

BILATERAL AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
BOTSWANA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

ON THE RECOGNITION

OF THE

KGALAGADI TRANSFRONTIER PARK

PREAMBLE

The Government of the Republic of Botswana (hereinafter referred to as "Botswana") and the Government of the Republic of South Africa (hereinafter referred to as "South Africa") (hereinafter also jointly referred to as "the Parties"),

RECOGNISING the principle of sovereign equality and territorial integrity of their states;

CONSCIOUS of the benefits to be derived from close co-operation and the maintenance of friendly relations with each other;

ACKNOWLEDGING the necessity to preserve the environment and in particular the unique ecosystem of the Kalahari for the benefit of all the people of Southern Africa; and

DESIRING to extend, maintain and protect the flourishing ecosystem of the Kalahari through the recognition of the Kgalagadi Transfrontier Park;

HEREBY AGREE as follows:

ARTICLE 1

RECOGNITION OF THE KGALAGADI TRANSFRONTIER PARK

Botswana and South Africa hereby jointly recognise the Kgalagadi Transfrontier Park in a manner that the area which is composed of the Gemsbok National Park in the Republic of Botswana and the Kalahari Gemsbok National Park in the Republic of South Africa shall be retained as far as may be in its natural state as an undivided ecosystem for the benefit of biodiversity conservation, research, visitors and the larger community with particular reference to those communities adjacent to the Park.

ARTICLE 2

CO-OPERATION

- (1) The Parties undertake, respectively, to procure that the Gemsbok National Park and the Kalahari Gemsbok National Park (hereinafter jointly referred to as “the Parks” and separately as “the Park”) be managed and controlled in accordance with the Management Objectives contained in this Agreement in general and in particular the Management Plan agreed to between the Botswana Department of Wildlife and National Parks (hereinafter referred to as “the Wildlife Department”) and the South African National Parks (hereinafter referred to as “the SANP”).

- (2) The Parties undertake -
 - (a) to procure the co-ordination of the management, control and the development of the Parks;

 - (b) to consult, assist and support each other in the implementation of the Management Objectives;

 - (c) to use their best endeavours to harmonise their national legislation and remove legal and practical obstacles or impediments where possible in order to facilitate the integration of the management of the Parks into a single ecological and tourism unit; and

 - (d) to achieve an equitable apportionment of revenues generated by the Parks, provided that the audited gate fees for entry into the Parks shall be shared equally between the Parties, while all other tourism and commercial revenues shall accrue to the Park generating such revenue unless otherwise agreed.

- (3) The Parties undertake to enter into further agreements which may be required to give effect to the spirit and intent of this Agreement.

ARTICLE 3

MANAGEMENT OBJECTIVES

1. The Management Objectives of the creation of the Kgalagadi Transfrontier Park, shall be -
 - (a) to guarantee the long term conservation of the wildlife resources in the southern Kalahari which will help to maintain the integrity of the Kalahari ecosystem;
 - (b) to share and pool expertise and experience between the Wildlife Department and SANP on a good neighbourly basis;
 - (c) to increase the local and international profile of this important conservation area, thereby greatly enhancing its potential as a tourist destination;
 - (d) to encourage the full realisation of the economic potential of the Parks and surrounding areas which will bring economic benefits to the Republic of Botswana and the Republic of South Africa especially to the local communities adjacent to the Parks;
 - (e) to develop joint promotional campaigns that will stimulate the two-way flow of tourists, thereby increasing the tourism potential for the Republic of Botswana and the Republic of South Africa and taking steps to facilitate the freedom of movement within the Kgalagadi Transfrontier Park;
 - (f) to comply with the requirements of international law regarding the protection of the environment; and

- (g) to integrate, as far as possible, the managerial, reservation, research, marketing and other systems of the Wildlife Department and SANP in respect of the Parks.
- (2) The Management Objectives shall, in the first instance, be implemented through the Wildlife Department and SANP concluding a Record of Understanding in which provision is made for a detailed Management Plan specifying practical steps for the achievement of the Management Objectives. The Record of Understanding shall also provide for the Kgalagadi Management Agency (hereinafter referred to as “the Agency”), which shall oversee the implementation of the Management Plan.
- (3) Subject to this Agreement, the Agency shall determine its own meeting times, rules and procedures.
- (4) Meetings of the Agency shall take place at such venue decided upon by the Agency.

ARTICLE 4

IMPLEMENTATION

- (1) Botswana hereby delegates such powers and functions to the Wildlife Department as are required for the co-ordination of the management of the Gemsbok National Park with that of the Kalahari Gemsbok National Park and for the implementation of the Management Objectives, including, but not limited to, the power to enter into further agreements with the SANP, for matters related to this Agreement.
- (2) South Africa hereby -

- (a) appoints the SANP to act as its agent for the purpose of co-ordinating the management of the Kalahari Gemsbok National Park with that of the Gemsbok National Park and to ensure the implementation of the Management Objectives; and
- (b) delegates such powers and functions to the SANP as are required for the implementation of the Management Objectives, including, but not limited to, the power to enter into further agreements with the Wildlife Department for matters related to this Agreement.

