

MEMORANDUM OF AGREEMENT

BETWEEN

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

HEREIN REPRESENTED BY

MR FUNDISILE MKETENI

IN HIS CAPACITY AS DEPUTY DIRECTOR-GENERAL

HE BEING DULY AUTHORISED THERETO

AND

**COAL OF AFRICA LIMITED INCLUDING ITS WHOLLY OWNED SUBSIDIARY LIMPOPO COAL
COMPANY (PTY) LTD**

BOTH HEREIN REPRESENTED BY

MR JOHN WALLINGTON

IN HIS CAPACITY AS CHIEF EXECUTIVE OFFICER

HE BEING DULY AUTHORISED THERETO

AND

SOUTH AFRICAN NATIONAL PARKS

HEREIN REPRESENTED BY

DR DAVID MABUNDA

IN HIS CAPACITY AS CHIEF EXECUTIVE

HE BEING DULY AUTHORISED THERETO

TO ENSURE INTEGRITY OF THE MAPUNGUBWE WORLD HERITAGE SITE



PREAMBLE

RECALLING the conditions of the environmental authorisation in terms of section 24G of the National Environmental Management Amendment Act, 2004 (Act No 8 of 2004) for rectification of activities unlawfully commenced on Farms Erfust 123 MS, Bergen Op Zoom 124 MS and Overvlakte 125 MS (PTNS 3,4,5), Musina, Limpopo Province (The Vele Colliery) which was issued on 5 July 2011;

RECALLING IN PARTICULAR Paragraphs 28 and 29 of the environmental authorisation which call for the formalisation and implementation of a Memorandum of Agreement (MoA) relating to biodiversity offsets between the Biodiversity and Conservation Branch of the Department of Environmental Affairs and Coal of Africa Limited within 06 months of the date of issue of the environmental authorisation;

ACKNOWLEDGING the important role played by South African National Parks as the responsible management authority for the world heritage site assigned in terms of the World Heritage Convention Act, 2004 (Act No. 49 of 1999);

MINDFUL of the existing declaration for co-operation at a global level between the International Council on Mining and Metals (ICMM) and the World Heritage Committee on matters of mining and protected areas which has resulted in a Sustainable Development Framework to support development and implementation of scientifically sound procedures for integrated approaches to land use planning;

DESIROUS of strengthening cooperation between the parties towards the conservation and the sustainable development of the Mapungubwe Cultural Landscape World Heritage Site whilst optimising benefits to local communities;

RECOGNISING the outstanding universal value of the Mapungubwe Cultural Landscape World Heritage Site and the fact that it is part of the priceless and irreplaceable heritage, not only of the Republic, but of humankind as a whole deserving protection and transmission to future generations;



FURTHER RECOGNISING the significance of the area as a national heritage site, a national park and part of a broader Transfrontier Conservation Area with Zimbabwe and Botswana and the existing plans to extend the world heritage status of the area to these neighbouring countries;

CONCERNED that the Mapungubwe Cultural Landscape World Heritage Site is under increased pressure from development including exploration for and mining of natural resources, which have the potential to impact adversely on the different attributes that contribute to the outstanding universal value of the World Heritage Site;

COMMITTED to maintaining the integrity of the World Heritage Site and to ensuring that negative impacts of development are avoided, minimised or remedied in pursuit of sustainable development; and

ACKNOWLEDGING that the participation of all stakeholders is crucial to the conservation and sustainable development of the World Heritage Site and that this will be enhanced through long-term cooperative efforts guided by the relevant biodiversity offsets programmes and implementation plans.

HEREBY AGREE AS FOLLOWS:

ARTICLE I – DEFINITIONS

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

“**DEA**” means the Department of Environmental Affairs;

“**CoAL**” means Coal of Africa Ltd and its subsidiary Limpopo Coal Company (Pty) Limited;

“**EMC**” means Environmental Management Committee and its sub-committees

“**SANParks**” means South African National Parks;

"**Stakeholders**" means individuals or groups of individuals or representative institutions with a stake, direct interest or a right recognisable under law in the development and management of the World Heritage Site, such as local or district authorities, traditional authorities, local communities;

"**MoA**" means this memorandum of agreement and its annexures;

"**NEMA**" means the National Environmental Management Act, 1998 (Act No. 107 of 1998) and related amendments;

"**Community**" means community as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"**Parties**" means the DEA, SANParks and CoAL;

"**Sustainable Development**" means sustainable development as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"**World Heritage Site**" means the Mapungubwe Cultural Landscape World Heritage Site as published in the Government Gazette No. 31832, under Government Notice No. 71, of 30 January 2009.

ARTICLE II - OBJECTIVES

The goal of this MoA is to comply with the relevant provisions of the NEMA section 24G environmental authorisation that was issued on 05 July 2011.

The purpose of this MoA is to ensure the integrity of Mapungubwe Cultural Landscape World Heritage Site through comprehensive biodiversity offsets programmes thereby optimising benefits to local communities.

To attain the goal of this MoA, the Parties agree to:

- i) promote alliances in the management of natural and cultural resources;



- ii) ensure compliance with the provisions of this MoA as well as with the requirements of other applicable legislation through monitoring and evaluation;
- iii) encourage social, economic and other partnerships among Stakeholders;
- iv) promote integrated planning, research, education, awareness and capacity building;
- v) collaborate in formulating detailed biodiversity offsets programmes and implementation plans; and
- vi) provide adequate financial, human and other resources for the effective implementation of the MoA.

