

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**The DEPARTMENT OF BASIC EDUCATION**

**(Hereinafter referred to as "DBE")**

**Herein represented by Mr PB Soobrayan, duly authorized thereto in his capacity as the  
Director-General**

**AND**

**The Tiger Brands Foundation**

**(Hereinafter referred to as "TBF")**

**Herein represented by Mr K Glen, duly authorized thereto in his capacity as the Director**

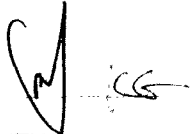
**ON**

**The Partnership between TBF and the National School Nutrition Programme**

**(Hereinafter referred to as "NSNP")**

CONFIDENTIAL



  
INITIAL HERE

CONFIDENTIAL



INITIAL HERE

*Handwritten initials: M.K.G.*

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement -

- 1.1.1 “**Agreement**” means this agreement together with all its schedules and annexes, as may be amended from time to time;
- 1.1.2 “**Business Day**” means any day (other than a Saturday or Sunday or an official public holiday in South Africa);
- 1.1.3 “**DBE**” means Department of Basic Education of South Africa, with its principal place of business at Sol Plaatje House, 222 Struben Street, Pretoria, 0001, herein represented by Mr PB Soobrayan in his capacity as the Director-General;
- 1.1.4 “**Designated Employee**” means an employee of the DBE, including a person who has a contractual relationship with the DBE as a result of this Agreement and who is entrusted with the duty to render the Services on behalf of the DBE, who shall include but not limited to the DBE’s employees, directors, members, officers and/or contractors engaged by the DBE to render the Services;
- 1.1.5 “**Disclosing Purpose**” means inspection, examination and evaluation by the DBE of the Confidential Information made available to the DBE before, during or after the implementation of this Agreement, in order to determine the viability, structure, terms and conditions of the proposed business relationship between the Parties and the resultant contractual arrangement between the Parties;
- 1.1.6 “**Learner**” means a learner in a public school as defined in the South African Schools Act;
- 1.1.7 “**Tiger Brands Foundation**” (TBF) means an independent trust set up by Tiger Brands

CONFIDENTIAL



ICG  
INITIAL HERE

Handwritten initials in black ink, appearing to be 'ICG', written over the printed text 'INITIAL HERE'.

- 1.1.8 **“Parties”** means the DBE and the TBF, the term **“Party”** shall be construed as either one of them, as the context may require;
- 1.1.9 **“School”** for purposes of this agreement, means a public school as contemplated in the South African Schools Act;
- 1.1.10 **“Signature Date”** means the date of signing of this Agreement by a Party signing last;
- 1.1.11 **“South Africa”** means the Republic of South Africa;
- 1.1.12 **“Termination Date”** means the date upon which this Agreement is terminated as provided for in this Agreement.

1.2 **In this Agreement, unless otherwise specified -**

- 1.2.1 references to clauses and schedules are to clauses of and schedules to this Agreement as may be amended from time to time;
- 1.2.2 use of any gender includes the other gender;
- 1.2.3 use of the singular includes the plural and vice versa;
- 1.2.4 references to an “entity” shall be construed so as to include any close corporation, co-operative, trust, municipality or other body corporate wherever and however incorporated or established;
- 1.2.5 references to a “person” shall be construed so as to include any individual, firm, an entity or other body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership.
- 1.2.6 reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified or re-enacted;

- 1.2.7 reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of this Agreement) at any time;
- 1.2.8 headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- 1.2.9 reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than South Africa be treated as a reference to any analogous term in that jurisdiction;
- 1.2.10 any capitalised term not defined in clause 1.1 shall have the meaning assigned to it in the relevant clause or section of this Agreement where such term is first used;
- 1.2.11 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.2.12 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.2.13 the schedules and annexes form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement;
- 1.2.14 expressions defined in this Agreement shall bear the same meanings in schedules and annexes to this Agreement which do not themselves contain their own definitions; and
- 1.2.15 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply.

**2. INTRODUCTION**

2.1 The Department of Basic Education (DBE) makes a major contribution to the development and growth of school nutrition programme in our country through the establishment of relationship with Tiger Brands Foundation and the implementation of curriculum enrichment plans in schools;

2.2 The Tiger Brands Foundation (TBF) is an independent trust.

“To improve the lives of school children attending non – fee paying schools and their surrounding communities by creating sustainable, scalable and replicable programmes focused on nutrition and education enhancement”

2.3 Both DBE and TBF believe that the discipline and structure provided by regular, well-resourced and well-organised competition will create an environment conducive to a positive scholastic performance that will cultivate a healthy life style among learners.

**3. COLLABORATIVE RELATIONSHIP**

With effect from the Commencement Date, the Parties shall be mutually subjected to the terms and conditions of this Agreement.

**4. FEES AND PAYMENT**

No fees shall be payable to and between the Parties.

