

BILATERAL AGREEMENT

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS



(Hereinafter referred to as "DEA")

herein represented by

MR. FUNDISILE MKETENI

In his capacity as

DEPUTY DIRECTOR-GENERAL

being duly authorised thereto

and

PEACE PARKS FOUNDATION



A company duly registered in terms of

section 21 of the Companies Act

Registration Nr 1997/004896/08

(Hereinafter referred to as "PPF")

herein represented by

Mr Werner Myburgh

in his capacity as

CHIEF EXECUTIVE OFFICER

being duly authorised thereto

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Whereas DEA and PPF wish to enter into an Agreement to assist in the facilitation and co-ordination of the establishment and development of Transfrontier Conservation Areas (TFCAs);

Whereas DEA requires support with the facilitation and establishment of TFCAs;

And whereas PPF, an organisation established for the specific purpose to assist with the facilitation and establishment of transfrontier conservation areas is willing to support the facilitation process as mutually agreed upon;

The two parties hereby agree as follows:

1. INTERPRETATION

1.1 In this Agreement the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings:

1.1.1 The **Parties** means the Department of Environmental Affairs, and the Peace Parks Foundation;

1.1.2 The **Employer** means DEA, or PPF who respectively enters into a contractual agreement with an employee for a fixed term.

1.2 In this Agreement, unless inconsistent with or otherwise indicated by the context –

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

1.2.2 any reference to natural persons includes legal persons and vice versa;

1.2.3 any reference to gender includes the other gender.

1.3 The head notes to the various clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the construction thereof.

2. ROLES AND RESPONSIBILITIES OF THE PARTIES

The respective roles and responsibilities of the Parties, shall *inter alia*, be:

2.1 DEA

2.1.1 All interdepartmental (government) communication;

2.1.2 All inter-governmental communication;

2.1.3 Assist with marketing;

2.1.4 Formalisation of policies and monitoring implementation;

2.1.5 International level media interaction;

2.1.6 Co-ordinate and facilitate co-operation between the three spheres of government structures, parastatals and other agencies;

- 2.1.7 Lead agent in negotiations and entering into international agreements,
- 2.1.8 Proclamation/designation of protected South African areas forming a part of the TFCA;
- 2.1.9 Management of Cabinet Memoranda or processes;
- 2.1.10 Oversee management of SA component of TFCAs;
- 2.1.11 Ensure community involvement/empowerment in the various stages of TFCA development.
- 2.1.12 Appoint TFCA Project Co-ordinators, TFCA Programme Managers and all other staff deemed necessary for the achievement of the above.
- 2.1.13 Funding of Projects and services identified by DEA and executed by one of the other parties on the basis of reimbursement by DEA on condition that the other party agrees thereto and that a detailed terms of reference is provided by DEA.
- 2.1.14 Management of co-governance arrangements;
- 2.1.15 Coordinate the implementation of the SA component of the TFCAs which entail planning, marketing, infrastructure development; effective ecosystem management, trans-boundary ecotourism development and exchange of technical and scientific information.

2.2 PPF

- 2.2.1 Fundraising to support the facilitation of TFCAs as per PPF's mission;
- 2.2.2 Fundraising for training wildlife and guesthouse/lodge managers at the Southern African Wildlife College and the Southern African College for Tourism respectively;
- 2.2.3 Assist with International marketing;
- 2.2.4 Technical skills and expertise, e.g. GIS database development and maintenance;
- 2.2.5 Fund the salaries of TFCA Project Co-ordinators appointed by DEA as per the contract terms mutually agreed upon;
- 2.2.6 Develop and maintain a database of stakeholders per TFCA;
- 2.2.7 Support within its programme, the promotion of the development of TFCAs on a commercial basis including private sector involvement and investment;

3. APPOINTMENTS

- 3.1 In order to implement government's TFCA programme, DEA has established the TFCA Directorate. To facilitate and coordinate the establishment of the TFCA Projects, the services of the dedicated Project Coordinator are required (over and above other staff).
- 3.2 It is hereby agreed to appoint a fixed term Project Coordinator, financed by PPF, located and accountable to DEA (in the case of South Africa being the coordinating country) or the Country coordinating the programme at that time, as per the rotation agreement between participating countries.
- 3.3 Possible other appointments as agreed to by the parties but subject to approval of the Executive Committee of PPF, if funded by PPF.

4. PROGRAMME IMPLEMENTATION

To ensure co-ordination of activities in the implementation of the TFCA program, the parties agree to jointly develop a broad over arching 3-5 year business plan based on TFCA-KPA's. This plan, which will be periodically reviewed, will identify common objectives and strategies, monitoring and evaluation mechanisms. The Parties will individually develop annual work plans, based on their capacity to achieve specific targets.

5. COMMUNICATION

- 5.1 In order to facilitate communication and information sharing, the Parties agree to hold meetings of officials on a regular basis. These will be meetings of technical and senior officials. DEA will be invited to sit on PPF EXCO meetings in an advisory capacity as and when necessary.
- 5.2 The Parties further agree to share information related to the TFCAs prior to broad dissemination/publication. Such publications and dissemination will recognise the contribution made by partners.

6. GEOGRAPHICAL INFORMATION SYSTEMS (GIS)

PPF will provide GIS support for the TFCAs as agreed upon by the Parties. If the GIS support required forms part of a TFCA project funded by external donor funding, PPF GIS activities will be funded from funding secured for this activity.

7. WEBSITE

PPF website will have a section dedicated to each TFCA and will be developed with the support from DEA with proper links to homepages of the Parties. The contents, layout and contribution of each Party will be agreed upon by the Parties and will be reviewed on a six-monthly basis.

8. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties

regarding the subject matter hereof other than those set out herein are binding on the Parties.

9. LAWS OF THE REPUBLIC OF SOUTH AFRICA

This Agreement shall be governed by and construed and interpreted in accordance with the Laws of the Republic of South Africa.

10. TERMINATION OF AGREEMENT

10.1 Any Party to this Agreement may terminate it at any time during the currency thereof by giving six (6) month's notice in writing to the other Parties.

10.2 If the Agreement is terminated other than in terms of clause 17 below as a result of a breach by PPF, the other Parties hereby indemnify PPF against any claim and any costs relating to such claim by any person resulting from or in any way related to the termination of the employment as a result of the termination of this Agreement.

11. INDEMNITY

11.1 The Parties hereby agree that no Party shall be liable for any loss, injury or any other casualty suffered or incurred by the other Party or for any failure to comply with its obligations in terms of this Agreement due to strike, irregular industrial action short of strikes, riots, storms, explosions, vis major, war (whether declared or undeclared) or any similar cause beyond the reasonable control of the other Party and any failure or delay by any Party in the performance of any obligations under this Agreement due to any of the foregoing causes shall not be considered as a breach of this Agreement.

11.2 Subject to the provisions of clause 11.1 above, each Party indemnifies the other Parties from and holds the other Parties harmless against any or all liabilities arising from acts or omissions of a Party, its employees and/or its agents and/or appointed researchers arising out of this Agreement.

12. CESSION & DELEGATION

No Party shall be entitled without prior written consent by the other Party to cede, delegate or otherwise transfer any of its rights and/or obligations in terms of this Agreement.

13. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both Parties or their duly authorised representatives.



14. RELAXATION

No waiver on the part of any of the Parties of any rights arising from breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same of any other provision.

15. ARBITRATION

15.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise between the Parties in the widest sense in connection with –

15.1.1 the formation or existence of;

15.1.2 the carrying into effect of;

15.1.3 the interpretation or application of the provisions of;

15.1.4 the Parties' respective rights and obligations in terms of or arising out of;

15.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;

15.1.6 any documents furnished by the Parties pursuant to the provisions of, this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties to the dispute, be referred to and be determined by arbitration in terms of this clause, provided that the one Party to the dispute has demanded the arbitration by written notice to the other Party.

15.2 The arbitration shall be held –

15.2.1 at Pretoria;

15.2.2 with only the representatives and legal representatives of the Parties to the dispute present thereat;

15.2.3 otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed within 21 (twenty one) days after it was demanded.

15.3 The arbitrator shall be, if the matter in dispute is principally –

15.3.1 a legal matter, a practising advocate or attorney of Pretoria of at least 15 (fifteen) years' standing;

15.3.2 an accounting matter, a practising chartered accountant of Pretoria of at least 15 (fifteen) years' standing;

15.3.3 any other matter, any independent person, agreed upon between the parties to the dispute.

- 15.4 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 15.5 Should the Parties to the dispute fail to agree on an arbitrator within 7 (seven) days after the expiry of the period referred to in 15.4, the arbitrator shall be appointed at the request of any Party to the dispute by the Law Society of the Northern Provinces of South Africa
- 15.6 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of any competent court at the instance of any of the Parties to the dispute.
- 15.7 The Parties hereby consent to the jurisdiction of the High Court of South Africa (Pretoria) in respect of any proceedings arising out of this Agreement not subject to arbitration in terms of this clause.
- 15.8 The provisions of this clause –
 - 15.8.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
 - 15.8.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

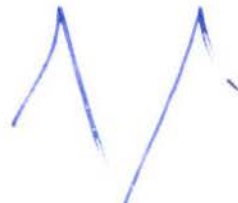
16. NOTICES AND DOMICILIA

16.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

16.2 For purposes of this Agreement the Parties' respective addresses shall be -

DEA	Department of Environmental Affairs Fedsure Forum Building (Cnr. Van der Walt & Pretorius Street) Pretoria 0001
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PPF	Peace Parks Foundation Millennia Park 11 TERMO ROAD 16 Stellinga Avenue TECHNO PARK Stellenbosch, 7613
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or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.



- 16.3 Any notice given in terms of this Agreement shall be in writing and shall –
- 16.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 16.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;
 - 16.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.
- 16.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party.

17. COMMENCEMENT AND DURATION

This Agreement shall commence upon signature by both Parties and shall stay in force for a period of three years unless terminated in accordance with clause 10 above.

18. PARTIES AS INDEPENDENT ENTITIES

- 18.1 PPF acts as an independent entity and not as an agent or employee of DEA and has no authority to bind DEA contractually.
- 18.2 DEA hereby agrees that they have no authority to bind PPF contractually and indemnifies PPF for any action or application, including costs that arise in this regard.
- 18.3 PPF hereby agrees that they have no authority to bind DEA contractually and indemnifies DEA for any action or application, including costs that arise in this regard.

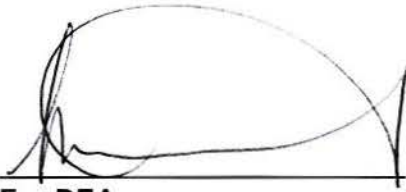
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Signed at PRETORIA on this 13th day of January 2012 ²⁰¹¹ (A)


AS WITNESSES

1. Name: SKUMSA MANGOTMA

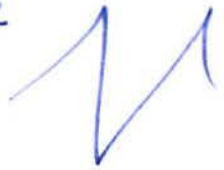
Signature: 


For DEA

2. Name: RAMATSI MELE MENCWAH


Signature: 

Signed at STELLENBOSCH on this 16TH day of JANUARY 2012 ²⁰¹¹




AS WITNESSES

1. Name: ELIZABETH FULLARD

Signature: 


For PPF

2. Name: Lee-Anne Robertson

Signature: 

TERMS OF REFERENCE

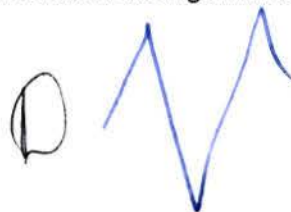
TFCA PROJECT CO-ORDINATOR

NATURE OF SERVICES:

To describe the functions and responsibilities of a person appointed to drive, co-ordinate and facilitate the activities relating to the planning, development and implementation of a Transfrontier Conservation Area (TFCA). All tasks are to be executed in accordance with the guidelines determined by the Parties.

KEY RESULT AREAS:

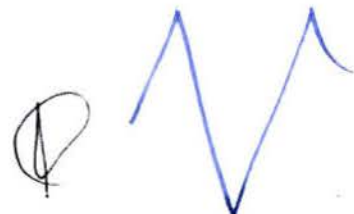
1. Drive and provide momentum to the planning, establishment and development process of the TFCA.
 - a) Initiate, suggest to and solicit ideas from the Parties and TFCA Technical Committee (TFCA TC) and all other stakeholders for planning the TFCA.
 - b) Ensure that ideas and concepts are fully evaluated.
 - c) Collate, co-ordinate and develop ideas emanating from the TFCA TC and other stakeholders for planning and developing the TFCA.
 - d) Ensure that evaluated and approved ideas and plans are coordinated and integrated into a holistic and meaningful development strategy.
 - e) Ensure that real, meaningful and visible momentum and progress is maintained in the planning, establishment and development of the TFCA, to the satisfaction of reasonable national and international expectations.
2. Ensure that an effective *process* of TFCA planning, establishment and development is engaged in and maintained.
 - a) Continually suggest to and solicit ideas from the Parties and the TFCA TC as to appropriate strategies and options to proceed along the planning and development process.
 - b) Continually monitor and report back on progress to date, and provide perspective on where the process currently stands.
 - c) Ensure that all stakeholders are regularly informed and consulted in the development process.
3. Ensure effective, regular meetings at appropriate intervals for information exchange and planning purposes by the TFCA Technical Committee.
 - a) Ensure that dates and venues for meetings are timeously established and all relevant persons informed.
 - b) Maintain communication with the local contact person in the particular country hosting the meeting to ensure that all relevant information is given through (number of persons attending from each country, accommodation arrangements etc.).



- c) When meeting is held in country in which the Co-ordinator is based, all arrangements for meeting are done by the Co-ordinator (ensuring venue, audio-visual aids, accommodation, documentation, transport etc.).
 - d) Suggest and prepare an Agenda for each meeting.
 - e) Ensure that any amendments/editing required for any documents are done.
 - f) Ensure that documents pertaining to any meeting are timeously distributed to all participants.
 - g) Ensure that effective record-keeping and filing systems for meeting-related documents are maintained.
 - h) Ensure that an effective Secretariat is available for each meeting.
4. Ensure compiling of an effective, integrated joint management plan for the TFCA.
- a) Ensure that an open process is followed.
 - b) Ensure that the framework for the management plan addresses the full range of activities and opportunities presented by the TFCA, including wildlife management, tourism, social issues, legal aspects, border matters, equitable benefits, joint management, and others.
 - c) Ensure that the framework for the management plan addresses all aspects necessary for co-ordinated, integrated management of the TFCA.
 - d) Ensure that a comprehensive management plan document acceptable by all participating countries is compiled.
5. Ensure effective communication with all Interested and Affected Parties (I & AP).

In accordance with decisions/recommendations emanating from the Parties and TFCA Technical Committee, or any other appropriate request:

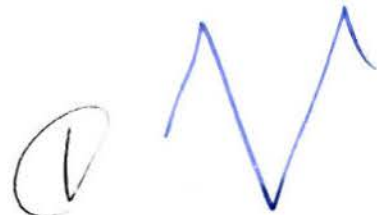
- a) Convey relevant information to appropriate I&AP's.
 - b) Ensure that an effective database is established and maintained listing essential details of all relevant I&AP's.
 - c) When necessary, convene and ensure effective facilitation of public/community meetings.
 - d) Establish contact and meet with State, Government, Public, NGO's or any other bodies as may become necessary for effective administration and management of TFCA process in co-ordination with the Parties.
6. Financial planning and budgeting for TFCA expenditures.
- a) Assist with compiling annual budget and long-term projected financial requirements for the TFCA.
 - b) Ensure that auditable records are maintained for all expenditures incurred.
 - c) Approach donor agencies in co-ordination with the Parties with a view to obtain funds required for the TFCA, and assist existing government or other bodies currently gaining funds for TFCA.
 - d) Assist various role-players associated with the TFCA in approved financial transactions.



7. Ensure that general administration and *ad hoc* functions are executed.
 - a) Ensure that effective documentation as required through legitimate and approved requests is prepared which addresses the information needs of the TFCA-planning/implementation process.
 - b) To function in a manner such that all procedures and processes associated with the planning, implementation and management of the TFCA initiative are streamlined and effective.
 - c) Perform additional reasonably-requested duties as approved by the Parties and TFCA TC.
 - d) Deal with official correspondence relating to the TFCA in a timeous and effective manner.
 - e) Establish and maintain an effective document filing system relating to the TFCA.

8. Website

Be responsible for updating the contents of the relevant TFCA component of PPF's website which will be directly linked to the websites of DEA, and the websites of other conservation agencies or government bodies of the participating TFCA partner countries.



TERMS OF REFERENCE

TFCA PROGRAMME MANAGER (SANParks)

OBJECTIVE OF TERMS OF REFERENCE:

To describe the functions and responsibilities of the post of SANParks TFCA Programme Manager.

PURPOSE AND GENERAL TASKS:

To act as contact point for all activities relating to the planning, development and implementation of Transfrontier Conservation Areas (TFCAs). All tasks are to be executed in accordance with the general guidelines and strategic planning determined by the employer.

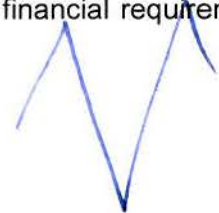
Broad parameters / duties will be as follows:

1. Act as a liaison person between DEA and PPF on TFCA related matters;
2. Assist in drawing up proposed action plans in consultation with other role-players for each of the TFCAs;
3. Interact with the appointed Co-ordinators per TFCA and co-ordinate the various activities that flow from this;
4. Assist in the co-ordination of the marketing and publicity of TFCAs;
5. 6. Act as an advisor to the Parties on the various TFCA initiatives;
7. Assist with the securing of funding to establish the various TFCAs;
8. Ensure that all processes are in line with especially the South African statutory requirements.

KEY RESULT AREAS:

1. Assist the Parties in the engagement of stakeholders for each TFCA through:
 - a) The initiation and solicitation of ideas from all stakeholders for conceptualising, strategising and planning TFCAs;
 - b) Regularly informing and consulting stakeholders regarding the process, progress and problems encountered;
 - c) Ensuring community participation in all the TFCA processes;
 - d) Initiating and developing a strategy to enhance the socio-economic benefits to be utilized for each TFCA;
 - e) The compilation of a detailed database of all stakeholders per TFCA;

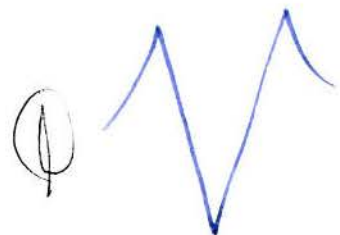
- f) The development of a detailed tourism development plan per TFCA with specific reference to SMME initiative;
 - g) Effective, appropriate communication with all Interested and Affected Parties (different stakeholders) -
 - i) Convey relevant information to appropriate Interested and Affected Parties;
 - ii) When necessary, convene and ensure effective facilitation of public/community meetings;
 - iii) Establish contact and meet with State, Government, International Partners and NGO's or any other bodies as may become necessary for effective management of TFCA processes.
2. To provide momentum to the planning, development and implementation of TFCAs.
- a) To collate, co-ordinate and develop ideas emanating from the various role-players and stakeholders for planning and developing the TFCAs.
 - b) To ensure that evaluated and approved ideas and plans are co-ordinated and integrated into a holistic and meaningful development / implementation / management strategy.
 - c) To ensure that real, meaningful and visible momentum and progress is maintained in the planning, development and implementation of the TFCAs, to the satisfaction of reasonable national and international expectations.
 - d) To continually suggest to and solicit ideas from role-players and stakeholders as to appropriate strategies and options to proceed along the planning and development process.
 - e) To continually monitor and report back on progress to date, and provide perspective on where the TFCA processes currently stand.
 - f) To ensure that proper documentation of the process of planning and development is recorded and referenced to the various TFCAs.
3. To ensure effective planning and information exchange by means of regular TFCA meetings.
- a) Ensure that dates and venues for meetings are timeously established and all relevant persons informed.
 - b) To provide input in the preparation of Agendas for TFCA meetings.
 - c) Ensure that any amendments/editing required for any documents are done timeously by TFCA co-ordinators.
 - d) Ensure that documents pertaining to any meeting are timeously distributed to all participants.
 - e) Ensure that effective record-keeping and filing systems for all documents are maintained.
 - f) Ensure that an effective Secretariat is available for each meeting.
4. Financial planning and budgeting for TFCAs.
- a) Assist with compiling annual budgets and long-term projected financial requirements for TFCAs.



- b) Implement an effective budget control system.
 - c) Assist various parties associated with TFCAs with approved financial matters.
5. General Administration and *ad hoc* functions.
- a) Ensure that effective documentation, as required through legitimate and approved requests is prepared, which addresses the information needs of the TFCA-planning/implementation processes.
 - b) To co-ordinate all processes associated with coordinating the , implementation and management of the various TFCA initiatives to ensure acceptable progress.
 - c) To perform additional reasonably requested duties as requested by the Steering Committee.
 - d) To deal with official correspondence relating to TFCAs in a timeous and effective manner.
 - e) To establish and maintain an effective administrative system relating to TFCAs.

GENERAL:

- 1. Salary to be funded in accordance with main agreement.

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