

Memorandum of Agreement

between

**Southern Africa Trust
4 Midridge North
International Business Gateway
6th Road (off New Road)
Midrand
South Africa**

**Fax Number: + 27 11 318 0814
Telephone number: + 27 11 318 1012**

And

Company

1. INTERPRETATION

- 1.1 In this Agreement, unless the contrary appears from the context, the following words and phrases shall have the meanings ascribed to them, as follows:-
 - 1.1.1 "The Trust" means the Southern Africa Trust, a trust set up in terms of the Trust Property Control Act No. 57 of 1988.
 - 1.1.2 "the Company" means the second entity cited on page 1 of this Agreement;
 - 1.1.3 "the Parties" means, collectively, the Southern Africa Trust and the Consultant;
 - 1.1.4 "1.1.7 "the Effective Date" means the date of signature of this Agreement by the last Party, or such other date as is set out in Annexure 2;
 - 1.1.5 "the/this Agreement" means this Agreement, together with any Annexures, hereto.
- 1.2 In this Agreement:-
 - 1.2.1 the singular shall include the plural and vice versa;
 - 1.2.2 the masculine gender shall include the feminine and neuter genders and vice versa;
 - 1.2.3 unless otherwise indicated, any meaning ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears, thereafter;
 - 1.2.4 headings to the clauses are only for convenience of reference and shall not be utilised in any legal proceedings that may arise in relation to the terms and conditions of this contract.
- 1.3 This Agreement shall bind the Parties and their respective successors-in-title.

2. BACKGROUND

- 2.1 The Trust has requested the Company to pilot the B4D Pathfinder Tools, which are the B4D Barometer and the B4D Toolkit, and provide extensive feedback on the usefulness, content, and technical user-friendliness of these Tools.
- 2.2 The Company is active or starting to be active in the field of inclusive business, which is defined as the profitable integration of poor people and / or small and micro scale enterprises in the value chain of a company. The company therefore brings in the required professional knowledge and experience to provide the feedback on the B4D Pathfinder Tools.
- 2.3 The Parties desire that this arrangement be reduced to writing and be contained in this Agreement.

3. APPOINTMENT

The Trust, hereby, appoints and the Company, hereby, accepts such appointment, of the Company, to test the B4D Pathfinder Tools and provide the Trust with a comprehensive feedback, on the terms and conditions of this Agreement.

4. STANDARD TERMS AND CONDITIONS

The Standard Terms and Conditions, relating to this Agreement, are set out in Annexure 1.

5. SPECIAL TERMS AND CONDITIONS

The Special Terms and Conditions, relating to this Agreement, are set out in Annexure 2.

SIGNED AT MIDRAND ON THE _____ DAY OF _____ 2014

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF OF THE SOUTHERN AFRICA TRUST

SIGNED AT _____ ON THE _____ DAY OF _____ 2014

AS WITNESSES:

1. _____

2. _____

FOR AND ON BEHALF OF THE COMPANY WHICH, HEREBY, WARRANTS HIS AUTHORITY

ANNEXURE 1**STANDARD TERMS AND CONDITIONS****1. GENERAL PROVISIONS****1.1 Language**

This Agreement has been concluded in English, which shall be the language for all matters relating to the meaning or interpretation of this Agreement.

1.2 Domicilium Citandi Et Executandi

Any notice made, pursuant to this Agreement, shall be in writing and shall be deemed to have been made when sent by registered mail or telefax transmission or by email to the other Party at the addresses specified on page 1 of this Agreement.

1.3 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement, by the Parties, may be taken or executed by the officials specified.

1.4 Whole Agreement

This Agreement contains the entire agreement between the Parties and no representations, warranties, undertakings or promises, of whatever nature, which may have been made by any of the Parties, their agents or employees, other than those contained herein, shall be binding or enforceable by the one Party against the other.

1.5 Non-Enforcement/Indulgence

The non-enforcement of any provision of this Agreement or any indulgence which either Party may grant to the other Party shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with all the provisions of this Agreement or to enforce its right in respect of which such indulgence was granted.

1.6 Breach

In the event of either Party ("the defaulting Party") failing to comply with its obligations in terms of this Agreement, for which no specific remedy has been provided, the other Party ("the aggrieved Party") may, by written notice addressed to the defaulting Party, require the defaulting Party to remedy its breach within 15 (fifteen) business days of the date of such notice. If the defaulting Party fails to remedy its breach within the aforesaid period, the aggrieved Party may, without prejudice to any rights it may otherwise have against the defaulting Party, either:-

- 1.6.1 claim specific performance of the obligations of the defaulting Party, in terms of this Agreement; or
- 1.6.2 where such breach is material, cancel this Agreement and recover damages for breach of contract, from the defaulting Party.

