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**GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR****No. R. 640****30 June 2006****SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 of 1998)****PROPOSED REGULATIONS CONCERNING THE REGISTRATION  
OF LEARNERSHIPS AND LEARNERSHIP AGREEMENTS**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of section 36 of the Skills Development Act, 1998 (Act No. 97 of 1998), and after consultation with the National Skills Authority, hereby publish for public comment proposed amendments to the Regulations concerning the registration of learnerships and learnership agreements published in Government Notice No. R 330 of 03 April 2001.

Interested parties are invited to submit written comments on the proposed regulations within 30 days after the publication notice by:-

- (a) Posting comments to:                   The Executive Officer  
National Skills Authority  
Mr S Morotoba  
Department of Labour  
Private Bag XI 17  
Pretoria  
0001
- (b) Fax comments to:                        The Executive Officer  
National Skills Authority  
(012) 309 4237
- (c) Deliver comments to:                  Room 371  
Third Floor  
Laboria House Building  
215 Schoeman Street  
Pretoria
- (d) Email to:                                 [malesela.mokoele@labour.gov.za](mailto:malesela.mokoele@labour.gov.za)

**SCHEDULE**

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## 1. Definitions

In this Schedule, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned **and** -

- (a) 'employer' includes a lead employer;
- 5 (b) '**ESDA**' means an employment and skills development agency contemplated in section 17(7) of the Act;
- (c) 'ETQA' means an education and training quality assurance body contemplated in section 5(1)(a)(ii)(bb) of the **South** African Qualifications Authority Act;
- 10 (d) 'lead employer' means a lead employer Contemplated in regulation 5(4);
- (e) 'lead training provider' means a lead training provider contemplated in regulation 5(5);
- (f) 'learnership' means a learning programme which –
  - (i) consists of a structured learning component;
  - 15 (ii) includes practical work experience of a specified nature and duration; and
  - (iii) leads to a qualification registered by the South African Qualifications Authority and related to an occupation;
- 20 (g) 'learnership agreement' means a learnership agreement contemplated in section 17(1) of the Act;
- (h) 'section 18(1) learner' means a learner who **was** in the employment of the employer party **to** the learnership agreement when the agreement **was** concluded;

- 5
- (i) 'section 18(2) learner' means a learner who was not in the employment of the employer party to the learnership agreement when the agreement was concluded;
- (j) '**Skills** Development Levies Act' means the Skills Development Levies Act, 1999 (Act 9 of 1999);
- (k) 'submit' means to deliver by hand or registered post or to transmit a communication by electronic mechanism as a result of which the recipient is capable of printing the communication;
- 10 (l) 'the Act' means the **Skills** Development Act, 1998 (Act 97 of 1998);
- (m) 'training provider' includes a lead training provider; and
- (n) 'qualification associated with a learnership' means the qualification contemplated in section 16(c) of the Act.

## 2. Registering learnerships

- 15 (1) A SETA applying to register a learnership, in terms of section 16 of the Act, must complete the registration form set out in Annexure A to these Regulations.
- (2) The completed registration form referred to in subregulation (1) must be signed by the executive officer of the SETA and be submitted to the Director-General.
- 20 (3) If the SETA applying to register a learnership is not the ETQA accredited for the relevant qualification associated with the learnership, the SETA must submit proof to the satisfaction of the Director-General that it has made adequate arrangements with the relevant ETQA-
- (a) to ensure the quality management of education and training and learner assessment under the learnership; and
- (b) to issue certificates of achievement for the qualification.
- 25 (4) Upon registration of a learnership, the Director-General must-

(a) allocate and issue a learnership number; and

(b) issue a certificate of registration to the SETA.

(5) The Director-General may require a SETA to submit information, particulars or documentation in respect of a registered learnership at intervals or within time-periods stipulated by the Director-General.

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### 3. Amending registered learnerships

(1) A SETA may apply in writing to the Director-General to amend a registered learnership.

(2) If the South African Qualifications Authority amends the registration of a qualification associated with a learnership, the relevant SETA must, within 45 working days of the amendment, apply to amend the registered learnership in terms of subregulation (1).

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(3) If the registered learnership is amended, the Director-General must amend the relevant certificate of registration accordingly or issue a new certificate of registration.

(4) The amendment of a learnership does not affect –

15

(a) the rights and obligations of the parties to any learnership agreement in respect of that learnership in force at the time of the amendment;

(b) the validity of any learnership completed by a learner or any qualification associated with the learnership achieved by a learner before amendment of the learnership.

20

### 4. Deregistration of learnerships

(1) The Director-General may deregister a learnership if –

(a) the relevant SETA has in writing requested the Director-General to deregister the learnership;

(b) the qualification associated with the learnership has been deregistered by the South African Qualifications Authority;

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- (c) the relevant SETA fails to submit information, particulars or documentation in respect of the learnership in accordance with regulation 3(5); or
  - (d) the Director-General on reasonable grounds is satisfied that there is no longer a need for the learnership.
  
- 5 (2) The Director-General **must**, before deregistering a learnership-
  - (a) publish notice of the intention to deregister and the reasons for doing so in the Government Gazette;
  - (b) give interested persons 30 days from the date of notice in the *Government Gazette* to make representations on why the learnership should not be cancelled; and
  - 10 (c) consider those representations in reaching a decision.
  
- (3) The deregistration of a learnership does not affect –
  - (a) the rights and obligations of the parties to any learnership agreement in respect of that learnership in force at the time of deregistration;
  - 15 (b) the validity of any learnership completed by a learner or any qualification associated with the learnership achieved by a learner before deregistration of the learnership.

#### 5. Registering learnership agreements

- 20 (1) A learnership agreement must be in the form set out in Annexure B to these Regulations.
  
- (2) A SETA may require the parties to a learnership agreement to submit relevant information in addition to that required in terms of subregulation(1).
  
- (3) A SETA may register a learnership agreement in terms of section 17(3) of the Act only if-
  - 25 (a) the Director-General has registered the learnership;

- 5
- (b) a completed learnership agreement form referred to in subregulation (a) has been submitted to the SETA;
- (c) all parties to the agreement have signed the agreement and, if the learner is a minor<sup>1</sup>, the learner's parent or guardian has signed the agreement on behalf of the learner;
- 10
- (d) the employer party to the learnership agreement falls within the scope of coverage of the SETA as determined by the Minister in terms of section 9(2) of the Act;
- (e) if the employer party is liable to pay a levy, the employer party is classified within the jurisdiction of the SETA in terms of section 5 of the Skills Development Levies Act;
- (f) the training provider party to the learnership agreement is accredited for the qualification associated with the learnership as contemplated in section 17(1)(c) of the Act;
- 15
- (g) the terms of the agreement comply with the Act, any other applicable law and the terms of the registered learnership;
- (h) the learnership agreement was concluded before the start of the learnership; and
- 20
- (i) in the case of a section 18(2) learner, the learner and the employer party have entered into a contract of employment.
- (4) Subject to any limits or conditions that the Director-General may determine, a SETA may only register a learnership agreement to which a group of employers is party if-
- (a) one of the employers is identified in the agreement as the lead employer; and
- (b) the lead employer undertakes -

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<sup>1</sup> A minor is an unmarried person who is under 21 years of age. The High Court may declare a person who is over 18 years of age to have attained majority.

- (i) to ensure compliance with the employer's duties in terms of the agreement; and
  - (ii) to ensure the implementation of the agreement at the workplace of the other employer parties to the agreement.
  
- 5 (5) A **SETA** may only register a learnership agreement to which a group of training providers is party if-
  - (a) one of the training providers is identified in the agreement as the lead training provider;
  - (b) the lead training provider is accredited for the qualification associated with the  
10 learnership as contemplated in section 17(1)(c) of the Act;
  - (c) the lead training provider undertakes -
    - (i) to ensure compliance with the training provider's duties in terms of the agreement;
    - (ii) to ensure the proper assessment of the learner; and  
15 (iii) to undertake the quality assurance of training and assessment at the sites of the training provider parties to the agreement.
  
- (6) Within 21 working days of receiving the learnership agreement, the **SETA** must decide-
  - (a) whether or not to register the learnership agreement;
  - (b) in respect of every learnership agreement that is registered, whether or not to  
20 pay a grant-
    - (i) towards the costs of the learnership;
    - (ii) towards the allowance to be paid to a section 18(2) learner.
  
- 25 (7) If a **SETA** decides to register the learnership agreement, the **SETA** must, within 7 working days of its decision -

- 5
- (a) advise the employer of the amount of any grant that it will pay in terms of subregulation (6)(b);
  - (b) record the name, the date of registration and the registration number of the learnership agreement; and
  - (c) send a copy of the learnership agreement to each of the parties to the agreement at the addresses stated in the agreement.
- (8) If a SETA decides not to register the learnership agreement, the SETA must, within 7 working days of its decision, notify the parties to the agreement accordingly in writing, providing reasons thereof

10      **6. Commencing education and training under learnership**

The learner and training provider parties to a learnership agreement may not commence the education and training specified in the agreement until the SETA has registered the learnership agreement.

7. **Altering terms of learnership agreement**

- 15
- (1) The parties to a learnership agreement registered with the relevant SETA may, by mutual agreement and subject to the SETA's approval, alter the terms of the said agreement.
  - (2) A SETA may only register an alteration referred to in subregulation (1), if a copy of the learnership agreement, together with the alterations to the said agreement, signed
- 20
- by all the parties thereto, is submitted to the SETA.

8. **Substituting parties to learnership agreements**

- (1) A SETA may approve the substitution of the employer or the training provider party to a learnership agreement in terms of section 17(5) of the Act if a written application, accompanied by an agreement setting out the terms of the substitution and signed by
- 25
- all the parties to the learnership agreement, is submitted to the SETA.

- (2) The parties to a learnership agreement may, with the approval of the SETA, substitute a new learnership agreement for a learnership agreement that the SETA has already registered.

#### 9. Suspending learnership agreements

- 5 (1) A SETA may approve the suspension of a learnership agreement for a specified period if-
- (a) the employer and learner have agreed in writing to suspend the agreement; or
- (b) the employer or the learner has requested, on good cause, to suspend the agreement and the other parties to the learnership agreement have had the opportunity to make representations as to why the agreement should not be suspended.
- 10 (2) An application to suspend a learnership agreement in terms of subregulation (1) must be submitted to the SETA in writing together with-
- (a) in the case of subparagraph (1)(a), a written agreement signed by the employer and the learner setting out the reasons for the suspension; and
- 15 (b) in the case of subparagraph (1)(b), the reasons for the suspension and proof that the other parties to the learnership agreement have had the opportunity to make representations as to why the agreement should not be suspended.
- 20 (3) The parties to a suspended learnership agreement must take appropriate steps to reactivate the learnership programme on expiry of the approved period of suspension.

#### 10. Terminating learnership agreements

- (1) A SETA may approve the termination of a learnership agreement in terms of section 17(4)(b) of the Act if-
- (a) the employer and learner have agreed in writing to terminate the agreement;

- (b) the employer or learner has requested, on good cause, to terminate the agreement and the other parties to the learnership agreement have had the opportunity to make representations as to why the agreement should not be terminated;
- 5 (c) the employee has terminated the contract of employment with the employer; or
- (d) the training provider has requested on good cause to terminate the agreement and-
- (i) the other parties to the agreement have had the opportunity to make representations; and
- 10 (ii) the SETA and the employer have been unable to arrange for a new training provider party to be substituted **for** the old training provider party in accordance with regulation 8(1).
- (2) An application to terminate a learnership agreement in terms of subregulation (1) must be submitted to the SETA in writing together with-
- 15 (a) a copy of the relevant learnership agreement;
- (b) in the case of subparagraph (1)(a), a written agreement signed by the employer and the learner setting out the reasons for the termination.

#### 11. **Qualifications associated with learnerships and assessment**

- 20 (1) The training provider party to a learnership agreement **must** within 21 working days of the learner's final assessment **for** the qualification associated with the learnership, issue a written statement of results –
- (a) to the learner;
- (b) to the relevant SETA; and
- 25 (c) if that SETA is not the ETQA accredited for the qualification, the ETQA that is accredited for the qualification.

- 5 (2) If the learner is successful in the final assessment for the qualification associated with the learnership, the relevant SETA or, if that SETA is not the ETQA accredited for the qualification, the ETQA that is accredited for the qualification, must issue the learner with a certificate of achievement for the qualification within **45** working days of the final assessment.

## 12. Making of decisions by SETA

Unless indicated otherwise in these Regulations, a SETA must make any decision required in terms of these Regulations within **30** working days of receiving the relevant documents.

