

# MEMORANDUM OF AGREEMENT

Entered into and between

## **SOUTH AFRICAN NATIONAL PARKS**

herein represented by Mr. Fundisile Mketeni

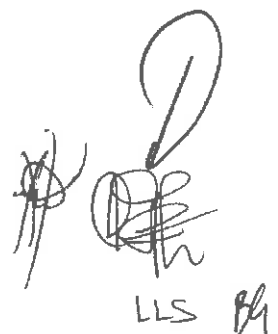
In his capacity as Chief Executive Officer, duly authorised hereto  
(hereinafter referred to as "the Executing Agency")

And

## **EASTERN CAPE PARKS AND TOURISM AGENCY**

herein represented by Mr. Vuyani Dayimani

In his capacity as Chief Executive Officer, duly authorised hereto  
(hereinafter referred to as "the Project Partner")

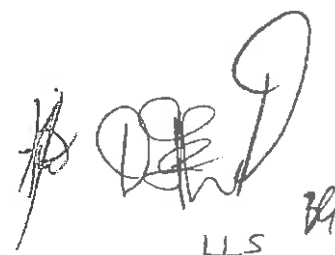


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## **1 RECORDAL**

**It is hereby recorded that**

- 1.1 **WHEREAS** the United Nations Development Programme ("UNDP") and the Republic of South Africa (the Government) concluded an agreement on the 3<sup>rd</sup> of October 1994 (the 1994 Agreement) in terms of which the UNDP undertook to assist the Government in carrying out the Government development projects to supplement the Government national efforts in economic development, social progress and better standards of life;
- 1.2 **AND WHEREAS** the parties to the 1994 Agreement have identified and agreed to a project titled "Improving Management Effectiveness of the Protected Area Network". The Government is represented by the Department of Environmental Affairs and South African National Parks is the Project Executing Agency. The Project seek to effectively expand representation of important terrestrial habitats in South Africa covering 197,000 hectares through cost-effective Protected Area expansion and improved management effectiveness and financial sustainability of the Protected Area and Conservation Network;
- 1.3 **AND WHEREAS** the Parties recognise the significance to protect the Biodiversity of South Africa from existing and emerging threats through the development of a financially sustainable, effective and representative Protected Area Network and improved land use practices in buffer areas around Protected and Conservation Areas, with a focus on community benefits (especially job creation and stimulation of economic activity) and partnerships;
- 1.4 **AND WHEREAS** the Project will be implemented simultaneously at three levels of Protected Area management, namely at the national, agency and site levels. The site level implementation will take place within and adjacent to the Protected and Conservation Areas;
- 1.5 **AND WHEREAS** the funding for the purpose of this Agreement was made available in terms of the Project Document, subject to certain terms and conditions contained therein.

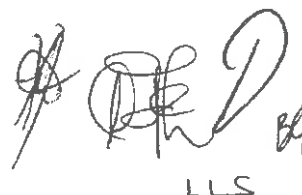


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**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

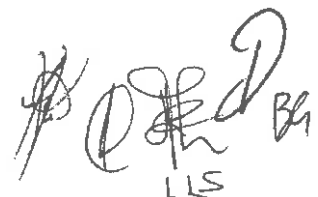
**2. DEFINITIONS**

- 2.1 In this Agreement, unless the context clearly indicates a contrary intention, the following words and phrases shall have the following meanings:
- 2.1.1. **"Act"** means the National Environmental Management: Protected Areas Act, No. 57 of 2003 as amended;
- 2.1.2. **"Co-finance"** – means the investment made by the Project Partner and other partners towards the implementation of the Project. The form of this investment can include the following:
- 2.1.2.1. Baseline co-financing: the investment that the Project Partner would have made in the day to day management of the protected areas under its control and management irrespective of the Project.
- 2.1.2.2. Direct co-financing: other investments by the Project Partner (both in cash and in kind) undertaken in conjunction with the GEF investment which contribute to or support activities that are being funded by the GEF (e.g. staff positions that are funded, accommodation and office space that are provided).
- 2.1.2.3. Indirect Co-financing: other investments by third parties that support the Project.
- 2.1.3. **"Commencement Date"** means the date of the last signature to the Agreement;
- 2.1.4. **"Conservation Area"** any land that is managed for conservation i.e. the protection of important areas of high value for biodiversity and eco-system functioning;
- 2.1.5. **"DEA"** means the Department of Environmental Affairs of the Republic of South Africa;
- 2.1.6. **"Eastern Cape Parks and Tourism Agency Act"** means the Eastern Cape Parks and Tourism Agency Act, No. 2 of 2010;



