

**AGREEMENT ON MANAGEMENT AND OPERATION
OF THE MIZIEB and AHRAX AREAS**

Today the 1 day of October 2020

A private agreement (from hereon referred to as the "Agreement") entered into between:

The Lands Authority, represented hereon by Emeritus Justice Lino Farrugia Sacco holder of identity card number 697449 and Mr James Piscopo holder of identity card number 225578M (hereinafter referred to as "**the Grantor**");

and

The **FKNK** (*Federazzjoni Kaċċaturi Nassaba Konservazzjonisti*), represented hereon by its President Joseph Perici Calascone, holder of identity card number 569356M and CEO Lino Farrugia holder of identity card number 786455M (hereinafter referred to as "FKNK" or the "**Guardian**").

The parties shall collectively be referred to as "the Parties" and may individually be referred to as "the Party" where the context permits;

In virtue of which, the Parties premise as follows:

WHEREAS the Government of Malta holds full ownership of the Mizieb and Ahrax Areas (hereinafter referred to as "the Sites") and the Lands Authority in accordance with the functions and powers vested in it through Chapter 563 of the Laws of Malta, 'Lands Authority Act', administers said property as outlined in the site plans attached in Annexes i and ii shown bordered in red and marked with letters, in the attached plans. This Agreement is not intended to transfer any of such right of ownership;

WHEREAS the Parties agree that the Site may be managed professionally by the Guardian, whilst carrying out any activity required for the management of the same site

WHEREAS the Guardian has drawn up two separate comprehensive Project Plans for Mizieb and Ahrax (attached in Annex iii[a] and iii[b] of this Agreement) that is to serve as the basis for the Guardian's obligation to achieve the objectives set out in this Agreement;

WHEREAS the Grantor is willing to grant the management and operation of the Site to the Guardian on an exclusivity basis, subject to the terms and conditions contained in this Agreement;

WHEREAS the Guardian is willing to manage and operate the Site under the terms and conditions contained in this Agreement;

Now therefore the Grantor grants unto the Guardian, the management and operation of the Site under the following terms and conditions, and the Guardian accepts the said grant to manage and operate the Site whilst assuming all the obligations attached to the said grant by virtue of this Agreement, under the following terms and conditions:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless the context otherwise requires or where it is expressly stated otherwise, the terms set forth hereunder shall have the following meanings:

1.1.1 **'Project Plan'** means the 'Mizieb, and Ahrax Project Plan' dated the October 2019, drafted by FKNK for the Site (attached in Annex iii[a] and iii[b] of this Agreement), for the period of the agreement, or any other Project Plan that may be drafted by FKNK for the period following the first year of the agreement as approved by the Board of Governors of the Lands Authority.

1.1.2 **'Extraordinary Maintenance'** means maintenance work that does not fall under ordinary routine maintenance but which may result from structural defects or other defects resulting from poor quality of work, or which may result from damage caused by vehicles, floods or storms, other acts of God and other force majeure events, to the exclusion of work emanating from negligence.

1.1.3 **'Laws of Malta'** includes national legislation, European Union Legislation and any other international commitments binding upon the Government.

1.1.4 **'Natura 2000 site'** refers to a coherent European ecological network of protected areas designated under the Council Directive 92/43/EU on the conservation of natural habitats and of wild fauna and flora, 'Habitats Directive' and the Council Directive 2009/147/EU on the conservation of

wild birds, 'Birds Directive', and also includes the Natura 2000 sites declared in Malta as Special Areas of Conservation and Special Protection Areas and regulated under Legal Notice 311 of 2006, 'Flora, Fauna and Natural Habitats Protection Regulations'. This network includes sites hosting the natural habitat types and habitats of species listed in the aforementioned Directives and Regulations, which habitat types and species are to be maintained or, where appropriate, restored, at a favourable conservation status in their natural range.

1.1.5 **'Ordinary Maintenance'** means work performed on a regularly scheduled basis to service, check or replace items to ensure a long operating life.

1.1.6 **'Reasonable & Prudent Operator'** means a person engaged by the guardian seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and internationally experienced operator:

(a) exercising reasonable judgment in the light of known facts, expecting to accomplish the desired result in a workmanlike manner consistent with law and EU standards; and

(b) engaged in the same or a similar type of undertaking, and in the same or similar circumstances and conditions,

and any references herein to the standards of a Reasonable and Prudent Operator shall be construed accordingly.

1.1.7 **'Site's'** means the areas shown bordered in red and marked with letters as indicated on the site plans in Annex i and ii, and as subject to any inclusions or exclusions which this Agreement may stipulate.

1.2 In this Agreement, unless otherwise specified or the context otherwise requires: -

1.2.1 words importing the singular only shall include the plural and vice versa;

1.2.2 words importing the whole shall be treated as including a reference to any part thereof;

1.2.3 words importing a gender shall include the other gender;

1.2.4 words importing individuals include legal persons and *vice versa*;

- 1.2.5 reference to any provision of law is a reference to that provision as modified or re-enacted from time to time;
- 1.2.6 reference to any statutory provision includes a reference to any subsidiary legislation made under that provision from time to time;
- 1.2.7 reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement.
- 1.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.
- 1.4 Any phrase in this Agreement introduced by the term "include", "including", "in particular" or similar expression will be construed as illustrative and will not limit the sense of the words preceding or following that term.

2. THE GRANT

- 2.1 The Grantor hereby grants unto the guardian who accepts, the exclusive management and operation of the Site, it being clearly agreed and understood that this grant constitutes a personal right competent solely to the guardian of the site, and is restricted solely and exclusively to the operation of the Site.
- 2.2 The Parties agree that the foreshore surrounding the coastal perimeter of the Site, as defined in Article 311(2) of the Civil Code, Chapter 16 of the Laws of Malta¹, shall remain part of the Public Domain and therefore the Government reserves all rights thereon. The foreshore remains excluded from the scope of this Agreement, and access to it shall remain open and free of charge at all times.
- 2.3 This Agreement precludes the right to lease or otherwise transfer unto any third party the use and operation of the Site, whether in whole or in part.
- 2.4 This Agreement precludes the guardian from forfeiting or relinquishing, assigning, sub-contracting, transferring or subrogating all or any part of its right under this

¹ The "foreshore" is that part of the coastal perimeter, including where it exceeds fifteen metres, which is normally covered by water due to the action of the waves and the use of which is restricted by this fact. The foreshore extends up to the reach of the largest wave and, even if it lies beyond the reach of the waves, to the limits of any beach:

Provided that the foreshore shall not extend over or onward of a schemed public road.

Agreement to manage and operate, whether directly or indirectly, the Sites or any part thereof, save to the submanagement by subcommittees of the FKNK which are responsible for the management of these sites, which subcommittees shall however be responsible to the Council of the FKNK.

2.5 The Guardian guarantees to the Grantor that it shall not allow any assertion of rights by third parties on the Site or any of its facilities including any form of accessory real rights such as pledge, privilege or hypothec and any other burden.

2.6 The Parties agree that the Site will be taken over *tale quale* without the guarantee of latent defects, subject to any applicable conditions.

3. RECIPROCAL RIGHT OF ACCESS TO THE SITE

3.1 The Guardian shall have free right of access to the Site at all times.

3.2 Without prejudice to any other law, the Guardian shall allow all the Parties or their representatives to have access to the Site, at reasonable times and in a manner as not to disturb the day to day management of the sites.

4. THE PERIOD

4.1 The Agreement shall remain valid and operative on a three year basis at the absolute discretion of the Board of Governors of the Lands Authority in representation of the Government of Malta. The period will commence on the (9) day of *Celebration* of the current year two thousand and twenty (2020).

4.2 On termination of this Agreement in accordance with clause 17 of this Agreement, the Guardian shall immediately vacate the Site.

5. THE MANAGEMENT

5.1 The Parties agree that the Grantor is hereby handing over the management and operation of the Site to the Guardian.




5.2 The Parties agree that the Guardian shall be responsible for the operations of the Site and associated facilities at its own cost and expense in accordance with the Standards of a Reasonable and Prudent Guardian.

- 5.3 The Guardian agrees that the Site shall be used exclusively for the activities defined in the management plans attached to this Agreement, and other ancillary uses which however do not change in any way whatsoever the principal nature and scope of the Site. Provided that the Grantor may authorise other activities as long as the prior written approval of the relevant public authorities, is obtained, and provided that such activities are in line and in accordance with the applicable laws. Approval of such activities is subject to permission being obtained from the Grantor who shall be notified of such activities at least two weeks in advance.
- 5.4 The Parties agree that the Guardian shall be responsible for the maintenance and upkeep of the Site and associated facilities at its own cost and expense in accordance with the Standards of a Reasonable and Prudent Guardian.
- 5.5 The Guardian undertakes to regularly maintain and clean the Site and perform such duties as required by this agreement.
- 5.6 The grantor agrees that prior to the termination of this Agreement, there shall be discussions regarding the responsibility for the execution of the Ordinary and Extraordinary Maintenance of the Site following the termination for whatsoever reason of this Agreement.
- 5.7 The Guardian shall assume responsibility for achieving any contractual obligations of this agreement in line with the principles of transparency and sound financial management.
- 5.8 The Government of Malta or any of its authorities/agencies shall retain the right to use all facilities found on Site, provided that the Guardian is served with a notice of not less than ten (10) working days prior to the requested use.
- 5.9 The Guardian shall be responsible to put up and/or procure all investment it deems necessary for the good management of the site in accordance to this agreement.
- 5.10 The Guardian shall take all necessary steps to ensure adequate security and safety within the Site, and to ensure the safety of all volunteers/employees working on the Site at any given time, according to health and safety regulations.
- 5.11 The sites shall be accessible to the public or any other authorised person/s, at all times except during specific times of day during the hunting season/s:

Provided that in relation to law enforcement officials and/or any other officials of any other competent regulatory authority, such access should be applicable at all time, including the specific times of day during the hunting season/s.

- 5.12 The Guardian is obliged to put up signs, with immediate effect from the date of signing, during the hunting season/s to indicate the times that the Sites are not accessible.
- 5.13 The Guardian, in agreement with the Grantor, is obliged to make available to the Public, areas, to be designated as Picnic areas, which may be used during the times indicated in clause 5.13, save for these areas in Miżieb which for limited periods during the hunting season/s as clearly signaged that cannot be used. These Picnic areas and their precincts shall upon the signing of this agreement immediately be clearly indicated by signs and other methods.
- 5.14 It is agreed by the parties that on specific areas within the perimeter of 'the sites' there may be lessees who are recognised by Government. It is unequivocally agreed that the rights of these lessees are not to be impinged in any way and the Guardian has to accept and acknowledge the rights that these lessees have on said land. The Guardian has to fully collaborate with the said lessees and has to respect all the rights of the said lawful tenants and other legally recognised users of land, including but not limited to any rights of access by the public through established footpaths.

6. RESPONSIBILITIES OF THE GUARDIAN

- 6.1 The Guardian shall act as a bonus pater familias and act within its reasonable power to ensure that the guardianship obligations arising from this agreement are safeguarded. 
- 6.2 The Guardian shall, within its reasonable power, ensure that the Site shall not be utilised for any illegal activities by its members, whereas, members who are involved in such illegal activities shall be held personally liable for such actions. 
- 6.3 The Guardian shall keep the Grantor fully indemnified against any responsibility which may accrue to them as a result of the Guardian's failure to abide by the provisions of this Agreement in particular those of this article. 
- 6.4 The Guardian undertakes to keep the Site in line with the Project Plan whilst obtaining the approval of the ERA whenever necessary.

- 6.5 The Guardian shall keep the Site in a good and reasonable state of maintenance and repair in accordance with clause 5.4 of this Agreement, and on the termination or dissolution of this agreement, shall return the Site to the Grantor in a good state of repair, saving normal wear and tear;
- 6.6 The Guardian shall inform the general public of the opening and the closure of hunting season, that is between the 1st September and the 31st of January or any other date that may be approved by the concerned authorities, by means of a notification published in at least one Maltese and one English newspaper.
- 6.7 The Guardian must, in such notice, inform the general public of those areas which are accessible for the public and those which are not in both sites of Mizieb and Aħrax.

7. THE CONSIDERATION

- 7.1 During the term of this Agreement, the Guardian, in addition to its obligations assumed by it in terms of this agreement, shall pay the fee of € 200 (two hundred Euro) to the Grantor as consideration for the Grant per annum for each site.

8. HUMAN RESOURCES

- 8.1 The Parties agree that for the purposes of the objectives set in this Agreement and the Project Plan, Conservation Officers who should be granted executive enforcement powers in accordance to the Project Plan shall be recruited by the Minister responsible for hunting and trapping.
- 8.2 The Parties agree that the personnel mentioned in clause 8.1 of this Agreement shall be seconded with the Guardian.
- 8.3 The Parties agree that the personnel mentioned in clause 8.1 of this Agreement shall report directly to the Guardian.
- 8.4 The Guardian binds itself to carry out all administrative duties in relation to the personnel mentioned in clause 8.1 of this Agreement, and therefore all duties with regards to managing vacation leave, sick leave, overtime, time off in lieu and schedule of employee's duties shall be managed by the Guardian.



8.5 The Guardian binds itself to submit to the Grantor an annual report for all seconded personnel, which report shall record all updates with regards to each employee throughout the relative reporting period.

8.6 The Parties agree that where an employee's contract of employment expires or is terminated for whatever reason, the Grantor shall within a reasonable time and by no later than six (6) months provide a replacement or recruit another individual who shall replace the outgoing employee:

Provided that where the vacancy remains unfulfilled after the lapse of six (6) months, the Grantor shall become liable to compensate the Guardian for additional payroll costs incurred by it until such time that replacement employee is seconded to the Guardian.

8.7 The Guardian binds itself that in the administrative duties carried out by the Guardian in relation to the personnel mentioned in clause 8.1 of this Agreement, the Guardian shall acknowledge the personnel's rights and obligations as public service employees, as established *inter alia* in the Public Service Management Code.

9. GOVERNANCE

9.1 The Parties shall set up a Joint Monitoring Board which shall be responsible for exercising oversight, monitoring and control over the achievement of the specific standards of maintenance and upkeep of the Site and to notify the Parties on any departures from the agreed standards. The said Board shall monitor and evaluate the performance of the Parties in carrying out their functions and responsibilities in accordance with this Agreement.

9.2 The Parties agree that the Joint Monitoring Board shall consist of a Chairperson who shall be appointed by the Grantor, and six (6) other members, with the Grantor and Mellieħa Local Council appointing a member each whereas the Ministry responsible for the Lands Authority and the Guardian shall appoint two members each. The two representatives appointed by FKNK shall represent the area of Miżieb and I-Aħrax respectively.

9.3 The Guardian commits to follow the vision and work plan structure as agreed upon and defined in the Project Plan attached in this Agreement, and agrees to achieve the objectives set for the Site in the same Plan.



9.4 The Guardian agrees to submit to the Grantor at the end of every calendar year, an Annual Report which shall include:

9.4.1 An Administrative Report which details all the initiatives embarked upon during the calendar year at issue; and

9.4.2 Audited Financial Statements on the financial performance of the FKNK, which shall include any annual expenses incurred for the management and operation of the Site.

9.5 The Guardian agrees to submit to the Grantor at the end of every calendar year, an annual work plan for the following year. The work plan should keep in line with the vision and obligations stipulated in the Grant Agreement and the Project Plan, while obtaining the approval of the ERA.

10. INSURANCE

10.1 The Guardian shall in the joint names of the Grantor and the Guardian, prior to the signing of this Agreement, hold an insurance in order to safeguards the rights of third parties in case of third party liability, including legal costs and expenses, in respect of death of, or bodily injury to any person or loss of or damage to third party property in case of any negligent action incurred by the Guardian.

10.2 The Guardian shall further ensure that all its members, who make use of the Site, are insured against third party liability, including legal costs and expenses, in respect of death of, or bodily injury, to any person or loss of or damage to third party property.

11. RECURRENT EXPENSES

11.1 All bills, charges, running costs, rental charges and overheads relating to the Site, including those for water, electricity, drainage, telephone and any other service or utility used in or upon or furnished to the Site as from the signing of this Agreement till its termination, shall be entirely at the expense of the Guardian. All other taxes, rates, permits and similar charges which are current or that may be imposed by the executive, administrative or local authority on the Site shall, during the continuance in force of this Agreement, remain entirely at the charge of the Guardian.



12. NAME OF SITE

12.1 The Guardian shall prominently display the name and logo of the sites' after obtaining all relative permits from the relative authorities.

13. PERMITS, LICENCES AND AUTHORISATIONS

13.1 The Guardian binds itself to obtain all necessary permits and authorisations including those pertaining to environmental and sanitary laws and regulations as and whenever necessary.

13.2 The Grantor promises to collaborate in obtaining such permits.

13.3 The Guardian binds itself to act in accordance with all the conditions imposed by any existing permit or licence, including any future condition which may be imposed by any administrative authority from time to time.

13.4 The Guardian shall remain directly responsible towards the administrative authorities in respect of all permits necessary and required to manage and operate the Site.

13.5 The Parties agree that upon the termination or otherwise sooner termination of this Agreement, the Guardian shall within thirty (30) working days of being so requested in writing, transfer all the then current permits and licences onto the Grantor's names or in the name of any other person/s so authorised by the same Grantor. The parties agree that this clause refers to any permit or licence with any competent authority at the time necessary for the management and operation of the Site.

14. BREACH OF CONTRACT

14.1 Any breach of any of the provisions of this agreement by the Guardian shall entitle the Grantor to demand the remedy thereof within five (5) working days of service of a judicial letter to that effect, or such longer period as the nature of the circumstance may require.

The Guardian's failure to remedy the breach or fault within the period stated above shall result in the Grantor being irrevocably and unconditionally authorised unilaterally to terminate this agreement itself by notice in writing and to resume possession immediately of the Site, and to this end the Grantor shall be entitled to take all those measures allowed by law.

15. TERMINATION

- 15.1 Both Guardian and Grantor shall have the right to terminate this Agreement at any time by giving the other Party a six (6) months' prior notice in writing to that effect.
- 15.2 The Grantor shall have the right to terminate this Agreement by notice in writing to the Guardian and without the necessity of any other legal proceedings if:
- 15.2.1 the Guardian has failed to observe or perform any other of the obligations under this agreement and such failure has continued for a period of three (3) months after written notice thereof has been given by the Grantor to the Guardian; or
 - 15.2.2 the Guardian has abandoned the premises; or
 - 15.2.3 the Guardian becomes insolvent.
- 15.3 Upon termination of this Agreement, the guardian shall have the right of first refusal should it be decided by the Grantor to issue the Site through public tender.
- 15.4 If upon the termination of this Agreement, the Grantor decide not to issue the Site by public tender, the management and operation of the Site and all ancillary facilities is to return to the Grantor's control.

16. FORCE MAJEURE

- 16.1 The Parties shall not be liable, for any failure, delay or interruption in its performance of any of its respective obligations under this Agreement when such failure, delay or interruption arises, whether directly or indirectly, whether foreseeable or unforeseeable, from failure, delays or interruption by Acts of God, acts of the public enemy, strikes, lockouts, epidemic and riots, power failure, water shortage, adverse weather conditions, fire or other causes beyond its control. Provided that the Guardian is to notify the Grantor with immediate effect whenever any force majeure occurs, and this clause shall only apply for the time that the force majeure persists.

17. CONFIDENTIALITY

- 17.1 The Parties agree that all information and materials exchanged between the Parties pursuant to this Agreement which in the sole opinion and discretion of the Grantor is considered to be sensitive, shall be deemed to be confidential information. Any confidential information received by one party to this Agreement from the other shall not be disclosed by the receiving party to any third party for its own benefit, or for the benefit of a third party, except as expressly provided by law or herein or without having previously obtained the written consent from the other Party.
- 17.2 The Parties agree that the Grantor retains the right to publish by whatever means non-confidential information from this Agreement.
- 17.3 The Parties agree that termination of this Agreement by whatever means shall not affect the provision on confidentiality of this Agreement.

18. DISPUTE RESOLUTION

- 18.1 In the event of any dispute arising between the parties, the parties shall seek to resolve the dispute amicably. In the event that no amicable solution can be found to the dispute within thirty (30) days from notice to each other, either party shall be entitled to refer the matter to arbitration in accordance with the remainder of this clause.
- 18.2 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with Part IV (Domestic Arbitration) of the Malta Arbitration Act, 1996 and the Arbitration Rules of the Malta Arbitration Centre as at present in force. The parties agree furthermore that:
- 18.2.1 the appointing authority shall be the Malta Arbitration Centre.
- 18.2.2 the number of arbitrators shall be three, with the Grantor and the Guardian appointing one (1) member each, and the two arbitrators thus appointed shall choose a third arbitrator who shall act as presiding arbitrator of the Arbitral Tribunal. If the two arbitrators fail to choose or disagree as to the choice of the third arbitrator, the presiding arbitrator shall be appointed by the Chairman of the Malta Arbitration Centre.
- 18.2.3 the language(s) to be used in the proceedings shall be Maltese.



19. LAW AND JURISDICTION

19.1 This Agreement and all the annexes are governed and shall be construed in accordance with the Laws of Malta.

19.2 If any provision of this Agreement is found to be illegal, void or unenforceable under the applicable law by any authority, this Agreement shall continue in force save that such provision shall be deemed to be severed herefrom with effect from the date of such determination or such earlier date as the Parties may agree.

19.3 This Agreement supersedes any and all negotiations, understanding, discussions, memoranda and agreement, whether verbal, written or otherwise, as may have taken place or been reached between the parties prior to the date of this Agreement with the exception for the Agreement which was reached by the Grantee and the Government in 1986.

19.4 All the documents attached hereto shall be deemed to constitute an integral part of this Agreement.

19.5 The Parties, intending to be legally bound, are therefore signing this agreement in two (2) originals, of which each party receives one.

The Lands Authority

FKNK

Date:

