employment etc.). Make sure that monitoring systems are working (e.g., JV lodge 'dashboard') and that the CC has enough information to make business-related decisions.
2. Create a forum for discussion about performance, management and partnership issues.

**REFER TO:** *Handout #23 (second page) and understand what is 'Looking forwards':*

1. Develop an Action Plan for the coming year (set targets, identify key activities, identify responsible persons, identify type and level of support required from JV partner and conservancy as well as external NGO partners and business service providers).



2. Develop an Annual Operating Budget for activities related to the JV lodge for the coming year.
3. Create a forum for decision making regarding the future of the JV Agreement.
4. Adapt monitoring and data collection systems if necessary.

#### When will the annual business review be conducted?

**UNDERSTAND:** The annual business review should take place shortly after the end of the financial year, e.g., in April (the Namibian financial year ends in February and the lodge will need 4-6 weeks to finalise its financial accounts).

**NOTE:** Doing the annual business review at this time will have the added advantage of feeding the data into the conservancy and national CBNRM database set up for annual reporting on the progress of the overall CBNRM Programme (which is planned for March/April every year).

#### Who will conduct the annual business review?

**UNDERSTAND:** The annual business review should be conducted by the Enterprise Management Committee (EMC) or conservancy JMC members, with the full participation of the CC and members. It may be helpful to invite the JV lodge operator to assist in providing accurate feedback.

It is often helpful to have some technical advice (someone with knowledge of business and the sector e.g., tourism, JVs etc.) at the review. This could be provided by a local or national NGO partner, or by a consultant or government agency.

**SUMMARISE/LINK:** The topic we have just covered looked the annual business review process: its purpose and when and where it should be held. We examined how the process looks back, to evaluate the performance of the JV enterprise in the previous year, as well as forward – specifically in drawing up an Action Plan and Annual Operating Budget for the forthcoming year.

The final topic of this manual will look at a tool for evaluating the performance of the JV enterprise, called the 'dashboard'.



## TOPIC 13: The JV financial 'dashboard'

**UNDERSTAND:** A 'dashboard' is a user-friendly interface that organises and presents information in a way that is easy to read. The conservancy may make use of such a dashboard to keep track of performance of the lodge and adherence to their JV Agreement. The major purpose of a JV financial dashboard is to display important information on the operation of the JV business.

**UNDERSTAND: A JV financial dashboard offers a simple view into the data associated with joint ventures:**

- It summarises the key financial data from financial statements.
- It is designed to offer greater transparency and understanding of the JV business.
- It allows for discussions on financial performance and benefits in such a way that partners can engage with a common understanding.
- Its display of well-defined data allows any person within the business (conservancy and JV operator) to interpret the numbers in the same way.
- It increases the understanding and trust of the partners through engagement.
- It becomes the catalyst for Joint Management Committee meetings.

**STUDY:** *Handout #24 and understand the information presented on the dashboard.*

**UNDERSTAND:** Business dashboards have been around in some form or other since the 1980s. Ideally, the display should be unambiguous in terms of the format, colouring, scaling and style of graphs. Remember that the prime intention is to convey information.

1. Often the simplest dashboards are the most effective and are ideally displayed on one screen (or page) for ease of use. **They show the most important business information** needed to allow JV partners to develop a successful business relationship. Dashboards can visually summarise business performance in a way that can be interpreted quickly.
2. Recently, with increasing focus on performance measurement through key performance indicators (KPI), **dashboard performance measurement and KPIs have become almost synonymous**. Dashboards, however, are only one mechanism for KPI presentation.



**UNDERSTAND:** Business dashboards do have some disadvantages, however, since the design of dashboards needs a bit of practice. Pay attention to:

- **Clutter** – the more items on a dashboard, the more likely it is that important information will be overlooked.
- **Too many colours** – the more colours that are involved in the design, the more likely important changes in colour will be missed. (Issues with printing, as well as colour blindness in people utilising the dashboard, also need to be borne in mind.)
- **Relevancy** – including data that is not important detracts from the important data.
- **Large graphics** – many dashboards waste space by using large 'dial-like' images that take up a lot of space but don't give much informational value.

**UNDERSTAND:** The dashboard itself follows a straightforward grid layout and the primary emphasis is placed on comparing current results against those of the previous year(s). The dashboard is divided into two sections:

- a. Tables with monthly data comparing current month with the same month in the previous year.
- b. Graphs with annual data.

Both sections have data on occupancy, revenue, expenses, year-to-date payments to government and communities, and JV Agreement fees.

**SUMMARISE/LINK:** This final topic looked at a useful tool for evaluating the performance of the JV enterprise as a business, the financial dashboard.

A quick and easy informal self-assessment to evaluate your knowledge of this topic follows.



## **SELF-ASSESSMENT: Assessing participants' understanding of this Module**

Handout #25 (2 pages) comprises a set of 'true or false' statements based on this Module and is designed to evaluate the knowledge and skills that you have acquired. This might be a useful activity to test whether you really have solid knowledge of this manual.



## List of Handouts

- MODULE 2.1, HANDOUT #1: JV models in Namibia (3 pages)
- MODULE 2.1, HANDOUT #2: Existing Namibian JV lodges and campsites (2 pages)
- MODULE 2.1, HANDOUT #3: Tourism Options Plan
- MODULE 2.1, HANDOUT #4: Feasibility of a Tourism Plan
- MODULE 2.1, HANDOUT #5: Calculating 'Achieved Rate' and 'Occupancy Rate' (2 pages)
- MODULE 2.1, HANDOUT #6: The two approaches for financial arrangements
- MODULE 2.1, HANDOUT #7: Fixed and variable fees
- MODULE 2.1, HANDOUT #8: Advantages and disadvantages of the approaches used to attract and secure JV investors
- MODULE 2.1, HANDOUT #9: Key general issues of the adjudication process (5 pages)
- MODULE 2.1, HANDOUT #10: Exercise: Key general issues in the adjudication process (3 pages)
- MODULE 2.1, HANDOUT #11: Justification for the use of community equity funding
- MODULE 2.1, HANDOUT #12: Options for ownership/partnership/management arrangements when community equity is applied (2 pages)
- MODULE 2.1, HANDOUT #13: Step-by-step CEq funding decision making (3 pages)
- MODULE 2.1, HANDOUT #14: Equity funding justification (2 pages)
- MODULE 2.1, HANDOUT #15: JV negotiations: preparation phase
- MODULE 2.1, HANDOUT #16: JV negotiations: opening phase
- MODULE 2.1, HANDOUT #17: JV negotiations: bargaining phase
- MODULE 2.1, HANDOUT #18: JV negotiations: closing phase
- MODULE 2.1, HANDOUT #19: Potential negative environmental impacts
- MODULE 2.1, HANDOUT #20: Potential negative social impacts
- MODULE 2.1, HANDOUT #21: The environmental impact assessment (EIA) process
- MODULE 2.1, HANDOUT #22: Logistics of setting up and managing a JMC (2 pages)
- MODULE 2.1, HANDOUT #23: Undertaking an annual business review (2 pages)
- MODULE 2.1, HANDOUT #24: The JV financial 'dashboard'
- MODULE 2.1, HANDOUT #25: *Self assessment evaluation for participants* (2 pages)

All Handouts are one page only, unless otherwise specified.