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- 2.1.7. **"Executing Agency"** means South African National Parks, a corporate body established in terms of the National Parks Act No. 57 of 1976, and continuing to exist in terms of Section 54(1) of the Act;
- 2.1.8. **"Financial Completion Date"** means the 30<sup>th</sup> of September 2019;
- 2.1.9. **"Management Plan"** means the Protected Area Management Plan developed in terms of the Act for the protected areas, by the Project Partner and approved by the MEC;
- 2.1.10. **"MEC"** means the Member of the Executive Council for Economic Development, Environmental Affairs and Tourism in the Eastern Cape Province;
- 2.1.11. **"Minister"** means the Minister of Environmental Affairs;
- 2.1.12. **"Parties"** means the parties to this Agreement;
- 2.1.13. **"Project"** means the project for the "Improving Management Effectiveness of the Protected Area Network", signed on behalf of UNDP; DEA and the Executing Agency on 29 June 2015;
- 2.1.14. **"Project Partner"** means the Eastern Cape Parks and Tourism Agency established in terms of section 10 of the Eastern Cape Parks and Tourism Agency Act;
- 2.1.15. **"Protected Area"** means any of the protected areas as referred to in section 9 of the Act;
- 2.1.16. **"Termination Date"** means the 31 December 2019 or any such further period as may be agreed between the Parties;
- 2.2 Clause headings are inserted for the sake of convenience only and shall not be read for the purposes of interpreting any provision of this Agreement;
- 2.3 Any gender shall include the other genders and the singular shall include the plural and vice versa.



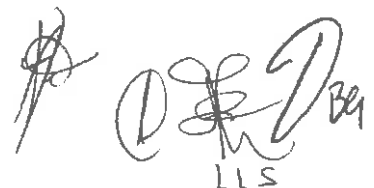
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### 3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on Commencement Date and shall endure until Termination Date of the Project.
- 3.2 It is recorded that this Agreement and the Project Document form an indivisible transaction and the two are interdependent. If the Project does not come into existence or is cancelled for whatsoever reason it will automatically lead to the cancellation of this Agreement.
- 3.3 The Project Partner must notify SANParks of any circumstances that might result in:
- 3.3.1. the delivery of the deliverables not being finished by the Financial Completion Date;  
and
- 3.3.2. the deliverables being varied from the Project deliverables.
- 3.4 In the event that the Project is delayed due to unforeseen circumstances (not caused by any act or omission by the Parties hereto), this Agreement may be extended for such a period as mutually agreed upon between the Parties, subject to the written approval of UNDP first being obtained, to ensure the execution of the planned activities of the Project.

### 4. OBLIGATIONS OF THE PROJECT PARTNER

- 4.1 It is recorded that the Project Partner has committed the amount of USA \$ 8, 500 000 million (Eight Million and Five Hundred Thousand US Dollars) in co-financing towards the deliverables of this Agreement.
- 4.2 The Project Partner undertakes to contribute to Eastern Cape low cost Protected Area Expansion by securing 30,000 ha of the higher altitude montane areas of the Katberg and Amathole mountains and parts of the Drakensberg Alpine Centre through stewardship arrangements. In order to achieve this target the Project Partner will appoint:
- 4.2.1. a Stewardship Facilitator for Private / State Land;