1.7 Arbitration

1.7.1 Save in respect of those provisions of the Agreement which provide for their own remedies, any dispute arising out of, or relating to, this Agreement, concerning the interpretation of the terms and conditions of this Agreement, or of compliance by any Party with the terms/conditions of this Agreement, which is not resolved amicably through consultation or negotiation shall, subject to the other provisions of this clause, be settled by arbitration, in terms of the Arbitration Act No. 42 of 1965, as amended, from time to time.

1.7.2 In the case of arbitration, a tribunal shall be composed of one arbitrator, who shall be appointed by the Parties, by agreement or, failing such agreement, by the chairperson of the Arbitration Foundation of South Africa, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he has to adjudicate. In the case

where the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his predecessor.

- 1.7.3 The arbitration shall be held at Johannesburg and in accordance with whatever procedures the arbitrator considers appropriate. In particular, the arbitrator, may, if he deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms, unless the Parties otherwise agree, in writing.
- 1.7.4 After the institution of arbitration proceedings, the tribunal may proceed with the arbitration, notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall, within 30 (thirty) days of the termination of the proceedings, render a final and binding written award, including interest and costs, and furnish the Parties with written reasons for his judgment.
- 1.7.5 The provisions of this clause may be invoked by any Party, by delivering to the other Party, a demand, in writing, that an arbitrator be appointed to adjudicate in respect of a specified dispute.

2. COMMENCEMENT, COMPLETION AND TERMINATION

2.1 Effectiveness of Agreement and Commencement of Services

This Agreement shall come into effect and the Company shall commence the piloting the B4D Pathfinder Tools its provision of feedback on the B4D Pathfinder Tools starting with the Effective Date.

2.2 Expiration of Agreement

Unless terminated earlier, pursuant to Clause 2.3, this Agreement shall terminate two years after the Effective Date, also specified in Annexure 2.

2.3 Termination

2.3.1 The Trust may, on not less than 7 (seven) days' written notice of termination to the Company, terminate the provision of any Services, should:

2.3.1.1 The Company fail to remedy a failure in the performance hereunder, within 7 (seven) days of receipt of such notice, or within such further period as the Trust may approve, in writing;

2.3.1.2 The Company fail, in the absence of any review or appeal proceedings, to comply with any final decision reached as a result of any legal or arbitration proceedings;

2.3.1.3 As a result of force majeure, the Company be unable to perform a material portion of the provisions for a continuous period of not less than 60 (sixty) days;

2.3.1.4 The Company, in the judgement of the Trust has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement. For purposes of this clause 2.3.1.4:

"Corrupt Practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of an official in the selection process or in contract execution;

"Fraudulent Practice" means a misrepresentation of facts, in order to influence a selection process or the execution of a contract to the detriment of the TRUST, and includes collusive practice among consultants (prior to, or after, submission of proposals), designed to establish prices at artificial non-competitive levels and to deprive the TRUST of the benefits of free and open competition; or

2.3.1.5 The Trust, in its sole discretion, and for any reason, whatsoever, including operational reasons, decides to terminate the Agreement.

3. OBLIGATIONS

3.1 Co-operation

To ensure that the purposes and objectives of the Brief are accomplished, the Parties shall periodically exchange views and furnish all such information as may be reasonably requested, regarding progress, performance of their respective obligations and other related matters to the purposes and objectives of the Brief.

3.2 Confidentiality

The Company and the Trust shall not disclose any proprietary or confidential information relating to this Agreement, or the business or operations of the Company and the Trust, (see Confidentiality Agreement).

3.3 Quality

The Company commits to ensuring that the provision of feedback on the B4D Pathfinder Tools will be comprehensive and of sound quality.

3.4 Feedback on the B4D Pathfinder Tools by the Company to be the Property of the Trust

All feedback on the B4D Pathfinder Tools provided by the Company, pursuant to this Agreement, shall become and remain the properties of the Trust.

3.5 Assistance by Trust

The Trust shall use its best endeavours, to assist the Company in piloting the B4D Pathfinder Tools and providing feedback on them.

3.6 Indemnification of the Trust by the Company

- 3.6.1 The Company shall keep the Trust, during and after this Agreement, indemnified against all indirect, consequential, special or direct losses, damages, expenses, costs and claims, including, but not limited to, legal fees and expenses, suffered by the Trust, or any third party, where such loss, damage, expense or cost is the result of any wrongful action or omission, negligence or breach of any contract by the Company, its employees and/or its agents.
- 3.6.2 The Trust shall not be liable for any loss incurred by the Company as a result of any unnecessary or irrelevant work done by the Company, including work done after an extension.

3.7 No Authority to Represent the Trust

Notwithstanding anything to the contrary herein contained, the Company, hereby, acknowledges that neither the Company, nor any employee or subcontractor of the Company has any authority, whatsoever, to represent the Trust in any capacity, whatsoever. In particular, but without limiting the generality of the afore going, neither the Company, nor any of its employees and/or subcontractors, shall be entitled to conclude any contracts on behalf of the Trust, to incur any obligation, bind the Trust to any obligation, nor to sign any documentation on behalf of the Trust.

ANNEXURE 2
SPECIAL TERMS AND CONDITIONS

1. Location of Company

The company is located in

2. Authorized Representatives

For the Southern Africa Trust: Name: Dr Bhekinkosi Moyo
 Designation: Executive Director
 Tel: +27 11 318 1012
 Fax: +27 11 318 0814
 E-mail: bmoyo@southernafricatrust.org

Alternate – Name: McBride Nkhlamba
 Designation: Head of Programmes
 Tel: 011 318 1012
 Fax: 011 318 0814
 E-mail: mnkhalamba@southernafricatrust.org

For the Company: Name:
 Designation:
 Tel:
 Cell:
 Fax:
 E-mail:

3. Effectiveness of Agreement

Start Date:
 End Date:

4. Piloting of B4D Pathfinder Tools and Provision of Feedback

The company shall pilot the B4D Pathfinder Tools and provide feedback on these on a basis on the following schedule:

- Signing the B4D Charter.
- Piloting the B4D Pathfinder Tools free of charge for two years starting on the Effective Date.
- Providing feedback on the Tools (see Annexure 3).

ANNEXURE 3

1. Background

Following the SADC Conference on Poverty and Development (Mauritius, April, 2008), the Trust, in collaboration with the former SADC Employers' Group (SEG, now SADC Private Sector Forum, SPSF) initiated the Business for Development (B4D) Pathfinder. The B4D Pathfinder's objective is to harness and strengthen the corporate response to overcoming poverty. Private sector operations can involve the poor - outside and inside the informal sector - in production, distribution and marketing processes of new products and services, and develop and provide products and services for the people at the bottom of the pyramid according to their needs. The concept of inclusive business goes beyond the current practices of corporate giving and integrates the poor into the core business of businesses to create profits. It is therefore regarded as a win-win situations for companies and small and micro enterprises of the low-income segment.

The B4D Pathfinder initiative covers the joint promotion of inclusive business within the SADC region; the provision of tools for the private sector; and the co-facilitation to create an enabling environment at the regional and national level.

This Agreement focuses exclusive on the piloting of the B4D Pathfinder Tools by the Company and the company's feedback on both Tools the B4D-Barometer and the B4D-Toolkit.

(1) B4D Charter

The over-arching commitment of the B4D Pathfinder initiative is embodied in a B4D Charter. The Charter is intended to encourage and inspire the Company to profitably include the poor people and small and micro enterprises in their core value chains. It is a non-binding code of acceptable business values and operational principles. In the B4D Charter the Company expresses its commitment and aspiration to start, implement and expand the concept of inclusive business.

(2) B4D Barometer

The B4D Barometer is an online self-assessment tool for companies to monitor and evaluate their inclusive business practices. Companies can identify successes, risks, gaps, challenges and solutions. In particular, they obtain a comprehensive update of the state of inclusivity and achievements as well as recommendations for improvements.

The tool comprises of a series of universal and industry-specific questions and 5 different answer levels for each question. The tool also provides companies with:

- A brief analysis of the results in form of performance graphs;
- Feedback & recommendations from B4D Experts; and
- A trends analysis (when used on a regular basis).

The B4D-Barometer covers the value chain core function 'Procurement', 'Distribution' and 'Customers at the Base of the Pyramid (BoP)'. Each of these core functions is covered by about 70-80 universal questions.

(3) B4D Toolkit

The B4D-toolkit will assist you in *how* to implement and expand inclusive business practices. Essentially, it is a comprehensive source of information based on a long-term collection of knowledge. The B4D-Toolkit comprises of:

- A universal guide on *how* to be inclusive, currently covering a total of 22 practice-oriented modules that focus on the value chain functions
 - Procurement;
 - Distribution; and
 - Customers at the Base of the Pyramid (BoP).
- A list of B4D Pathfinder Experts, who can assist you with implementing inclusive business practices, in particular when using the B4D Pathfinder Tools.
- Case studies and links to studies by global key players.
- Examples of regulatory frameworks and support structures for SMME development and inclusive business analyzed in five countries in southern Africa.
- Links to 12 comprehensive publications on inclusive business worthwhile to know.
- Links to appropriate websites of global and African key organizations that are active in the field of inclusive business.

2. Scope

The Company shall pilot the B4D Pathfinder Tools and provide a feedback on the Tools.

The following criteria have been developed to guide the Company is their feedback on the B4D Pathfinder Tools:

- Relevance and content of the **B4D-Barometer** questions and answers options – and gaps/challenges/solutions;
 1. Do the Barometer questions and answer options make sense for the company?
 - a) Are they helpful for the company in starting / implementing / extending its inclusive business activities?
 - b) Do the questions and answer improve or foster the company's inclusive business activities?
 - c) Are the answers relevant and correctly ranked and weighted?
 2. Are the questions and answer options of the B4D-Barometer helpful for the company in
 - a) Assessing the company's inclusive business performance, in particular the process of
 - o Planning;
 - o Implementation;
 - o Logistics;
 - o Internal organizational relations and procedures; and
 - o Outcomes.
 - b) Assessing and buffering the company's risks when doing inclusive business;
 - c) learning of new approaches that might improve the company's inclusive business approach.
 3. How is the "look and feel" of the questions and answer options (length, design, clarity of the questions and answer options)?
 4. What questions would the company like to add?
 5. What answer options would the company like to add?
 6. Which questions and answer options are recommended to be deleted?
 7. Which questions and answer options are recommended to be changed in content – and what content is recommended by the Company?
 8. Which questions and answer options are recommended to be changed in ranking and weighting?
 9. Which further additions would the Company recommend to match the Company's needs of assisting its inclusive business approach?
 10. Which further steps would the Company recommend (such as, for example, a Barometer designed for the small and micro enterprises with which the company may implement its inclusive business activities, to establish a cross-check mechanism and feedback from the small and micro enterprises on the Company's inclusive business practices, etc.)
 11. How does the Company assess the design of online-software, user-friendliness, clarity etc.;

To provide a proper and comprehensive feedback, the Company will find a **feedback box in each question** of the B4D-Barometer at the bottom of each page.

- Relevance and content of the B4D **Toolkit**:
 1. Do the tools of the B4D-Toolkit make sense for the company with regard to
 - a) All modules and sub-modules of the Toolkit's **Guide**;
 - b) The other tools, such as Tools on
 - o 'B4D experts';
 - o 'Case Studies';
 - o Frameworks & support structures';
 - o Useful links; and
 - o Must reads
 - c) Are these Tools helpful for the company in starting / implementing / extending its inclusive business activities?
 - d) Which of the Tools does the Company regard as (very) helpful?
 - e) Which of the Tools are less helpful?
 - f) Are the Tools helpful to foster the company's inclusive business activities?
 - g) Do the Tools address the relevant issues and steps for the Company?
 - h) Do they cover relevant best practices?
 2. How is the "look and feel" of the Toolkit (length, design, clarity)?
 3. What Tools would the company like to add?
 4. Which Tools are recommended to be deleted?
 5. Which Tools are recommended to be changed in content – and what content is recommended by the Company?
 6. Which further additions would the company recommend to match the company's needs of assisting its inclusive business approach?

7. How does the Company assess the design of online-software, user-friendliness, clarity etc.;

- **Impact of B4D Pathfinder Tools:**

The Trust requests a feedback on whether the Company's use of the B4D Pathfinder Tools resulted in the Company extending its inclusive business practices.

- **Frequency of feedback:**

1. The Company shall provide an intense feedback of sound quality when piloting the B4D Pathfinder Tools for the first time.
2. The Company shall provide additional feedback after further usage of the B4D Pathfinder Tools, in particular on new / additional aspects which were not mentioned when piloting the B4D Pathfinder Tools the first time.
3. The company shall provide feedback on whether or not the B4D Pathfinder Tools are still helpful when the company's inclusive business practices are advanced and has already used the B4D Pathfinder Tools for some time, in particular on the matter which of the Tools remain useful for the company and which of them do not – and why.