## Definitions

<b>Adjudication</b>	To 'judge' or 'compare' JV proposals which have been submitted as part of the Call for Proposal (CfP) process
<b>Agreement</b>	A written document that sets down what has been agreed between two parties. It should clarify who does what and when, where and for how long. In addition, it should state clearly what each party must and must not do and what will happen if the parties do not comply with the Agreement.
<b>Beds or Bed-Nights</b>	The number of beds sold by a lodge. This is used to calculate occupancy.
<b>Call for Proposal (CfP)</b>	Formal competitive bidding process. Can also be referred to as tender, call for expression of interest or request for proposal.
<b>Capital Costs</b>	These are the funds that are used to establish a business. For example, the capital investment requirements to build a tourist lodge would include: building the infrastructure (buildings, roads, water and electricity); purchasing vehicles and developing initial marketing and advertising material to attract guests.
<b>Community Equity (CEq)</b>	Money (normally as a non-refundable grant, but could be a loan) made available to organised communities (mainly conservancies) that can be brought to the table as part of a tourism business development in partnership with a second party (normally the private sector)
<b>Concession</b>	A contractual right to carry on a certain kind of business or activity in an area, such as to explore or develop its natural resources. In Namibia there are various concessions where an operator has exclusive rights to utilise a certain area of a national park for tourism activities, e.g. skeleton coast concession
<b>Cost of Sales</b>	These are the expenses specifically associated with the cost of providing the key income earning facilities and activities – accommodation, food, bar, game drives etc.
<b>Dividend on shareholding</b>	If the conservancy becomes a shareholder in the business (contributes capital to the development of fixed or moveable assets and therefore has contributed community equity), they will be entitled to additional payments for this contribution. This may come from a percentage of the profits as determined in the shareholders agreement. Although this may only happen if the lodge makes a profit, the % of profit used for dividends will be decided by the shareholders in the business – so the conservancy will be able to influence this decision.
<b>Environment Management Plan (EMP)</b>	A management tool used to ensure that reasonably avoidable adverse impacts of the construction or operation of a project are prevented; and that the positive benefits of the projects are enhanced. It is thus an important tools for ensuring that the management actions arising from Environmental Impact Assessment (EIA)



	processes are clearly defined and implemented through all phases of the project life-cycle.
<b>Environmental Impact Assessment</b>	An assessment of the possible positive or negative impact that a proposed project may have on the environment, together consisting of the natural, social and economic aspects.
<b>Equity</b>	Acquisition of ownership participation in a private company.
<b>Feasibility Study</b>	Feasibility studies aim to objectively and rationally uncover the strengths and weaknesses of a proposed venture, opportunities and threats as presented by the environment, the resources required to carry through, and ultimately the prospects for success.
<b>Financial projections</b>	A forecast obtained by an inference about some hypothetical situation based on known facts, e.g. the occupancy rate and thus income of a lodge.
<b>Fixed Fee</b>	A fixed fee is like rental income – for example, if an operator agrees to pay a conservancy N\$1,000 per month for the use of a site on which to build a lodge. A flat fee structure has the advantage of providing guaranteed income (whether or not the lodge does good business and makes a profit). However, the disadvantage of a flat fee structure is that it limits the amount of money a conservancy can earn, as earnings often do not increase as the business grows.
<b>Gross Turnover / Income</b>	Sometimes also referred to as turnover, is the total amount of money a business earns in a given period
<b>Joint Venture</b>	A Joint Venture (JV) is a business activity undertaken by one or more partners for their mutual benefit.
<b>JV Reference Group</b>	A group of people identified by the conservancy who will represent them throughout the entire JV process. The members of this group could be a combination of conservancy committee members, staff and if required external expertise.
<b>lessee</b>	A person who leases a property or land from its owner (the lessor)
<b>Memorandum of Understanding (MOU)</b>	It is a document describing a bilateral or multilateral agreement between parties. It expresses an intended common line of action between the parties.
<b>National Park</b>	A national park is a reserve of natural or semi-natural land, declared or owned by a government, that is restricted from most development and is set aside for human recreation and enjoyment and animal and environmental protection.
<b>Non Financial Income</b>	In addition to wages, staff often also benefit from free housing, meals, rations, transport and recreational facilities. Again for staff in rural areas, this can often add significantly to their overall benefit package.





<b>Net Income</b> (also referred to as profit)	Net income, also referred to as profit, is calculated by taking total income earned (gross turnover / income) and subtracting expenses. For example, if a business earns N\$100 dollars (gross income), and has expenses of N\$80 (salaries, for example), then net income (profit) equals N\$20.
<b>Net Turnover / Achieved Income</b>	This is the income that the lodge actually receives after deductions are paid out. In Namibia, these deductions typically include commissions (range between 15-35%; paid to booking agents for making bookings on behalf of the lodge and tour operators for using the lodge on a regular basis), VAT (paid at 15% to government on all accommodation and activities) and the Namibia Tourism Board (NTB) Levy (2% of accommodation rate or 1% of fully inclusive rate). Note – it is this figure (Net Turnover / Achieved Income) that is most commonly used for the calculation of lease fees to the conservancy.
<b>Operational Costs</b>	These are all the other costs associated with the running, or operating of the business. Typical operational costs may include salaries, maintenance, electricity and fuel costs.
<b>Outsource supplies</b>	A lodge may decide to purchase certain products or services from individuals in the local community. For example, this could include; tour guides, firewood, laundry, meat, vegetables, bread etc.
<b>Permission to Occupy (PTO)</b>	Permission to occupy. An arrangement between the lodge and a local Traditional Authority, usually with payment involved, to operate a lodge on communal land. This needs to be replaced with a Leasehold Certificate.
<b>Rack rate</b>	The term for the published full price of a hotel/lodge room, which the customer would pay if he or she walked into the hotel off the street and asked for a room. Not the amount of money that actually goes to the lodge.
<b>Wage income</b>	Salaries paid to staff. Wage income to individuals within the community is often the most important local benefit to come from a JV lodge. Where the majority of staff comes from the local community, this can have a very positive impact on the local economy, especially in remote rural areas.
<b>Zonation</b>	A land use planning approach used by the conservancy/government allowing tourism activities to be planned in an environmentally sensitive and economically viable way, e.g. trophy hunting, game drives, birding, lodge.



## Draft Template Agreement

*Note: All comments are in orange, a different font & brackets*

### MEMORANDUM OF AGREEMENT (MOU)

Made and entered into by and between *(Lists the parties to this agreement)*

**THE** \_\_\_\_\_ *(Name)* **CONSERVANCY**  
herein represented by \_\_\_\_\_ *(Name of Chairperson)*  
he/she warranting to be duly authorised thereto (hereinafter referred to as "the  
Conservancy")

and

\_\_\_\_\_ *(Name of Operator / Investor)*

herein represented by \_\_\_\_\_ *(Name of Representative*  
*e.g. Director)*

he / she warranting to be duly authorised thereto (hereinafter referred to as the "the  
Operator")

### MEMORANDUM OF AGREEMENT

*(This section is an introduction and explains the overall objectives and purpose of both the  
conservancy and the operator – why do they wish to enter into this agreement)*

#### WHEREAS

(a) The Conservancy has the objective of conserving the natural and cultural heritage of the  
Conservancy Area for the benefit and enjoyment of its residents and visitors.

(b) The Conservancy wishes to generate income and community benefits from tourism  
developments and activities within the Conservancy Area by making lodge sites and  
traversing areas available to appropriate and reputable tourism operators.

(c) The Conservancy has allocated an Exclusive Area, No-Hunting Areas and other  
Traversing Areas in association with the Lodge Site as more fully described in the Zonation  
Schedule annexed hereto as Annexure "A".

*(the annexure should give a detailed description of the conservancy zonation and any rules relating to  
activities within the different zones).*

(d) The Conservancy has applied for the Right of Leasehold over the Lodge Site in terms  
of the Communal Land Reform Act (2002) and requires the Operator's approval and support  
for its application.

*(in this example it is the conservancy that has applied for the Leasehold Certificate)*

(f) The Operator has submitted a proposal to the Conservancy (Annexure "B") for the  
purpose of operating the Lodge and utilizing the Exclusive Area and Traversing Areas.

(g) 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 (c) above.

*(States clearly that the agreement needs to be in the interests of both parties)*

#### ANNEXURES

Annexure A: Zonation Schedule

Annexure B: Operator's Proposal

Annexure C: Conservancy Management Plan

Annexure D: Operator's Environmental Plan



Annexure E: Operator's Empowerment Plan

Annexure F: Certificate of Right of Leasehold

*(It is important that all of these Annexures are prepared and attached as they are part of the final agreement.)*

**NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:**

## **1. DEFINITIONS**

*(Provides clarification and explanation of the meaning of key words that are used in the agreement).*

**1.1** In this Agreement the following words shall have the meaning assigned to them hereunder:

1.1.1 "Agreement" shall mean this Agreement and any annexures hereto.

1.1.2 "Conservancy" shall mean the **Name** Conservancy, acting through its duly appointed committee.

1.1.3 "Conservancy Area" shall mean the geographic area registered as the \_\_\_\_\_ **Name** Conservancy.

1.1.4 "Days" shall mean a business day, weekend day and national holiday.

1.1.5 "Exclusive Area" shall mean the area within the Conservancy where the right to develop and operate tourism facilities is restricted to the Operator, as recorded in the Zonation Schedule *(Note – this exclusive area is provided to the operator so that the lodge has a fair chance of getting started and developing as a tourism business without other close competition. This exclusivity may be limited to a time period of 5-10 years depending on the type of lodge – a lodge that has been developed with a large investment (more than N\$10m) will often request at least 10 years exclusivity).*

1.1.6 "Effective Date" shall be \_\_\_\_\_

*(the date when this agreement is legally enforceable (normally after all the suspensive clauses have been completed e.g. Leasehold Certificate is issued etc)*

1.1.7 "Improvements" shall mean the Lodge, any existing assets on the Lodge Site or within the Exclusive Area, as well as and any new fixed Improvements to be erected or established on the Lodge Site or in the Exclusive Area, including but not limited to the Lodge structures and staff accommodation.

1.1.8 "Lodge" shall mean the \_\_\_\_\_ **Name** Lodge constructed on the Lodge Site within the Conservancy Area.

1.1.9 "Lodge Site" shall mean the site upon which the Lodge is built, as covered by the Right of Leasehold *(Leasehold Certificate)* that the Operator shall acquire for this purpose

*(the Certificate will give details of the exact site with a description and should include GPS coordinates).*

1.1.10 "Net Turnover" shall mean any and all monies, in any manner directly generated by and/or flowing or arising from the Lodge and the Agreement, received or receivable by the Operator, excluding the commissions of *bona fide* travel agents and tour operators not related to the Operator, (which shall not be more than \_\_\_\_% of the rack rate payable per person per night), Namibia Tourism Board levy, damages, interest earned, insurance proceeds, capital gains realized on the disposal of movable assets and Value Added Tax received by the Operator. For any given year, this Net Turnover must be consistent with that presented in the Operator's accounts for tax purposes for the appropriate Financial Year, as certified by the Operator's auditors.

*(It is very important that this definition is clear and very well-defined, because it is net turnover that will be used as the basis for calculating the lease fee payments / operating fee to the conservancy)*

1.1.11 "Operating Fee" shall mean an amount equivalent to a percentage of Net Turnover, or a minimum operating fee, whichever amount is the greater for any given year in question. The minimum operating fee shall escalate annually at the official inflation rate.

*(the operating fee is also referred to as the leasehold or lease fee)*

1.1.12 "Parties" shall mean the Conservancy or *nominee* *(representative of the conservancy)* and the Operator or *nominee* *(representative of the operator)*.



1.1.13 "Right of Leasehold" shall mean the lease rights over the Lodge Site, which shall be acquired by the Conservancy in terms of the Communal Land Reform Act, 2002.

*(the Leasehold Certificate will outline the details of the leasehold rights)*

1.1.14 "Traversing Areas" shall mean the Lodge 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 Lodge and traverse for tourism purposes, as fully described in the Zonation Schedule.

*(Note as of March 2009, legislation does not yet exist, that allows the conservancy to provide exclusivity over traversing. This means that all tour operators and individual tourists can drive where they wish in the conservancy as all roads are "open to the public". It is however, possible to restrict access by using signage that requests tourists to not enter certain areas).*

1.1.15 "Zonation Schedule" shall mean a zoning scheme agreed by the Parties, which shall include at least the delineation of the Lodge Site, Exclusive Area, and No-Hunting Areas. The Zonation Schedule shall record the zoning scheme in narrative and cartographic format and shall be appended to this Agreement as Annexure "A".

## 1.2 Words using:

1.2.1 any reference to a gender includes the other gender;

1.2.2 any reference to the singular includes the plural and vice versa; and

1.2.3 any reference to natural persons includes legal persons and vice versa.

1.3 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. FRAMEWORK

### 2.1 Land availability

The Conservancy, with effect from the Effective Date, makes available to the Operator the Lodge Site, Exclusive Area and other Traversing Areas, on the terms and conditions herein.

### 2.2 Leasehold

2.2.1 The Conservancy shall acquire the Lease Rights for the Lodge Site.

*(In this example it is the conservancy that has the responsibility for applying to the Land Board for a Leasehold Certificate, which will be issued in the name of the conservancy)*

The approval to sub-lease should be obtained no later than \_\_\_\_\_ Number (days) after the signing of this Agreement.

*(The conservancy needs to agree that they will obtain the leasehold certificate within a certain number of days after signing the agreement. This will normally be a minimum of 90 days as the Land Boards can be very slow in issuing the certificates. It is important that the conservancy gets the application in to the Land Board as soon as possible and that they show the operator that they have done this (send them an email / fax ) so that any delays in processing the application can be seen to be the responsibility of the Land Board and not the conservancy.)*

2.2.2 The Operator shall support the Conservancy's application with appropriate information needed for acquiring the Lease Rights and do everything within its powers to expedite such application.

2.2.3 The Conservancy will be responsible for the payment of lease fees as determined by the Land Board (Government).

*(The conservancy needs to be very careful with this clause as it is not yet clear how much the Land Boards are going to charge for issuing a leasehold)*

### 2.3 Use

2.3.1 The Operator will use the Lodge Site, Exclusive Area and other Traversing Areas solely for operating the Lodge and its associated tourism activities, as described in more detail in this Agreement or any amendment thereto as may have been agreed by the Parties.

2.3.2 The Conservancy will negotiate the boundaries around the Exclusive Area with the community to provide sufficient exclusivity for tourist activities. Within an area of



\_\_\_ kilometres of the Lodge Site there shall be no new settlement, no cattle or domestic animals, no tree cutting, no burning, no ploughing or any other activities which could have a negative impact on the success of this lodge development. The area will be agreed and captured in a map, which will be attached as Annexure “A”.  
*(As mentioned previously, it is not possible by law to exclude other tourists from the exclusive area, but they can be “discouraged” by notices to remain outside. Key to this clause however, is agreement within the conservancy, particularly by the community living nearest to the lodge, to avoid those activities that will make it difficult for the lodge to operate properly – the list above includes new settlement, cattle / livestock, tree cutting, burning and ploughing. It is very important that the local community understands why these activities might make it difficult for the lodge to operate properly – for example tourists are often very environmentally aware and could be upset by cutting and burning of trees adjacent to the lodge itself. It is also important that the operator also understands how local people live and that often tree cutting and burning is part of their livelihoods and survival strategy. Proper preparation of the Conservancy members in terms of tourism training and awareness can help here. However, if it is not possible to avoid some of these activities then the conservancy should not agree to have them in the agreement. If they do agree and they are unable to stop the community from undertaking these activities then they must also understand that there may be consequences – for example the lodge may not generate as much turnover and therefore payments to the conservancy could be reduced or the operator may try to negotiate a reduction in payments because the lodge operating environment is different from what was originally offered).*

## 2.4 Development and Maintenance

2.4.1 The Operator undertakes to develop a lodge within the Lodge Site which will include the following:

- 2.4.1.1 .. *(Full description of the lodge buildings, facilities and activities)*
- 2.4.1.2 ...
- 2.4.1.3 .....
- 2.4.1.4 .....

2.4.2 The initial total costs of the Improvements should be a minimum of  
*(Capital costs – building and equipment costs. It is important to know what this is at it helps us to assess the proposal)*

2.4.3 The lodge structures must comply with the minimum requirements of the Environmental Impact Assessment study conducted by the Operator.

2.4.4 The construction of the proposed developments outlined above will commence within \_\_\_\_\_ days after the signing of this Agreement.

*(It is important to get the operator to commit to a starting date for construction. It would be normal to expect this to be no more than 90 days. Remember that construction does not have to start before the Leasehold Certificate has been issued. If the Leasehold Certificate is delayed, the operator does not have to start construction even if more than 90 days has passed.)*

2.4.5 The Operator can develop additional tourism related infrastructure within the Lodge Site and Exclusive Area that it deems essential for the successful operation of the Lodge, provided that written permission is first sought from the Conservancy as well as any other relevant authority. Permission by the Conservancy shall not be unreasonably withheld

*(if the proposed additions can be justified by the operator in terms of the success of the business and they do not have a negative impact on the local community or the environment, the conservancy should agree. Note that if the additions are substantial or add a completely new activity or facility it may be necessary to renegotiate the agreement – for example there may be the possibility of increased local employment and additional payments to the conservancy).*

2.4.6 The Operator undertakes to maintain the Improvements, at its own cost and risk

*(Note that once the conservancy becomes an equity owner and shareholder in the lodge infrastructure – buildings etc, they will also become liable for sharing the cost of maintaining the buildings. This will need to be clearly understood and clarified in the agreement).* Neither the Conservancy, nor the State, nor any Relevant Authority shall provide any



guarantee or support, and this Agreement shall not be deemed to grant any right or impose any obligations other than specifically provided herein or as provided in law *(this is saying that the operator must take full responsibility for the building and operation of the lodge and must not expect any additional support or rights other than those that are included in this agreement).*

2.4.7 The Conservancy does not warrant that the Lodge Site, Exclusive Area and other associated Traversing Areas are suitable for the purposes intended by the Operator. The Conservancy furthermore makes no warranty in regard to the availability of any services and utilities (such as electricity, water and sewerage). *(Again this just says that the operator is responsible for assessing the site for suitability for a tourism lodge development and if it is later found not to be suitable – for example because the bore hole dries up – this is not the responsibility of the conservancy).*

## 2.5 Operating Fee

2.5.1 Starting from Effective Date, the Operator shall pay the Conservancy in arrears within \_\_\_\_\_ Days *(normally 30 or 60)* following the end of each \_\_\_\_\_ *(normally month or quarter)* an operating fee of:

Calendar Year \_\_\_\_\_: % of net turnover (Signing date to December)

Calendar Year \_\_\_\_\_: % of net turnover (Signing date to December)

Calendar Year \_\_\_\_\_: % of net turnover (Signing date to December)

Calendar Year \_\_\_\_\_: % of net turnover (Signing date to December)

*(These percentages and periods will be agreed as part of the negotiating process before the contract is drafted. They should actually be part of the original proposal that is offered by the investor / operator.)*

2.5.2 Notwithstanding clause 7.1 the Operator is liable to pay a minimum operating fee of N\$ \_\_\_\_\_ per annum. This minimum fee should increase annually in line with the prevailing figures for inflation as determined by the National Planning Commission.

2.5.3 If an audit of the Operator's accounts for a given year revises the Net Turnover on which the Operating Fee was based on, the difference will be paid by the Operator to the Conservancy or refunded by the Conservancy to the Operator, as appropriate, within 60 (sixty) Days of such audit and receipt of official notification. *(This clause just allows for a "check" to be made by auditors at the end of each year to ensure that the lodge net turnover figures and method of calculating payments to the conservancy are correct. If they are not, then an adjustment should be made – either the operator must pay additional money to the Conservancy or the conservancy may have to pay back money to the operator).*

2.5.4 All payments to be made in terms of this Agreement shall be made to the Conservancy at the *domicilium (official address)* of the Conservancy referred to in this Agreement, or to such other address in Namibia as the Conservancy may from time to time direct in writing. All such payments must be made payable to and in favour of the Conservancy

*(It is very important that payments are made directly in the name of the conservancy and preferably directly into the conservancy's bank account. In some cases payments have been made in cash to the conservancy manager and money has gone missing. Payments made into a bank account can also be easily traced and verified as there will be proper records kept of such payments.)*

without deduction or set off for whatsoever reason

*(it is not acceptable for the operator to reduce the payments without agreement by both parties in writing)* and shall be accompanied by a brief explanatory narrative *(written explanation)* verifying the information (including Net Turnover) used to calculate payments.

2.5.5 Any overdue payment shall be subject to an interest charge of 15% per annum on outstanding amounts.

2.5.6 If a Party is obliged 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 payment of the New Taxes have the effect of rendering the commercial objectives of either Party as unviable, the Parties shall meet forthwith to consider the



situation and seek in good faith to renegotiate and amend clause 2.5.1 to give relief to the Party obliged to pay the New Taxes.

*(This clause has been included mainly because of the uncertainty surrounding the Leasehold Certificate fees to be charged by the Land Board Leasehold. It says that if any additional fees or taxes are charged that had not been known when the agreement was signed and they are so large to have a big impact on the lodge business then both parties will agree to re-negotiate the agreement if necessary)*

## 2.6 Termination

2.6.1 This Agreement shall start on the Effective Date and continue for a period of \_\_\_\_\_ years, unless sooner terminated as provided herein

*(there are some clauses in this agreement that allow for an earlier termination – these are normally related to either party not doing important things that they have agreed to do).*

2.6.2 The Operator has the option to renew this Agreement for a further period of \_\_\_\_\_ years, provided it has not committed a breach of this Agreement at any time prior to the option contemplated in this clause 2.6.2.

2.6.3 The Operator shall be obliged to give written notice to the Conservancy at least 1 (one) years before expiry whether it intends to exercise its option to renew this Agreement with the Conservancy as outlined in 2.6.2.

*(It is important to obtain plenty of advance notice from the operator regarding their intention to extend the agreement or not – if they do not wish to continue, finding a new JV partner can take at least up to one year)*

2.6.4 Should the Operator not wish to renew this Agreement for a further period, the Operator shall at all reasonable times during the last 6 months of the agreement period, allow prospective partners of the Conservancy, to enter and view the interior of the Improvements

2.6.5 At the end of the Agreement period, including any renewals hereto, or at such earlier time as may be provided herein the Operator shall vacate the Lodge Site, Exclusive and Traversing Areas and leave such areas, and Improvements thereon, clean and in good working condition, or as otherwise agreed to in writing by the Parties.

2.6.6 As stipulated within the Communal Land Reform Act of 2002, section 40, the Operator shall not be entitled to compensation (*N\$ payments*) for the Improvements from the State or any other authority, unless as otherwise agreed to in writing by the Parties.

2.6.7 Should the Operator at the end of the Agreement intend disposing of nonfixed assets used by the Lodge (*for example – vehicles, equipment, furniture, curtains, bedding, towels, kitchenware etc.*), the Conservancy shall have the first option to buy these items from the Operator at a market-related price, as negotiated and agreed to by the Parties. If a price is not agreed to within 30 (thirty) Days of this option being exercised, the Operator shall be entitled to dispose of these items to any third party.

2.6.8 On termination due to a material breach by the Conservancy, the Operator shall be entitled to be compensated for the structural investment and immovable assets by either the Conservancy or an approved third party purchaser at a value to be determined by an independent valuation.

*(if the conservancy does something that makes it impossible for the operator to operate the lodge; for example - builds houses in front of the lodge or allows a second operator to build a lodge inside the exclusive development zone, the operator can request compensation (N\$ payment) for their losses.)*

2.6.9 On termination due to material breach by the Operator, the Conservancy shall be entitled to be compensated for the value of “loss of business” by either the Operator or by an approved third party purchaser. Either way the value is to be determined by an independent valuation.

*(If the operator does something that is not in line with the main part of the agreement and they are asked to cease operating; for example – fails to make payments as agreed, the conservancy is entitled to request compensation (N\$ payment) for their loss of income.)*



### 3. SPECIAL REMEDY FOR BREACH *(what happens if either party does not do what it has agreed to do)*

#### 3.1 Breaches by the Operator

3.1.1 Should the Operator default in any payment due under this Agreement or be in breach of its terms in any other way excluding a breach of its general obligations listed under Clause 5 and fail to remedy such default or breach within 30 (thirty) Days after receiving a written demand that it be remedied, the Conservancy shall be entitled, without prejudice *(this means that if they take this action, they can still undertake other actions as well)* to any alternative or additional right of action or remedy available to the Conservancy in the circumstances, to cancel this Agreement with immediate effect, be repossessed of the Right of Leasehold *(if it is in the name of the operator)*, and recover from the Operator damages *(compensation – N\$ payment)* for the default or breach and the cancellation of this Agreement.

3.1.2 The Operator shall furthermore be deemed to be in breach in the event that it commits an act of insolvency, being voluntary or otherwise liquidated, being placed under judicial management, or a civil judgment being obtained against them. *(If the operator goes bust - the lodge can no longer operate as a viable business)* In such an event the Conservancy would be entitled to cancel the Agreement without any notification to the Operator.

3.1.3 Clause 3.1.1 shall not be construed as excluding the ordinary lawful consequences of a breach of this Agreement by the Operator and in particular any right of cancellation of this Agreement on the ground of material breach going to the root of this Agreement.

3.1.4 In the event of the Conservancy 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 rent and any other amounts which would have been payable to the Conservancy but for the cancellation, the Conservancy may accept such payments without prejudice to and without affecting the cancellation, in all respects as if they had been payments on account of the damages suffered by the Conservancy by reason of the unlawful holding over on the part of the Agreement.

*(this means that if the agreement is cancelled because the operator has not done what they should have done, but they decide to stay on the lodge site, continue to operate the lodge and continue to make payments to the conservancy, the conservancy may accept these payments – but this does not mean that everything has been settled and the conservancy can still demand that they cease to operate and leave the site).*

#### 3.2 Breaches by the Conservancy

3.2.1 Should the Conservancy be in breach of any of the terms of this Agreement (excluding a breach relating to its general obligations listed under Clause 4 below and fail to remedy such breach within 30 (thirty) Days after receiving a written demand that it be remedied, the Operator shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Operator in the circumstances, to cancel this Agreement with immediate effect, and recover from the Conservancy damages for the default or breach and the cancellation of this Agreement.

*(If the conservancy does not do what it said it was going to do according to the agreement, the operator can cancel the agreement and request compensation (N\$ payment) from the conservancy.*

### 4. THE CONSERVANCY'S OBLIGATIONS *(what the conservancy needs to do)*

#### 4.1 Legal Rights

4.1.1 The Conservancy shall furnish the Operator with a copy of its Leasehold Certificate before or no later than \_\_\_\_\_ *(Number of Days (suggest 90 days minimum due to delays with Land Board processing))*





4.1.2 The Conservancy shall do everything within its powers to encourage the government *(the conservancy should lobby the government either directly or via their conservancy associations)* to bestow the necessary rights on the Conservancy to allow the regulation and/or restriction of tour operators and "self-drive" tourists within the Exclusive Area *(if the operator is able to have exclusivity it will make the tourism product more valuable and the net turnover could increase)*. In the meantime the Operator in consultation with the Conservancy may erect signs demarcating the Lodge Site and Exclusive Area for restricted access only. The Operator is aware that such demarcations cannot be legally enforced by Conservancy until such time as the abovementioned rights are in place

4.1.3 The Conservancy shall do everything within its powers to support any application brought by the Operator for the granting of all licenses *(e.g. liquor license)* or other authorities as may be required by the Operator to use the Lodge Site and Exclusive Area pursuant to the provisions of clauses 2.2. Notwithstanding this provision, the Operator shall be responsible for obtaining all such licenses or authorities at its sole risk and cost.

## 4.2 Conservancy Management

The Conservancy will take responsibility for the management of the Conservancy Area in a manner that will support the operations of the Operator as contemplated in this Agreement, and will be responsible for the on-going management of wildlife and other natural resources in the Exclusive Areas, and in particular will;

4.2.1 integrate the Zonation Schedule and any rules of use developed by the Joint Management Committee (see Clause 7) into the Conservancy's management and utilisation plan (see annexure "C");

4.2.2 prohibit any form of hunting at the Lodge Site or within the Exclusive Area and No-Hunting Areas, except in the event that an animal is sick, injured, or wounded;

4.2.3 undertake problem animal control within the Conservancy Area, with due consideration for the tourism activities of the Operator;

4.2.4 develop, implement and enforce a management strategy for excluding settlement, cattle and other domestic animals, tree cutting, burning, ploughing or any other agreed activities, which could have a negative impact on the success of this lodge development within the Lodge Site and Exclusive Area;

*(in particular, this needs to involve the community living next to the lodge and it is important that they understand and commit themselves to the proposed management strategy).*

4.2.5 Implement and enforce, within its authority, the conservancy management and utilisation plan covering the entire Conservancy Area (attached as Annexure "C");

4.2.6 submit to the Operator a copy of the Conservancy's annual report within 1 (one) year of the end of the Conservancy year end, which shall include: its annual financial statements; and summary of benefit distribution, as well a summary of natural resource management activities undertaken during the year under report;

*(it is important that the operator knows what the conservancy is doing and especially what are the issues affecting the members. It also helps if the operator has a better understanding of the costs incurred by the conservancy in undertaking wildlife and resource management activities and how the conservancy is using funds available for community benefits).*

4.2.7 ensure the Operator, and any other tourism operators, including trophy hunters, who are using the Conservancy Area, meet the Conservancy at least once a year to coordinate activities and the use of specific areas within the Conservancy;

*(Having regular meetings, communicating with all the "resource users" and co-ordinating their activities has a positive impact on all of their businesses and therefore on the overall net turnover and payments to the conservancy).*

4.2.8 monitor compliance by the Operator to its Environmental Management Plan and Empowerment Plan

*(at least once a year, the conservancy should ask the operator to show them what the lodge is doing to ensure they are not damaging the environment and are doing what they said they would do in the Environmental Management Plan).*



### 4.3 Tourism Control

The Conservancy undertakes to:

- 4.3.1 assume responsibility for controlling tourism activities within the Conservancy Area as enabling legislation becomes available;
- 4.3.2 reject other tour operators and /or private individuals from building and operating tourism facilities within the Lodge Site and Exclusive Area;
- 4.3.3 refer to relevant tourism plans, policies and guidelines when planning new tourism developments within the Conservancy Area.
- 4.3.4 discuss with the Operator any proposals for future tourism related developments in the Conservancy Area, so as to ensure that such development will not undermine the existing partnership between the Conservancy and Operator.

## 5. THE OPERATOR'S OBLIGATIONS *(what the operator needs to do)*

### 5.1 Local Empowerment

5.1.1 The Operator shall provide the Conservancy with a written copy of a five year Empowerment Plan on or no later than \_\_\_\_\_ *Date*. This plan shall include the Operator's undertakings in terms of local employment, training, procurement and any other forms of assistance the Operator intends offering to members of the Conservancy. The Empowerment Plan should have specified targets and time frames for the undertaking described. The Empowerment Plan shall reflect a clear commitment by the Operator to optimise employment, skills development and other benefits to members of the Conservancy.

5.1.2 Wherever possible the Operator shall employ members of the Conservancy at the Lodge and, where specific skills required by the Lodge are not immediately available among members of the Conservancy, shall include in its Empowerment Plan a skills development proposal designed to build such skills amongst members of the Conservancy.

*(This should include dates when it is expected that local staff will be sufficiently skilled to take over some of the positions previously held by external staff).*

5.1.3 The Operator shall submit written reports regarding the implementation of its Empowerment Plan at least once per annum (*year*). These reports shall provide information on the number of local and outside staff employed at the Lodge and their levels of remuneration. The reports shall also outline the skills development and training activities conducted for the benefit of Conservancy members, and any other benefits or activities relating to the empowerment of the Conservancy and its members that have been undertaken.

5.1.4 The Operator undertakes that notwithstanding a downturn in the tourism market which may necessitate retrenchments (*loss of jobs*), to always endeavour to maintain a minimum of \_\_\_\_ (*number*) permanent employees from the Conservancy.

5.1.5 The Operator shall provide adequate accommodation facilities and food/meals for those employees whose responsibilities require them to overnight at the lodge.

5.1.6 The Operator shall furnish the Conservancy with a copy of the employment policies for the Lodge.

5.1.7 All human resource management decisions made will be made with due regard to the provisions of the Labour Act, No. 11 of 2007.

5.1.8 The Operator will look for opportunities for "preferential procurement" of goods and services from local business. Where possible the Operator will support local entrepreneurial activities, including those that support the lodge operations, i.e. traditional village, laundry services and vegetable gardens.

### 5.2 Environmental Management

The Operator undertakes to:

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

5.2.2 Adhere to the Zonation Schedule and relevant sections of the conservancy



management and utilisation plan, copies of which are annexed to this Agreement (Annexure “A” and “C” respectively).

5.2.3 Develop and adhere to a written Environmental Management Plan (EMP) *(it is the responsibility of the operator to organise and pay for this)* covering the operation of the Lodge and management of the Lodge Site and Exclusive Area, and that conforms to established best practice.

5.2.4 The Operator shall provide a copy of such a plan to the Conservancy within \_\_\_\_\_ *(Number of Days)* of the Effective Date *(the EMP needs to be done before construction starts so 30 days would be adequate here)*, and submit written reports on the implementation of the plan to the Conservancy at regular intervals, but no less than once per annum.

### **5.3 Auditing** *(checking the figures and finances of the lodge are correct)*

5.3.1 The operations of the Lodge shall be audited annually by a qualified Chartered Accountant nominated, appointed and compensated *(paid for)* by the Operator. Within 120 (one hundred and twenty) Days of the end of the Operator's financial year, the Operator shall provide the Conservancy with a copy of the audited financial statements.

5.3.2 The Conservancy shall have the right to a monthly report summarised into an annual report in prescribed formats that reflects the number of guests, and any other information that may be necessary for the Conservancy to determine or verify the Net Turnover for the particular month or year under review *(what goes into this report and how it is written should be discussed and agreed at the Joint Management Committee)*.

### **5.4 Right to inspect**

5.4.1 The Operator grants the Conservancy, through its attorneys and auditors, the right to, on reasonable notice, inspect and verify the Operator's management accounts, including the information used in the preparation of the financial statements referred to in clause 5.2.1. The Conservancy will exercise this right at its own cost.

5.4.2 The Conservancy shall have the right, at all reasonable times, through its duly authorised agent, to inspect the improvements *(buildings and facilities)*. The Conservancy 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 will not to be unreasonably withheld.

### **5.5 Maintenance** *(remember these clauses will change if the conservancy have community equity / shareholding in the fixed assets of the lodge. In such a case, the conservancy will also be responsible for contributing to maintenance costs, probably in line with their percentage equity / shareholding)*

5.5.1 All maintenance and repair of the fixed Improvements within the Lodge Site 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 recognised levels of maintenance

5.5.2 Maintenance of access roads to, from and around the Lodge Site, as well as game drive tracks in the Exclusive Area, shall be the responsibility of the Operator

### **5.6 Insurance and Liabilities** *(as above in 5.5 these clauses could change with community equity / shareholding)*

5.6.1 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 lodge operator. The Operator, when called upon to do so, shall furnish the Conservancy with a copy of the insurance policy.

5.6.2 The Operator shall not have any claims of any nature against the Conservancy for any loss, damage or injury the Operator, its guests or invitees, patrons or employees may suffer in the Conservancy Area, howsoever arising (whether out of



vis major or casus fortuitous (*natural disasters – storms, lightning etc.*) or any other cause beyond the Conservancy's control).

### 5.7 Material Change in Partnership

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

## 6. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

6.1 If as a consequence of vis major or casus fortuitus, the Improvements or the Exclusive Area should be damaged or destroyed to an extent which renders them substantially untenable and incapable of beneficial use (*damaged so that they cannot be used for operating a lodge tourism business*), then the Operator shall be entitled to terminate this Agreement by written notice to the Conservancy.

6.2 The right of termination mentioned in 6.1 must be exercised within 30 (thirty) Days of the date on which the event giving rise to the right occurs, failing which such right shall lapse. If the Operator exercises its right to terminate this Agreement under 6.1, then this Agreement shall terminate with effect from the date of the event in question.

6.3 If the Operator does not exercise its right to terminate in terms of 6.1, then the following provisions shall apply:

6.3.1 The Operator shall reinstate at its own cost the Improvements and the Exclusive Area as quickly as is reasonably possible in the circumstances, and shall apply the proceeds of any insurance policy relating to the Improvements for such purpose;

6.3.2 The Operator shall not be liable for payments until the damage has been restored but will continue to be liable for the Fee under this Agreement once the Improvements have been restored;

6.3.3 The Agreement period shall be extended by the period during which the Operator was deprived of the use of the Improvements and during which period the Fee was not payable.

*(If there is a natural disaster that was not the fault of the operator or the conservancy, and the operator wishes to stay, they must be given the opportunity to fix and repair all the damages at their cost. However to be fair, during the period where they are fixing the damages, they should not make any payments to the conservancy. In addition, the agreement should be extended for the period when repairs are being made.)*

6.4 The Parties shall not have any claims against each other as a result of such cancellation or loss of occupation of the Improvements 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.

6.5 Should the fixed Improvements 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 6.1 (*if there is minor damage which is not too serious and it is still possible to operate a tourism lodge*), then the following provisions shall apply:

6.5.1 This Agreement shall not be cancelled;

6.5.2 The Operator shall continue to be liable for the Fee;

6.5.3 The Operator shall, at its own cost, reinstate the Improvements and the Exclusive Area as quickly as is reasonably possible in the circumstances, and shall apply the proceeds of any insurance policy relating to the Improvements for such purpose;

## 7. JOINT MANAGEMENT COMMITTEE

7.1 The Conservancy and the Operator agree to establish a Joint Management Committee and arrange for its first meeting within 30 (thirty) Days of signing of this

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 Conservancy.

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

*(This is very important to understand – the JMC is there to “manage the agreement” and to deal with issues of misunderstanding or conflict when they arise. It is not there to get involved with the day to day running of the lodge).*

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

7.4.1 Take responsibility for implementing 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 a 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 decision regarding such matters is with the Operator

*(this remains a difficult aspect of the JMC and often leads to conflict between the operator and the conservancy. The operator has the right to manage their staff according to their company policy providing it is within the Labour Law. If an employee behaves unacceptably – for example turns up to work drunk or takes a vehicle without permission – the operator is well within their rights to sack the employee and the conservancy does not have the right to intervene. The conservancy has an important role to play in raising awareness amongst the conservancy regarding employment opportunities and finding potential candidates for employment – sometimes this involves “sharing” these opportunities between different areas or villages within the conservancy. In terms of which candidates are finally employed, this remains the decision of the operator as they need to employ the best candidates for the job).*

7.4.4 Resolve issues of concern to the Parties, such as the movement of tour operators within the Exclusive Area, and address the conduct of members of the Conservancy 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 conservation or community development related objectives of the Conservancy.

7.4.5 Discuss questions and issues relating to the quarterly and annual financial reports of the Lodge. Each of the Parties can nominate a person to represent its interests and to liaise with the other if any matters require in depth discussion.

7.4.6 Consider and decide upon the use of other areas within the Conservancy boundaries for tourism activities by the Operator.

7.4.7 Raise grievances and propose solutions with respect to conflicts or disputes arising from this Agreement in accordance with the provisions of clause 8

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 every quarter;

7.4.10.2 all meetings shall be minuted and the minutes shall be kept on file; and

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.

*(Although there are more than 39 operational JV’s in Namibia, the formation and operation of JMCs remains a major problem. Once the Agreement has been signed, it is crucial that the conservancy and operator communicate with each other on a regular basis. Lack of communication creates misunderstanding and eventually turns into mistrust and conflict. Holding regular, structured JMC meetings can overcome most of these problems. It is a good idea to use a neutral facilitator (NGO, MET or*



*consultant) to facilitate the first 3 or 4 meetings in order to establish a good relationship between the parties and a consistent agenda).  
The JV dashboard can be used in creating understanding and managing relationships.*

## **8. DISPUTE RESOLUTION** *(outlines the process for solving disputes between the parties)*

**8.1** Subject to clause 3 *(which identifies the right each party has if either one of them does not keep to the Agreement)*, 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 *(this is a process that uses a qualified and neutral person to listen to each side of the problem and recommend a solution)* on the following terms and conditions:

8.2.1 The Arbitrator shall be a person mutually appointed by the Parties, failing which the President of the Namibia Law Society shall make such an appointment.

Preference should ordinarily be given to an admitted practicing Legal Practitioner, practicing as such for at least 10 years.

8.2.2 The terms of reference of the arbitration will be determined by the Arbitrator.

8.2.3 The decision of the Arbitrator will be final and binding on the Parties.

8.2.4 The costs of such arbitration shall be born by the Parties equally, unless the Arbitrator finds a Party guilty of acting in bad faith or maliciously, in which case the Arbitrator may instruct the guilty Party to pay the arbitration costs

8.3 This arbitration clause shall not preclude a Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## **9. DOMICILIA AND NOTICES**

**9.1** The Parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 9.2 below, provided that such *domicilium* of either Party may be changed by written notice from such Party to the other Party with effect from the date of receipt or deemed receipt by the latter of such notice.

### **9.2** Addresses

9.2.1 The Conservancy:

9.2.2 The Operator:

**9.3** Any notice, acceptance, demand or other communication properly addressed by either Party to the other 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 14<sup>th</sup> business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

## **10. WHOLE AGREEMENT**

**10.1** This is the entire Agreement between the Parties.

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

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

*(This section states that only what is included in this Agreement can be considered as legally part of the JV Agreement. It is therefore important that enough time is given to preparing and checking the agreement in order to ensure that it is complete. It is wise to use the services of both a lawyer who is familiar with conservancy-private sector agreements as well as an advisor who fully understands the tourism sector and can analyse business proposals that represent the basis for the agreement).*



## 11. NON-WAIVER

Neither Party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Agreement by reason of 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.

*(this means that if one party is "understanding" and does not enforce a particular clause at any time; for example if a payment is late by 3 months; this does not mean that they cannot enforce this clause at any time in the future).*

## 12. WARRANT OF AUTHORITY

The persons signing this Agreement on behalf of the Parties expressly warrants their authority to do so.

*(the person signing this Agreement must be the duly elected chairperson of the Conservancy or if they are a nominated representative there must be some evidence in writing that shows that they have been given signing rights).*

## 13. SALE, CESSION, SUBLETTING AND ENCUMBERMENT

13.1 The Operator shall not be entitled, except with the prior written consent of the Conservancy, which cannot be unreasonable withheld:

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

13.1.2 to cede *(give to someone else)* all or any of its rights under this Agreement;

13.1.3 to sublet *(lease to another party)* or give up possession of the fixed Improvements, Lodge Site or Exclusive Area, in whole or part, to any third party; or

13.1.4 to encumber *(borrow money against)* the Lodge Site 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.

## 14. PROSPECTIVE TENANTS / PURCHASERS

Should the Parties not agree to extend the Agreement for a further period, the Operator shall at all reasonable times during the last 6 months of the agreement period, allow prospective tenants or purchasers of the Improvements, to enter and view the interior of the Improvements.

## 15. ORDER OF PRECEDENCE

Where discrepancies *(different information)* exist between this Agreement and its Annexures, the Agreement shall take precedence *(be more important)*.

## 16. REPLACEMENT OF EARLIER AGREEMENTS

As of the Effective Date this Agreement replaces all earlier agreements between the Parties, and between the Operator and the Traditional Authority, in relation to the Lodge, Exclusive Area and Traversing Areas.

## 17. OPERATOR'S SUCCESSORS IN TITLE

This Agreement shall be binding on the Operator's creditors *(people or organisations e.g. banks that have lent money)*, liquidators *(organisations that take over a business when it can no longer run profitably and cannot pay its debts)*, successors in title, heirs *(people that are given the assets or*



*operating rights when the current operator dies*), legatees, executors, administrators and beneficiaries.

## 18. GOOD FAITH

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.

THUS DONE AND SIGNED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_ for and on behalf of the **CONSERVANCY**

THUS DONE AND SIGNED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_ for and on behalf of the **OPERATOR**

ENDORSED AT \_\_\_\_\_ THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_ for and on behalf of the **Traditional Authority**





# NOTES