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- 4.2.2. a Stewardship Facilitator for Communal Land; and
- 4.2.3. an Ecologist.
- 4.3 The Project Partner will provide office space and support to the persons appointed in terms of clause 4.2 above.
- 4.4 The Project Partner further undertakes to secure formally under current PA legislation 10,000 ha of State Land prioritized in terms of their biodiversity and ecosystem services values under the Eastern Cape Protected Area Expansion Strategy for declaration, transfer/assignment/delegation to the Project Partner, status confirmation and consolidation. In order to achieve this target, the Project Partner will appoint a Legal Officer, with office space and support provided by the Project Partner.
- 4.5 The Project Partner shall:
  - 4.5.1. provide support with declaration for low cost protected area expansion;
  - 4.5.2. support Protected Area management planning and effectiveness monitoring and integration of results into management decision making;
  - 4.5.3. operationalise the Protected Areas through boundary delineations, formal gazetting, establishment of governance structures, monitoring, business planning and contractual partnerships; and
  - 4.5.4. develop and implement financial strategies that consider ecological infrastructure, resource economics and offset models to support local economic development, including 'green' jobs, restoration and fire breaks;
- 4.6 The Project Partner shall endeavour to ensure that it is always represented in workshops and meetings arranged by the Executing Agency in connection with this Agreement and the Project.
- 4.7 The Project Partner shall integrate the systems developed in terms of clause 5 of this Agreement into its core capacity and activities to support the low cost expansion, particularly contractual Protected Areas and Protected Environments.

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4.8 The Project Partner undertakes to improve the Protected Area/s management effectiveness by:

- 4.8.1. making the appointment referred to in clause 4.4 to facilitate the legal aspects of Protected Area declaration; and
- 4.8.2. ensuring close collaboration with the relevant officials involved in the Project, and the experts appointed by the Protected Area Technical Unit to be managed by the Executing Agency.

## 5. THE EXECUTING AGENCY'S OBLIGATIONS

5.1 The Executing Agency shall:

- 5.1.1. ensure close collaboration with the relevant officials at the national, provincial and site levels to enhance capacity and avoid duplication of effort; and
- 5.1.2. provide resources for logistical support to unlock and catalyse declaration processes where required.

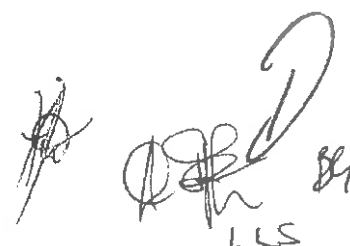
5.2 The Executing Agency shall facilitate:

- 5.2.1. the harmonising of Protected Area Management Planning; Monitoring and Evaluation; and management effectiveness tracking and reporting systems within and across all the Project Partners, to produce an integrated Management Effectiveness Tracking Tool (METT) system capable of reporting on agency/site, DEA and GEF level;
- 5.2.2. the reviewing baseline METT reports at mid-term and end of the Project and subsequent management effectiveness strategies at both the agency and site level, with the view to improving them where necessary and increasing agency adaptive management capacity;
- 5.2.3. engaging with the Project Partners in order to interrogate their individual METT processes and outcomes, and tracking and supporting the implementation of improvement strategies;



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- 5.2.4. developing and implementing a learning network to build management planning and effectiveness tracking capacity by mentoring agency staff, including the review and revision of management plans, METT assessments, concept development and business plans and Monitoring and Evaluation;
  - 5.2.5. facilitating of two high-level workshops with all the Project Partners, other Protected Areas management agencies in South Africa, aimed at developing Protected Areas management planning, monitoring and evaluation, and management effectiveness tracking best-practice for state, private and communally managed Protected Areas;
  - 5.2.6. coordinating METT evaluations at mid-term and end of project, with associated reports and management improvement strategies, and supporting the implementation of these improvement strategies to ensure real improvements of Protected Area management and biodiversity outcomes;
  - 5.2.7. communicating to the parties of the 1994 Agreement the progress made with the integration of the various Protected Area planning and management components, with a view to contributing to the ability of UNDP to develop global best practice in this regard; and
  - 5.2.8. training of junior staff involved in and / or responsible for Protected Area management at institutions through accredited short courses in Protected Area management planning, monitoring and evaluation, and management effectiveness tracking and reporting.
- 5.3 The Executing Agency acting through its duly authorised representatives, including without any limitation, its external auditors or legal advisors, shall at its own costs and on reasonable notice to the Project Partner, be entitled to inspect during business hours and at the premises of the Project Partner all books, records, and supporting documentation relating to this Agreement and the Project and to make copies of and take extracts from such books, records, and supporting documentation for audit purposes.

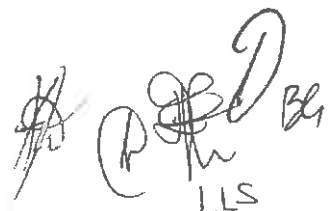


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## 6. FUNDING

- 6.1 It is recorded that the Project is classified by the South African Revenue Services as a Foreign Donor Funded Projects and that certain set of rules will apply as to the use of the funds by both the Executing Agency and the Project Partner. The Parties hereby undertake to conduct the Project within the parameters as set by the South African Revenue Services.
- 6.2 The Budget allocated to the Project Partner is the amount of USA \$ 1,029 424 (One Million Twenty Nine Thousand Four Hundred and Twenty Four US Dollars) as per Annexure A.
- 6.3 The Project Partner shall maintain a dedicated project account where project funds transferred by the Executing Agency in terms of the Project Plan and approved budget will be kept.
- 6.4 Interest gained on Project funds deposited into the dedicated Project Partner's Bank account will be ring fenced until a decision is made by the UNDP Project Steering Committee on the allocation of such interest.
- 6.5 The Executing Agency undertakes to transfer funds to the Project Partner on a quarterly basis in terms of the annual work plan as approved by the Project Steering Committee. The first payment will be made within 14 days from the date of the receipt of the Funds from UNDP.
- 6.6 Subsequent payments will be made within 14 days from receipt of a request by the Project Partner for transfer of the funds together with the financial and technical reports which includes all invoices on the last quarter's activities. Reports are due 5 working days before the end of the quarter.
- 6.7 The Executing Agency or parties to the 1994 Agreement may, upon reasonable notice to Project Partner, conduct audits or call for inspection of any information, records and documents relevant to this Agreement.

## 7. MONITORING AND REPORTING



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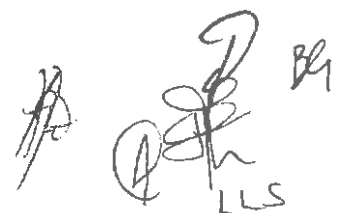
- 7.1 The Project monitoring, evaluation and reporting will be conducted in accordance with the provisions of PART IV of the Project Document.
- 7.2 The Project Partner will provide its Annual Audit Report by the Auditor General along with an annual external audit report for the Project to the Executing Agency.
- 7.3 The Project Partner undertakes to forward to SANParks a monthly statement of expenditure together with certified copies of the original invoices by no later than 25 of each month. The original invoices should be made available to SANParks within 14 days from the date of request.

## **8. PROCUREMENT**

- 8.1 Any purchase or procurement of services made from the funding in terms of this Agreement shall be undertaken in terms of the Project Partner's Procurement/Supply Chain Management Policy.
- 8.2 It is recorded that the Project Partner's Procurement/Supply Chain Policy conform to the Public Finance Management Act 1 of 1999.
- 8.3 Should the Project Partner not have a Procurement/Supply Chain Management Policy in place, such purchase or procurement of services shall comply with SANParks' Procurement/Supply Chain Management Policy.

## **9. BREACH AND CANCELLATION**

- 9.1 In the event of either Party committing a breach of any of the terms and/or conditions of this Agreement and failing to remedy such breach within the period of 30 calendar days of having been given written notice by the aggrieved party requiring such breach to be remedied, the aggrieved party may, without prejudice to any rights:
  - 9.1.1. claim specific performance; and/or
  - 9.1.2. cancel this Agreement;
- 9.2 and to recover any damages or monies from the Party committing such breach, entitled by law.

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## 10. DISPUTE RESOLUTION

- 10.1 The Parties to this Agreement agree that they will endeavour to resolve disputes amicably, by following the procedures laid down in the provisions of the Intergovernmental Relations Framework Act and the Guide issued in terms of this Act.
- 10.2 If the procedures in terms of the Intergovernmental Relations Framework Act do not achieve resolution, the Parties shall be obliged to refer the said dispute to arbitration before an arbitrator who shall be agreed between the Parties to such dispute or, failing such agreement within 21 (twenty-one) days of the date of posting to such Party of notification of the other Party's decision to refer such matter to arbitration, shall be appointed by the President for the time being of the Cape Law Society from amongst the members of the Cape Bar. The decision of the said arbitrator shall be final and binding on the Parties hereof.

## 11. SEVERABILITY

- 11.1 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

## 12. LAW

- 12.1 This Agreement is governed by South African Law.

## 13. DOMICILIA AND NOTICES

- 13.1 The Parties choose as their *domicilia citandi et executandi* the addresses mentioned in clause 13.2 below, provided that such *domicilium* of either Party may be changed by

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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.

13.2 As follows:

The Executing Agency:

643 Leyds Street,

Muckleneuk,

Pretoria, Gauteng;

The Project Partner:

6 St Marks Road,

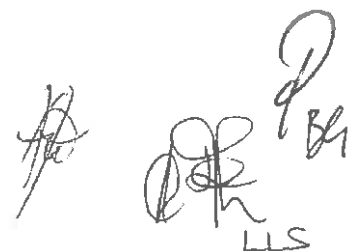
Southernwood,

East London, Eastern Cape;

- 13.3 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 7<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 telefax or email) 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.

#### 14. WHOLE AGREEMENT

- 14.1 This Agreement; annexures to this Agreement and the Project Document constitutes the entire agreement between the Parties.

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14.2 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.

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

## 15. RULES OF CONSTRUCTION

15.1 The rule of construction that, in the event of ambiguity, the contract shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement.

## 16. NON-WAIVER

16.1 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 of action against the other Party.

16.2 The failure of either Party to comply with any non-material provision of this Agreement shall not excuse the other Party from performing the latter's obligations hereunder fully and timeously.

## 17. WARRANTY OF AUTHORITY

17.1 The persons signing this Agreement on behalf of the Executing Agency and the Project Partner expressly warrant their authority to do so.

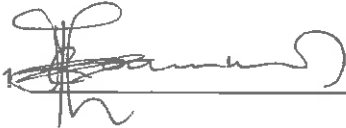
## 18. GOOD FAITH

18.1 Each of the Parties to this Agreement shall act with the utmost good faith and use all reasonable endeavours to procure the fulfilment of all the terms and conditions of this Agreement.

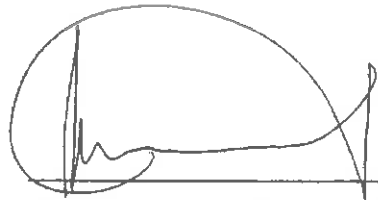
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SIGNED at Preterea on this 5<sup>th</sup> day of MAY 2016.

AS WITNESSES:

1. 


2. Bergot



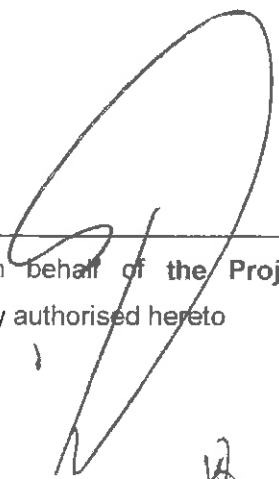
For and on behalf of the Executing  
Agency, duly authorised hereto

SIGNED at East London on this 3 day of JUNE 2016.

AS WITNESSES:

1. 

2. Beach

  
For and on behalf of the Project  
Partner, duly authorised hereto