## 13. Keeping of records

- 10 (1) Every SETA must keep an updated record of-
- (a) all learnership agreements registered by the SETA, including the title and number of the learnerships;
  - (b) all grants paid by the SETA in respect of learnerships;
  - 15 (c) all alterations to the terms of learnership agreements referred to in regulation 7;
  - (d) all substitutions of parties to learnership agreements in terms of regulation 8;
  - (e) all suspensions of learnership agreements in terms of regulation 9;
  - (f) all learnership agreements successfully concluded, including the title and number of the learnerships;
  - 20 (g) all learnership agreements that the SETA did not register and the reasons for not registering the agreements; and
  - (h) all learnership agreements terminated in terms of regulation 10, including the reasons for termination.
- 25 (2) Records referred to in subregulation (1) may be kept in any form, provided that at least one set of the records is kept in hard copy.

**14. Employer may conclude agreement with ESDA regarding learnership**

- (1) An employer may conclude an agreement with an ESDA in terms of which the ESDA is to perform some or all of the employer's obligations or exercise some or all of the employer's rights-
- 5 (a) in terms of a learnership agreement with a section 18(1) learner or a section 18(2) learner;
- (b) in terms of a contract of employment with a section 18(2) learner
- (2) **An** employer may conclude an agreement contemplated in subregulation (1) only with an ESDA registered by the Director-General in terms of these regulations.
- 10 (3) An agreement contemplated in subregulation (1)-
- (a) may apply to a contract of employment or learnership agreement that has already been concluded as well as to contracts of employment or learnership agreements that are to be concluded at a future date;
- 15 (b) may apply to a contract of employment or learnership agreement that has already been concluded only once the contract of employment or learnership agreement has been amended in writing and signed by the parties to the contract or agreement;
- (c) does not affect any rights or duties in terms of a contract of employment of a section 18(1) learner.<sup>2</sup>
- 20 (4) If an agreement contemplated in subregulation (1) is concluded in respect of -
- (a) a section 18(1) learner, the ESDA may only perform those obligations and exercise those duties which are specifically identified in the learnership agreement as being transferred to the **ESDA**;

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<sup>2</sup> NOTE: An agreement in terms of section 17(7) of the Act does not affect the obligations of the employer under other laws. For example, the employer remains responsible under the Occupational Health and Safety Act 85 of 1993 in respect of employees under the employer's supervision.

- (b) a section 18(2) learner, the **ESDA** may perform any obligations and exercise any duties of the employer except those which are specifically identified in the learnership agreement or contract of employment as remaining within the responsibility of the employer.

- 5 (5) An agreement contemplated in subregulation (1) must be substantially in the form of Annexure C to these Regulations.<sup>3</sup>

#### 15. Application for registration of ESDA

An application for registration of an ESDA must be submitted to the Director-General in the form set out in Annexure D to these Regulations.<sup>4</sup>

#### 10 16. Requirements for registration of ESDA

- (1) The Director-General may register an ESDA if the Director-General is satisfied that the applicant-
- (a) has the necessary infrastructure, resources and systems to provide quality services to learners and employers;
  - 15 (b) will comply with all statutory requirements relevant to its operations;
  - (c) has effective financial management policies and procedures;
  - (d) has effective administrative **and** records management policies and procedures;
  - (e) has structures and processes for decision-making, accountability and control that will ensure good governance;
  - 20 (f) has the necessary skills to provide effective services as an **ESDA**;
  - (g) will maintain a high standard of ethical conduct in providing services as an ESDA; and

<sup>3</sup> A draft Annexure C has been included setting out the minimum requirements of an **ESDA** Agreement. Further consideration must be given to the appropriate form and content of an ESDA Agreement.

<sup>4</sup> A draft annexure D has been included to illustrate the kind of information that might be required by the Director-General in order to register an ESDA. Further consideration must be given to the appropriate form and content of the **ESDA** Registration form.

(h) will comply with any other reasonable requirements determined by the Director-General.<sup>5</sup>

- 5 (2) The Director-General may require an applicant to submit further information, particulars or documentation in support of any application for registration, within the time-period stipulated by the Director-General.

#### 17. Determining applications for registration of ESDA

- (1) If the Director-General decides to register an ESDA, the Director-General must-
- (a) enter the applicant's name in the register of **ESDAs**; and
  - (b) issue a certificate of registration to the **ESDA** stating the terms of registration.
- 10 (2) The certificate of registration of an ESDA must be substantially in the form of Annexure **E** to these **Regulations**.<sup>6</sup>
- (3) If the Director-General decides not to register an **ESDA**, the Director-General must advise the applicant in writing of the decision and provide the applicant with written reasons for the decision.