**5. OBLIGATIONS OF THE DBE**

5.1 The DBE shall -

5.1.1 Identify schools in need of support by TBF for e.g. Breakfast

Feeding Programmes, improvement of infrastructure, donation of eating utensils to identified schools and involvement in promotional events like National Nutrition Week

- 5.1.2 Provide technical assistance in advising the TBF of nutrition, menu preparation and DBE policies and ensure communication within the DBE at a national, provincial and local level.
- 5.1.3 The DBE to approve and assist proposed research to be carried out by TBF on school sites which benefit from the TBF programmes.
- 5.1.4 The DBE agrees to reasonable participation in approved workshops, dialogues and debates that the TBF may host or elect to participate in.
- 5.1.5 The DBE agrees to share data, research or information relating to the TBF Breakfast Feeding programme where necessary.

## 6. OBLIGATIONS OF THE TBF

### 6.1 The Tiger Brands Foundation shall -.

- 6.1.1 Fund the breakfast feeding programmes at schools identified by DBE (subject to funding and due diligence). The level of funding and commitment will vary from school to school depending on the need, due diligence, funds available and at the discretion of the trustees of the TBF.
- 6.1.2 Be responsible for ensuring efficient operational and financial management of the programmes or projects. Ensuring the schools are accountable for the funding, donations and resources allocated.
- 6.1.3 Inform and request approval by the DBE of participation by other partners supporting the TBF.

- 6.1.4 Provide reports to the DBE and ensure that programmes/projects are monitored and evaluated in accordance with programme/project contracts.
- 6.1.5 Sign an Agreement between the TBF and the participating school.
- 6.1.6 Programmes/projects will be evaluated in accordance with the provisions of the individual programme / project contracts.
- 6.1.7 Projects will be monitored on a daily, weekly, monthly and quarterly basis with no interruption of curriculum activities..
- 6.1.8 Quarterly and annual review meetings will be held between the Parties (DBE and TBF) to:
- review the implementation of the project / programmes of the TBF
  - review the Agreement, and
  - report on the progress of the cooperation between the Parties.

The meetings will be clearly documented and minutes made available to the Parties.

## 7. WARRANTIES

7.1 Each Party warrants having the ability, experience, expertise and skills necessary to perform its obligation in terms of this Agreement. For the avoidance of doubt, Parties shall use all reasonable skill and care, to a standard to be reasonably expected from a first class and professional firm and provider of the Services, at all times in performing their obligations under this Agreement.

7.2 Parties warrant having the full right, power, authority and capacity and have taken or caused all steps to be taken, actions and corporate procedures necessary to enter into, execute, deliver and perform all of its obligations in terms of this Agreement, and no Services, materials or reports furnished in terms of this Agreement will in any way infringe upon or violate any applicable law, rule or regulation, any contract with a third party or any rights of any third person, including, without limitation, rights of patent, trade secret, trademark or copyright.



## 8. BREACH AND TERMINATION REMEDIES

Notwithstanding anything to the contrary contained herein, either Party shall be entitled to terminate this Agreement at any time without any liability for damages or any other claim of whatsoever nature, by providing 60 (sixty) days notice in writing to that effect.

## 9. INTELLECTUAL PROPERTY

9.1 In this Agreement, "**Intellectual Property**" means all work, including literary works, pictorial, graphic and sculptural works, architectural works, works of visual art, and any other work that may be the subject matter of copyright protection; advertising and marketing concepts, information; data; formulas; designs; models; drawings; computer programs, including all documentation, related listings, design specifications and flow charts.

9.2 Parties acknowledge and agree that all copyright in and ownership of all Intellectual Property made available to each Party and that which is conceived and/or created by either Party, ~~and/or employees or officers of both parties in connection with the~~ Services vest and shall remain vested in both parties.

## 10. INDEPENDENT CONTRACTOR

This agreement does not extend to and cannot be executed against a third party.


## 11. INDEMNITY

11.1 Parties hereby indemnify and agree to defend, keep indemnified and hold harmless the other Party in respect of all losses (including reasonable attorneys fees and costs), liability, damage or expense, suffered or incurred by any Party arising -

CONFIDENTIAL



INITIAL HERE

KG 

- 11.1.1 out of the performance of the Party's obligations under or breach by the other Party of any of the terms of this Agreement;
- 11.1.2 from any alleged libel, defamation, or any similar delict, or breach of any contractual right of a third party, or infringement of any Intellectual Property right of a third party, including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the performance of their respective obligations in terms of this Agreement.;
- 11.1.3 from the acts or omissions including any theft, fraud or other unlawful activity or any negligent wilful or fraudulent misconduct of the other Party's employees; or
- 11.2 Any breach of the provisions of the contract documents between the other Party and its employees.
- 11.3 The Party's use or approval of any materials shall not be construed as a waiver of its rights under clause 11.
- 11.4 ~~Parties shall co-operate with each other in the conduct of any proceedings arising pursuant to clause 10 and shall have the right (but not the obligation) to participate in such proceedings, provided that each Party shall bear its own costs.~~
- 11.5 No Party shall enter into settlement or compromise, or make any settlement or compromise offer, without the prior written approval of the other Party.
- 11.6 The indemnification under clause 10 shall survive termination of this ~~Agreement for any reason whatsoever.~~

**12. FORCE MAJEURE**

12.1 Neither Party shall be liable to the other for the inability to perform or for delayed performance in terms of this Agreement, should such inability or delay arise from any cause beyond the reasonable control of such Party, provided that the happening of such force has been drawn to the attention of the other Party within reasonable time of the occurrence of such cause (hereinafter referred to as a "*force majeure event*").

12.2 For the purposes of this clause, a *force majeure* event shall without limitation of the generality of the afore going, be deemed to include but not be limited to strikes, lockout, accidents, fires, explosions, theft, war, invasion, hostilities, civil revolution, flood, earthquake, lightening, act of local or national government, Marshall Law or any other cause beyond the reasonable control of the Party affected.

**13. NON-EXCLUSIVITY**

~~This Agreement shall not confer any exclusive right or obligation on the part of any Party~~ to hire or render similar services. Each Party shall be entitled to contract with any other party to render a similar type of service, during the term of this Agreement and or after its expiry.

**14. PUBLICITY**

~~No Party shall issue any press release, make or publish any public statement or other communication in any case relating to, connected with this Agreement nor use it to~~ advertise its products or services except where such publication is required in terms of clause 5 of this agreement.

CONFIDENTIAL



INITIAL HERE

KG [Signature]

**15. NOTICES**

Any notice to be given under this Agreement shall be delivered personally or sent by registered post or facsimile transmission. The address for service for each of the Parties shall be each Party's principal place of business address as set forth below –

**The DBE**

Address: Sol Plaatje House, 222 Struben Street, Pretoria, 0001

Fax: 012 323 4803

For the attention of: Mr PB Soobrayan

**The TBF**

Address: 3010 William Nicol Drive, Bryanston, 2021

Fax: 086 716 1846

For the attention of: Mr. Kelvin Glen

15.1 A notice shall be deemed to have been served as follows -

15.1.1 if personally delivered, at the time of delivery;

15.1.2 if posted, at the expiration of 7 (seven) days after the envelope containing the same was delivered in to the custody of the postal authorities; and


15.1.3 if sent by facsimile, 24 (twenty-four) hours after the time of successful transmission thereof.

15.2 In undertaking such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered in to the custody office of the postal authority as a prepaid registered delivery or that the facsimile was transmitted as the case may be.

CONFIDENTIAL



INITIAL HERE

KG. 

**16. GENERAL**

- 16.1 This Agreement and its annexes and schedules constitute the entire agreement between the Parties and supersedes all prior understandings and agreements, whether oral or written, between the Parties with regard to the subject matter hereof.
- 16.2 Neither Party may vary, cancel, change nor modify this Agreement or any attachment and or schedules and or annexes, unless such variation, cancellation, change or modification is in writing and executed by or on behalf of the Parties.
- 16.3 No indulgence or extension of time which either Party may grant to the other shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 16.4 If any provision of this Agreement is found to be illegal, invalid or unenforceable under applicable law, such provision shall, insofar as it is severable from the remaining provisions, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining provisions of this Agreement.
- 
- 16.5 To the extent permissible by law, neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

**17. *STIPULATIO ALTERI***

---

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

---

**18. COSTS**

Each Party shall bear and pay its own costs of or incidental to the negotiation, drafting preparation and execution of this Agreement.

**19. DURATION OF MOA**

This MoA comes into force on the date of last signature thereof by the Parties. It remains in force for a minimum period of three years, whereafter it will continue subject to three months written notice of termination being given by either party.

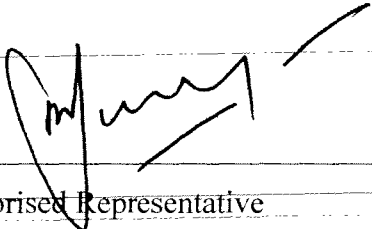
**20. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in all respects in accordance with the laws of South Africa, and the Parties submit to the exclusive jurisdiction of the courts of South Africa for purposes of any or all legal proceedings arising from or concerning this Agreement.

Signed at PRETORIA on 7 NOVEMBER 2011

For and on behalf of

**THE DEPARTMENT OF BASIC EDUCATION**



Authorised Representative

Name: **Mr PB Soobrayan**

Title: **Director- General**

CONFIDENTIAL

INITIAL HERE

Signed at Perth on 9 NOVEMBER 2011

For and on behalf of  
**The Tiger Brands Foundation**



\_\_\_\_\_  
Authorised Representative  
Name: **Mr Kelvin Glen**  
Title: **Director**