ARTICLE 5

KGALAGADI TRANSFRONTIER PARK FOUNDATION

- (1) The Kgalagadi Transfrontier Park Foundation (hereinafter referred to as "the Foundation") is hereby established, which shall in a manner provided for by this Agreement direct the activities of the Kgalagadi Transfrontier Park. The Foundation shall provide the representatives of Botswana and South Africa with the opportunity to share ideas, develop proposals, provide general guidance with respect to activities undertaken in the Kgalagadi Transfrontier Park and take steps that are in accordance with this Agreement to facilitate the integration and joint management of the Parks.
- (2) The Parties hereby respectively nominate the following persons in an *ex officio* capacity as founding members of the Foundation:

On behalf of Botswana:

- Hon. Mr. K.G. Kgoroba, Minister of Commerce and Industry;

- Hon. Mr. L.T.J. Mothibamele, Member of Parliament for Kgalagadi;
- Ms. T.C. Moremi, Permanent Secretary in the Ministry of Commerce and Industry; and
- Mr. S.C. Modise, Director of the Department of Wildlife and National Parks.

On behalf of South Africa:

- Dr. Z.P. Jordan, Minister of Environmental Affairs and Tourism;
- Mr. M. Dipico, Premier of the Northern Cape Province;
- Dr. V. Khanyeli, Chairperson of the South African National Parks; and
- Mr. M. Msimang, Chief Executive of the South African National Parks.

- (3) The founding members may, by consensus, co-opt further persons as founding members.
- (4) The founding members shall proceed, without delay, to cause the Foundation to be incorporated under section 21 of the South African Companies Act, 1973 (Act No. 61 of 1973). In view of the joint sponsorship of the Foundation, the founding members shall secure the authority of the South African Reserve Bank for the disbursement of funds of the Foundation to promote the financing of the Parks in an equitable manner. The SANP shall, for as long as the Parties deem fit, provide secretarial services to the Foundation whose administrative address shall be the same as that of the SANP.
- (5) The objective of the Foundation shall be to promote the conservation of the natural environment of the Parks and to develop the potential of the Parks as a tourist destination.

- (6) To implement its objective, the Foundation shall -
- (a) monitor the implementation of the Management Plan;
 - (b) render advice on matters arising from this Agreement;
 - (c) initiate steps that will facilitate further co-operation and integration of activities as may be delegated to it from time to time by the Parties;
and
 - (d) receive donations dedicated to the implementation of this Agreement from third parties and distribute such donations equitably to the Wildlife Department and SANP.
- (7) The chairperson of the Foundation shall rotate annually between the Parties with a representative of Botswana acting as chairperson for the first year.
- (8) A quorum for a meeting of the Foundation shall be four members, provided that at least two members designated by each of the Parties shall be present.
- (9) Decisions of the Foundation shall be taken by consensus. The Foundation shall, subject to this Agreement, determine its own meeting times, rules and procedure, and venue for meetings provided that it shall meet at least once per annum.

ARTICLE 6

FINANCIAL MATTERS

- (1) In order to discharge their obligations under this Agreement, the Parties shall annually make sufficient funds available to cover any expenses that may arise from the implementation of this Agreement, provided that the Wildlife Department, SANP and the Foundation shall use their best endeavours to obtain financial and other means of support from their own sources as well as from other sources for the implementation of the Management Objectives and the Management Plan.
- (2) Donations received by the Foundation shall be paid into a bank account and equitably allocated between the Parks in accordance with the priorities as identified by the Kgalagadi Management Agency.
- (3) The Foundation shall annually submit audited financial statements of its affairs to the Parties.

ARTICLE 7

RESPECT FOR DOMESTIC LAW

This Agreement shall in no way be construed as derogating from any provision of the domestic law in force in the countries of the Parties or any other agreement entered into between the Parties.

ARTICLE 8

SETTLEMENT OF DISPUTES

- (1) Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiation between the Parties, provided that a dispute may be referred for mediation when necessary.
- (2) If an amicable settlement of the dispute is not reached through mediation, the dispute shall be settled through arbitration by an Arbitration Tribunal appointed on the basis that each Party shall appoint an arbitrator and the two arbitrators appointed by the Parties shall appoint a third arbitrator who shall act as chairperson of the Arbitration Tribunal.
- (3) The Arbitration Tribunal shall decide upon its own procedures. The decision of the Tribunal shall be in writing and shall be supported by a majority of its members. Such a decision shall be final and binding upon the Parties.

ARTICLE 9

COMPETENT AUTHORITY

The competent authorities responsible for the implementation of this Agreement shall be

- (a) on behalf of the Republic of Botswana, the Department of Wildlife and National Parks; and
- (b) on behalf of the Republic of South Africa, the South African National Parks.

ARTICLE 10
ENTRY INTO FORCE

This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation of this Agreement. The date of entry into force shall be the last notification.

ARTICLE 11
TERMINATION

This Agreement may be terminated by either Party giving one year's written notice in advance through the diplomatic channel of its intention to terminate this Agreement.

ARTICLE 12
AMENDMENT

This Agreement may be amended through an exchange of notes between the Parties through the diplomatic channel.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed and sealed this Agreement in duplicate in the English language, both being equally authentic.

DONE aton thisday of.....Nineteen
Hundred and Ninety-nine.

.....
FOR THE GOVERNMENT OF THE REPUBLIC
OF BOTSWANA

DONE aton thisday of.....Nineteen
Hundred and Ninety-nine.

.....
FOR THE GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA