

ENTERPRISE AND SUPPLIER DEVELOPMENT AGREEMENT

entered into by and between



THE SOUTH AFRICAN MEDICAL RESEARCH COUNCIL(SAMRC)

A statutory science council established in terms of the South African Medical Research Council Act No. 58 of 1991 and a National Public Entity listed in schedule 3A of the Public Finance Management Act 1 of 1999, with its principal place of business situated at Medicina Campus, Francie Van Zijl Drive, Parow, 7500
(hereinafter referred to as “the Measured Entity”)

and

..... (PTY) LTD
a private company, having its principal place of business and registered head-office situated at
.....
(hereinafter referred to as “the Beneficiary”)

(the Measured Entity and the Beneficiary shall hereinafter jointly be referred to as “the Parties”
and each individually as “the Party”)

PREAMBLE

In order to give effect to the Broad-Based Black Economic Empowerment Codes of Good Practice (the B-BBEE Codes) issued in accordance with the Broad-Based Black Economic Empowerment Act 53 of 2003, the Measured Entity is embarking on a process to provide Supplier Development support to Exempted Micro-Enterprises (EMEs) and Qualifying Small Enterprises (QSEs). In this regard, the Measured Entity identified the Beneficiary as an entity which the Measured Entity can assist with Supplier Development as provided for in the B-BBEE Codes. This Enterprise and Supplier Development Agreement sets out the rights and obligations of the respective parties in order to facilitate meaningful transformation for the Beneficiary as required in terms of the B-BBEE Codes.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
- 1.1.1. **“Agreement”** means this Enterprise and Supplier Development Agreement and any annexures hereto including any documents incorporated by reference;
- 1.1.2. **“Business day”** means any day other than a Saturday, Sunday, or statutory public holiday in the Republic of South Africa;
- 1.1.3. **“Beneficiary Representative”** meansor such other **employee the Beneficiary** may nominate in writing from time to time who shall be responsible for performance of the Beneficiary in accordance with this Agreement;
- 1.1.4. **“Party/Parties”** shall mean the Measured Entity and the Beneficiary jointly or individually as the context indicates;
- 1.1.5. **“Measured Entity Representative”** means or such other **employee the Measured Entity** may nominate in writing from time to time who shall be responsible for monitoring the performance of the Beneficiary in terms of this Agreement;

1.1.6. **“Support”** means the assistance which the Measured Entity will provide to the Beneficiary as more fully set out in clause 4 below.

1.2 In this Agreement:

1.2.1 an expression which denotes -

1.2.1.1 any gender includes the other genders;

1.2.1.2 a natural person includes a juristic person and vice versa;

1.2.1.3 the singular includes the plural and vice versa; and

1.2.1.4 a Party includes a reference to that Party's successors in title and assigns allowed in law.

1.2.2 the clause headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation of the subject matter of this Agreement;

1.2.3 when any number of days is prescribed, it shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the first business day thereafter; and

1.2.4 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail unless the context expressly indicates otherwise.

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

1.4 The expiry or termination of the Agreement will not affect provisions of the Agreement that expressly provide that it will operate after any such expiry or termination or which out of necessity, must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. NATURE OF RELATIONSHIP

- 2.1 The Parties agree to enter into a Enterprise and Supplier Development relationship as described in the BEE Codes of Good Practice.
- 2.2 The Measured Entity will assist the Beneficiary with Support which is claimable at 100% value of the contribution for the purposes of BEE.
- 2.3 The Beneficiary is an independent contractor, and not an employee or partner, and at all relevant times during the currency of this Agreement no employer/employee relationship or partnership shall exist between the Beneficiary and the Measured Entity.
- 2.4 The Measured Entity does not have an exclusive relationship with the Beneficiary to carry out the Support; and may enter into the same relationship with other entities.

3. DURATION AND TERMINATION

- 3.1 Notwithstanding date of signature hereof, this Agreement shall come into effect on and shall, unless otherwise provided for in this Agreement, remain in force for a period of(....) years thereby terminating on.....
- 3.2 This Agreement may be renewed at the sole discretion of the Measured Entity. In the event that renewal is not granted, the Measured Entity shall not be obliged to provide any reasons therefor.
- 3.3 The Measured Entity shall be entitled to terminate this Agreement forthwith by written notice if the Beneficiary:
 - 3.3.1 enters into insolvency
 - 3.3.2 commits a fraudulent or dishonest act;
 - 3.3.3 is unable to perform its duties hereunder for a period exceeding 2 (two) months;
 - 3.3.4 is guilty of any conduct, which is prejudicial to the Measured Entity's interest;
 - 3.3.5 if a judgment is entered against the Beneficiary; or
 - 3.3.6 is in material breach of this Agreement or another contract with the Measured Entity and fails to remedy such breach within the notice period.

- 3.4 If the beneficiary is no longer qualifies under the ESD with regards to Exempted Micro-Enterprises (EMEs) (R10million and less annual revenue), and Qualifying Small Enterprises (QSEs) (annual revenue of between R10 million and R50 million) which are at least 51% black owned or at least 51% black women owned utilising the flow through principle. Beneficiary needs to provide an valid B-BBEE Certificate or Affidavit to Measured Entity for continues verification.
- 3.5 Notwithstanding any contrary term contained herein, either Party may at any time terminate this Agreement on at least 3 (three) month's written notice to the other Party.

4. SUPPORT

- 4.1 The Measured Entity shall provide the Support for the Beneficiary on a monthly basis and/or as and when required for the duration of the contract period in one or more of the following ways:

BBBEE Ref	Qualifying Contribution type	
1	Grant and Related Contributions	Tick
1.1	Grant Contribution to Black Owned EME and QSEs	✓
1.2	Direct Cost incurred in supporting enterprise development	
1.3	Discounts in addition to normal business practices supporting enterprise development	
1.4	Overhead Costs incurred in supporting enterprise development (including people appointed in enterprise development)	
2	Loans and Related Contributions	Tick
2.1	Interest-Free Loan with no security requirements supporting enterprise Development	
2.2	Standard Loan to Black Owned EME and QSEs	
2.3	Standard Loan provided to other Beneficiary Enterprises	
2.4	Guarantees provided on behalf of a Beneficiary entity	
2.5	Lower Interest Rate	
3	Equity Investments and Related Contributions	Tick
3.1	Minority Investment in Black Owned EME and QSEs	
3.2	Minority Investment in Other Beneficiary Enterprises	

3.3	Enterprise Development Investment with lower dividend to financier	
4	Contributions made in the form of human resource capacity	Tick
4.1	Professional services rendered at no cost and supporting enterprise development	
4.2	Professional services rendered at a discount and supporting enterprise development	
4.3	Time of employees of Measured Entity productively deployed in assisting beneficiaries	
5	Other Contributions	Tick
5.1	Shorter payment periods to Black Owned EME and QSEs	

4.2 The Support must be provided in a professional and impartial manner. In provision of the Support, the Measured Entity shall:

4.2.1 exercise reasonable care and skill in all aspects of the provision of the Support;
and

4.2.2 adhere to any requirements as set out in the B-BBEE Codes and related laws and policies.

4.3 The Beneficiary agrees to provide the Measured Entity with all information, co-operation and support as may be reasonably required by the Measured Entity to enable it to render the Support.

5. SPECIFIC WARRANTIES

5.1 The Beneficiary warrants that as and where applicable, it is at present, and will remain for the duration of this Agreement, in possession of such documents and/or certificates of and/or membership(s) to all such industry boards, associations, organizations and compliance regulatory authorities as may be necessary to enable the Beneficiary to receive the Support herein. This shall include but is not limited to the following:

5.1.1 remaining registered on the Central Supplier Data Base for Government,

5.1.2 remaining tax compliant with the South African Revenue Service,

5.1.3 remaining in good standing as required under the Compensation for Occupational Injuries and Disease Act,

5.1.4 maintaining sufficient relevant liability insurance (if applicable); and

5.1.5 maintaining a qualifying B-BBEE status i.e. the status at the time of entering into this Agreement or higher.

5.2 The Measured Entity shall be entitled to call upon the Beneficiary to submit proof of the currency and validity of the above at any time during the currency of the Agreement. The Beneficiary shall comply with the Measured Entity's request within 14 (fourteen) days of receipt thereof. Failure to submit the required proof shall be a material breach of the Agreement.

6. MONITORING, EVALUATION AND REPORTING

6.1 The Support rendered in terms of this Agreement will be monitored on an ongoing basis by the Measured Entity Representative.

6.2 Upon signature of this Agreement or so soon thereafter as may be reasonably practicable the Beneficiary Representative and the Measured Entity Representative will meet in order to discuss the way forward in order to effectively implement the intent and purport of this Agreement.

6.3 The Beneficiary must provide, on request of the Measured Entity, a report on the status of any issue relating to the Support and partake in discussions on strategic issues relating to the Support and any improvement opportunities in relation to the rendering of the Support that may exist. Any report requested by the Measured Entity in terms of this clause will be presented to the Measured Entity within 20 (twenty) days of request by the Measured Entity or such other timeframe as may be agreed upon by the Parties of request for such a report.

7. CONTRACT PRICE AND FINANCIAL ARRANGEMENTS

7.1 *If* financial Support is approved by the SAMRC and made available to the Beneficiary, such support will be recorded by means of an addendum to this Agreement or through a separate Funding Agreement.

- 7.2 The Beneficiary shall invoice the Measured Entity for the actual financial Support received in accordance with this Agreement or the Funding Agreement, as the case may be.
- 7.3 Payment will be affected after signoff by the Measured Entity Representative and in line with the Measured Entity's payment processes.
- 7.4 Payment will be made in South African Rand, via electronic funds transfer into the following official bank account nominated by the Beneficiary and registered with the SAMRC's Finance Department.
- 7.5 Every tax invoice rendered in terms of this Agreement shall contain at least the following information:
- The Measured Entity's VAT Number i.e. 4890103718
 - The Measured Entity's address i.e. South African Medical Research Council, Medicina Campus, Francie Van Zijl Drive, Parow Valley, 7500
 - The Beneficiary's VAT Registration Number (if applicable)
 - The Beneficiary's Income Tax number
 - The Beneficiary's physical address
- 7.6 Tax invoices must be set out to indicate amounts charged for billed items and VAT thereon in a separate column alternatively, where the statement contains only one amount, the statement "*the amount charged is exclusive of VAT at the prevailing percentage rate*" shall be quoted.

8. CONFIDENTIALITY

- 8.1 *If*, due to the nature of the Support, the Beneficiary's staff shall have access to places where property of the Measured Entity its employees, agents and patrons are kept including places where Confidential Information is kept, the Beneficiary shall ensure that its staff assigned to deliver the Support at the Measured Entity premises are trustworthy and shall take all required security measures to ensure the safety of the aforementioned property and Confidential Information.

- 8.2 The Parties hereby undertake not to make any public statement or issue press releases relating to or affecting either Party to this Agreement without the prior written consent of the other Party.
- 8.3 “Confidential Information” shall include but is not limited to, information which concerns or relates to the trade secrets, processes, operations, style of works, apparatus, production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the business ability to perform its functions, or causing substantial harm to the competitive position of the business.
- 8.4 The Parties may disclose Confidential Information to each other in order to facilitate activities under this Agreement. Such Confidential Information shall be safeguarded and not disclosed to any third parties without the consent of the Party to which the information relates, except if required to do so by law.
- 8.5 The Beneficiary will: -
- 8.5.1 use the Confidential Information only for the purposes of receiving and implementing the Support set out herein;
 - 8.5.2 treat and safeguard the Confidential Information as private and confidential; and
 - 8.5.3 ensure proper and secure storage of all Confidential Information.
- 8.6 The Beneficiary shall ensure that any personal information collected from any party or employee during the receipt of the Support shall be necessary in order to receive and implement the Support in accordance with this Agreement. The Beneficiary shall use, store, protect and destroy such personal information in accordance with the applicable data protection laws in force in South Africa from time to time.

9. PROTECTION OF PERSONAL INFORMATION

- 9.1 For this clause, “Responsible Party” is used as defined under the South African Protection of Personal Information Act, 2013 (“POPIA”) to mean the party who sources and decides what to do with the personal data they have attained for

processing. Similarly, the use herein of the term “Operator” as per POPIA means the party who processes personal data on the Responsible Party’s instruction for a particular processing function.

- 9.2 Both parties understand that they may process (including but not limited to, accessing, seeing, recording, using, transmitting and/or routing) personal data of data subjects as either a Responsible Party (for their own personal data acquired for their purposes) or as an Operator (for the personal data provided to them from the Responsible Party).
- 9.3 Both parties warrant to the other that they will adhere to all requirements and duties imposed on them by the application of POPIA, as dictated by the role that they fulfil relating to the personal data they process.
- 9.4 Further, both parties expressly indemnify the other party against any third-party claims which may be brought against either party for the party’s failure to adhere to their duties as prescribed under POPIA related to their role as either or both the relevant Responsible Party and/or Operator.
- 9.5 These duties naturally include the responsibility of each party to retain and store all data received from the other party as strictly confidential at all times.
- 9.6 Should either party require the other party to fulfil any particular conditions relating to its processing of any personal data as the Operator, the parties shall detail and agree to the same conditions in a separate written data processing agreement between them.
- 9.7 If either party operates as a Responsible Party, they warrant to the other party (as the relevant Operator of the Responsible Party’s personal data handed to them) that they have expressly obtained all relevant consents and/or can evidence its lawful bases for relaying any of their own or own users’/data subjects’ personal data to the other party for the purposes of that other party processing it for whatever reason as the Operator.

- 9.8 Both parties also warrant to each other that they have no criminal convictions or judgments recorded against them, which relate to crimes relating to fraud, unlawful use of personal information or any crime related to the illegal use or processing of personal information in any way.
- 9.9 Both parties also understand and agree that for data continuity and risk-mitigation purposes, should this agreement be terminated for any reason, and unless otherwise provided for in another data processing agreement between them, the parties will immediately cease all processing of personal data provided to them by the other party, as well as permanently delete/destroy any personal data of the other party's on/within their systems. To assist each other in this process, both parties will provide the other party with whatever information or tools needed in order to action this destruction as required.
- 9.10 The provisions of this clause are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force.

10. SECURITY AND HEALTH AND SAFETY

- 10.1 *If*, due to the nature of a transaction, the Beneficiary's staff must access the premises of the Measured Entity, the Beneficiary shall ensure that its staff entering the Measured Entity premises are trustworthy and shall take all required and relevant measures to ensure their own safety, as well as the safety of the Measured Entity's property, its employees, agents and patrons.
- 10.2 In this regard, the Beneficiary's staff shall adhere to all security and health and safety rules, directives and/or measures which may be set by the Measured Entity from time to time, whether in writing or on site and so directed by one of the Measured Entity's staff members/security personnel or other contractors with relevant authority.

11. INDEMNITY

- 11.1 The Measured Entity shall not be liable for any injury, loss or damage directly or indirectly incurred by the Beneficiary, arising out of or in connection with the Support rendered by

the Measured Entity in accordance with this Agreement, except in cases of gross negligence or wilful misconduct on behalf of the Measured Entity.

- 11.2 The Beneficiary indemnifies and holds the Measured Entity harmless, against any claims instituted by third parties, that may arise as a result of the Beneficiary's negligent or wilful acts or omissions or failure to comply with any provision of this Agreement or any claims that may arise as a result of the negligent or wilful acts or omissions by the Beneficiary or the acts or omissions of its employees, duly authorised representatives or appointed agents.

12. SETTLEMENT OF DISPUTES

- 12.1 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably. If the dispute is not capable of being settled amicably between the Parties, such dispute shall be elevated to the Senior Management / Executive or their duly designated representatives for a mediation purposes, within 7 days of the dispute having arisen.

- 12.2 Should the dispute, despite such referral to the Senior Management / Executive remain unresolved for a period of 30 (thirty) days after being so referred, the Parties may, by mutual consent, follow an arbitration/dispute resolution procedure as agreed between them, without detracting from either Party's right to institute action or motion proceedings in the High Court or other Court of competent jurisdiction in respect of any dispute that may arise out of this Agreement.

13. BREACH

- 13.1 If either of the Parties commits a material breach of any provision of this Agreement, the non-defaulting Party may call in writing on the defaulting Party (in breach) to remedy the breach within a period which, if the breach consists of the non-payment of money due, will not be less than 30 (thirty) days and if the breach is of any other nature will be not less than 10 (ten) days.

13.2 If the breach remains un-remedied after the notice period has expired, the non-defaulting Party may institute proceedings immediately for enforcement of the terms of this Agreement, cancel the Agreement with immediate effect or any other remedy that may be available to it in law.

13.3 Termination of this Agreement for breach shall not affect either Party's right to claim damages.

14. FORCE MAJEURE

14.1 An "**Event of Force Majeure**" means an impediment beyond the control of a Party, which prevents that Party from complying with any of its obligations under this Agreement, including but not limited to:

14.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;

14.1.2 natural disasters such as violent storms, earthquakes, tidal waves, floods, destruction by lightning;

14.1.3 explosions, fires, destruction of property or any kind of installations;

14.1.4 boycotts, strikes and lock-outs of all kinds, occupation of premises, and work stoppages;

14.1.5 epidemics and pandemics; and

14.1.6 any act of any state or government or other authority having jurisdiction over either Party.

14.2 Neither Party shall be liable for a failure to perform any of its obligations in as far as it proves:

14.2.1 that the failure was due to an impediment, which was beyond its control;

14.2.2 that it could not reasonably have expected to have taken the impediment;

14.2.3 its effects upon its ability to perform into account at the time of the conclusion of this Agreement; and

14.2.4 that it could not reasonably have overcome the impediment or at least its effect.

14.3 Notice and extension of time in the event of Force Majeure:

- 14.3.1 The Affected Party prevented from carrying out its obligations hereunder shall give notice to the other Party of an Event of Force Majeure upon it being reasonably foreseen by, or becoming known to, the Affected Party.
- 14.3.2 The Affected Party shall be relieved of its obligations but shall endeavour to continue to perform its obligations under the contract so far as it is reasonably practicable to do so.
- 14.3.3 The Affected Party shall be entitled to an extension of time for completion of its obligations equal to the period of interruption caused by an Event of Force Majeure subject to the provisions of clause 14.4.1 below.
- 14.3.4 If an Event of Force Majeure results in a loss or damage to a building or facility, then the Party shall rectify such loss or damage insofar as it is possible.
- 14.4 Optional Termination, Payment and Release:
- 14.4.1 Irrespective of any extension of time, if an Event of Force Majeure occurs and its effect continues for a period of 6 (six) months, then either Party may give to the other, a notice of termination which shall take effect one month after the giving of the notice. If, at the end of the one-month period, the effect of the Force Majeure continues, the Agreement shall terminate.

15. NOTICE AND DOMICILIUM

- 15.1 The Parties choose as their respective *domicilium citandi et executandi* for the purposes of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

15.1.1 THE MEASURED ENTITY:

SAMRC Medicina Campus, Francie van Zijl Drive, Parow, 7500, Western Cape

Attention: The General Counsel: Legal & Compliance Support

For day-to-day management of this contract:

Name: Mesuli Scwebu

Contact no: Mesuli.Scwebu@mrc.ac.za

Email address: +27 21 938 0688

15.1.2 THE BENEFICIARY:

.....

Attention:

For day-to-day management of this contract:

Name:

Contact no:

Email address:

15.2 All notices to be given in terms of this Agreement shall be given in writing and be hand delivered or sent by prepaid registered post to the Party's chosen *domicilium citandi et executandi*.

15.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 10 (ten) business days after the date of posting.

15.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other Party shall be adequate written notice of communication to such Party.

16. GENERAL

16.1 This Agreement contains the entire agreement between the Parties, and neither Party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein.

16.2 None of the provisions of this Agreement shall be considered waived by any Party unless such waiver is given in writing to the other Party. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof or failure or delay to exercise any rights of any Party will not prejudice that Party's rights under the Agreement in any manner whatsoever or be regarded as a waiver of any of the Party's rights in terms of the Agreement.

- 16.3 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue to be in full force and effect.
- 16.4 The Beneficiary may not assign its rights and obligations in terms of this Agreement to another Party.
- 16.5 No alteration, cancellation, variation or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties duly authorised representatives.
- 16.6 Each Party shall bear its own legal costs of and incidental to the drafting, negotiation and finalisation and completion of this Agreement.
- 16.7 This Agreement may be signed digitally, electronically and in separate counterparts, each copy of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. A counterpart of this Agreement in electronic form (including scanned PDF) shall be evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.

SIGNED FOR THE MEASURED ENTITY(SAMRC)

Date: _____

Signature: _____

Name: _____

Duly Authorized Representative Capacity: _____

SIGNED FOR THE BENEFICIARY

Date: _____

Signature: _____

Name: _____

Duly Authorized Representative Capacity: _____

Measure Entity (SAMRC) Signatory Initials: _____

Beneficiary Signatory Initials: _____