ARTICLE III

DEVELOPMENT OF BIODIVERSITY OFFSET PROGRAMMES

The Parties agree to develop detailed biodiversity offsets programmes which will form part of this MoA as annexures. The offsets framework will be underpinned by, among others, the following components:

- a) Natural Heritage Conservation;
- b) Cultural Heritage Conservation;
- c) Tourism development; and
- d) Water Resource Management.

The above components for offsets will be translated into more comprehensive programmes and implementation plans.

ARTICLE IV - INSTITUTIONAL ARRANGEMENTS

INSTITUTIONAL ARRANGEMENT

The Parties agree to:

- i) ensure coordination of the implementation of this MoA through the establishment of an Environmental Management Committee (EMC) or steering committee as well as relevant



subcommittees constituted by the Parties and any other person or organisations identified and agreed to by the Parties;

- ii) capacitate the EMC to be able to champion and monitor the development and implementation of the biodiversity offsets programmes and implementation plans;
- iii) ensure periodic review and updating of the biodiversity offsets programmes and implementation plans;
- iv) ensure effective participation of other key stakeholders, including government and non-governmental organisations, communities, landowners, the academic community and the private sector at the international, national and local levels, in the implementation of the MoA;
- v) ensure the mobilisation of the necessary political support for the implementation of the Strategy;
- vi) develop means whereby local communities sustainably benefit from the use of natural and cultural resources that occur within the World Heritage Site.

PRINCIPLES OF COOPERATION

The Parties shall observe the following principles in their cooperation in terms of this MoA:

- (a) Respect the role of the lead institution on an agreed joint programme;
- (b) Acknowledge each Party's support;
- (c) Honour commitments;
- (d) Ensure that information of mutual interest is forwarded to each Party within reasonable timeframes.

ARTICLE VI - CONFIDENTIALITY

Any Party shall treat information furnished by another Party or another person for purposes of the execution of this MoA as confidential.



A Party so furnished with information shall not disclose such information to any other person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.

The Parties agree that this MoA is not intended to restrict use or disclosure of any portion of such information which is -

- (a) made known to the public through no default by the receiving Party of its obligations under this MoA;
- (b) in honour of a court order, directing that the Party disclose or make available such information to a third Party who is not Party to this MoA;
- (c) rightfully received by the receiving Party from a third party having no obligation of confidentiality to the disclosing Party;
- (d) independently developed by the receiving Party by persons who did not have access to confidential information of the disclosing Party; or
- (e) disclosed by the receiving Party after receipt of written permission from the disclosing Party.

The Parties shall continue to observe the principle of confidentiality even after the MoA has terminated or is suspended for any reason whatsoever by the Parties.

ARTICLE VII - CORRUPTION

The Parties acknowledge and commit themselves to a policy of zero tolerance towards corrupt activities.

The Parties shall assist each other in developing fraud and corruption prevention strategies.

ARTICLE VIII - REVIEW AND AMENDMENTS

The Parties shall review, where necessary, the contents of this MoA annually or when deemed necessary.



No alteration, variation, addition or agreed cancellation of this MoA shall be of any force or effect unless reduced to writing in an addendum to this MoA and signed by both Parties or their duly authorised signatories.

The Parties shall review the progress achieved in the implementation of this MoA one (1) year after it has entered into force.

ARTICLE IX - DISPUTE RESOLUTION

Any disagreement or dispute arising between the Parties with regard to interpretation or implementation of this MoA shall be settled amicably, or if not possible, through the procedures and processes as laid down in chapter 4 of NEMA.

ARTICLE X - ENTRY INTO FORCE, DURATION AND TERMINATION

The rights, responsibilities and obligations of the Parties to this MoA shall commence on the Signature date of this MoA.

This MoA may be terminated by any Party giving one (1) year's written notice in advance to the other Party.

ARTICLE XI - DOMICILIUM

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 MoA at which addresses all processes and notices arising out of or in connection with this MoA, its breach or termination may validly be served upon or delivered to the Parties. For purposes of this MoA the Parties' respective addresses shall be –

- (a) National Department of Environmental Affairs
Fedsure Forum Building



315 Pretorius Street

PRETORIA

(b) CoAL

2nd Floor, Gabba Building, The Campus

57 Sloane Street

Bryanston

2021

(c) SANParks
643 Leyds Street
Muckleneuk
Pretoria, 0001

ARTICLE XII - GENERAL

1. Entire contract

This MoA and its annexures constitutes the entire agreement between the Parties with regard to the matters dealt within this MoA and no representations, terms, conditions or warranties not contained in this MoA shall be binding on the Parties.

2. Variation, cancellation and waiver

No contract varying, adding to, deleting from or cancelling this MoA, and no waiver of any right under this MoA, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

3. Cession

No Party may cede that Party's rights or delegate that Party's obligations without the prior written consent of the other Parties.

4. Applicable law

This MoA shall be interpreted and implemented in accordance with the laws of South Africa.



SIGNED at Pretoria on this 1st day of September 2011.

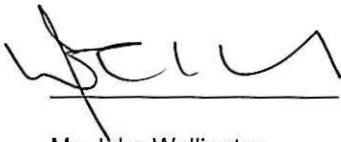


Mr. Fundisile Mketeni

for and on behalf of the

Department of Environmental Affairs

SIGNED at PRETORIA on this 1st day of SEPTEMBER 2011.

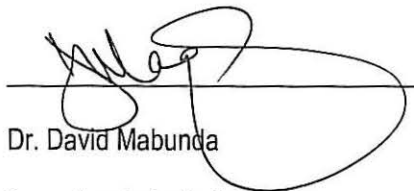


Mr. John Wallington

for and on behalf of

Coal of Africa Limited

SIGNED at PRETORIA on this 1st day of SEPTEMBER 2011.



Dr. David Mabunda

for and on behalf of

South African National Parks