#### 15 18. Conditions of registration of ESDA

The Director-General may impose any reasonable conditions on the registration of an ESDA and may on reasonable grounds, amend or cancel any condition imposed or impose new conditions.<sup>7</sup>

#### 19. Deregistration of ESDA

- 20 (1) The Director-General may, on reasonable grounds, deregister an ESDA after-
- (a) notifying the ESDA in writing of the intention to cancel its registration and the reasons therefor;

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<sup>5</sup> Further consideration should be given to prescribing the functions and duties of **ESDAs**.

<sup>6</sup> A draft annexure E has been included to illustrate the possible form of an ESDA registration certificate

<sup>7</sup> Further consideration should be given to any reporting *or* other obligations of **ESDAs**.

- (b) giving the ESDA 30 days from the date of notice to make representations on why it should not be deregistered; and
- (c) considering any representations received in reaching a decision.’
- (2) If the Director-General deregisters an ESDA, the Director-General must –
- 5 (a) notify the ESDA of the decision in writing of the decision and provide reasons for the decision; and
- (b) remove the ESDA’s name from the register of ESDAs.
- (3) An ESDA which has been deregistered as contemplated in subsection (1) must return its certificate of registration to the Director-General within 30 days of receiving notice
- 10 of deregistration.

## 20. Referring of dispute

- (1) A **party** referring a dispute in terms of section 19(2) of the Act must submit a completed Form 7.11 published in terms of the Labour Relations Act 66 of 1995 to the Commission for Conciliation, Mediation and Arbitration.
- 15 (2) The relevant provisions of Parts C and D of Chapter VII of the Labour Relations Act 66 of 1995, read with the changes required by the context, apply in respect of a dispute in terms of section 19 of the Act.
- (3) Any party to a dispute regarding the quality of education and training provided by a training provider party to a learnership agreement or regarding the quality of a learner’s learning performance may in writing refer the dispute to the ETQA
- 20 accredited for the qualification associated with the learnership for resolution in accordance with the applicable policies and procedures of the ETQA.

## 21. Short title

These regulations are to be known as *the* Learnership Regulations, 2006.

## 22. Repeal of Regulation

The Regulation referred to in Annexure F is hereby repealed as a whole.

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<sup>8</sup> Further consideration should be given to specific grounds for cancelling the registration of an ESDA.

**Annexure A****APPLICATION TO REGISTER A LEARNERSHIP****Documents to accompany this application form:**

- The relevant SAQA qualification document downloaded from the SAQA website.
- If the applying SETA is not the accredited ETQA for the qualification associated with the learnership, proof of adequate arrangements with the relevant ETQA must **be** attached.

Learnership registration number : _____
Learnership registration date: _____
Learnership review date: _____
SETA responsible for learnership: _____
ETQA accredited for qualification associated with the learnership: _____
(For official use only)

1. SETA information
  - 1.1 Name of SETA: \_\_\_\_\_
  - 1.2 Name of Chamber (if applicable): \_\_\_\_\_
  - 1.3 Details of SETA **official** responsible for preparing the application
    - 1.3.1 Name: \_\_\_\_\_
    - 1.3.2 Telephone number: \_\_\_\_\_
  - 1.4 SETA's telephone number: \_\_\_\_\_
  - 1.5 SETA's fax number: \_\_\_\_\_
  - 1.6 SETA's postal address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17 SETA's e mail address: \_\_\_\_\_

## 2. Qualification information

2.1 Title of qualification associated with the learnership: \_\_\_\_\_

2.2 SAQA qualification ID number: \_\_\_\_\_

2.3 NQF level: \_\_\_\_\_

2.4 Expiry date of the qualification: \_\_\_\_\_

2.5 Minimum number of credits of the qualification: \_\_\_\_\_

2.6 Entry level requirements for the qualification: \_\_\_\_\_

2.7 Name of ETQA accredited for the qualification: \_\_\_\_\_

## 3. Learnership information

3.1 Is this an application to register a new learnership or to replace an existing learnership?

(tick relevant box)

3.1.1  new learnership

3.1.2  learnership to replace an existing learnership

3.2 If replacing an existing learnership, indicate the following:

3.2.1 Name of existing learnership: \_\_\_\_\_

3.2.2 Number of existing learnership: \_\_\_\_\_

3.3 Learnership title: \_\_\_\_\_

3.4 Review date of the learnership: \_\_\_\_\_

3.5 Number of credits to be earned through the learnership: \_\_\_\_\_

3.6 Related occupation (as per Organising Framework for Occupations – OFO):

\_\_\_\_\_

3.7 Occupation code (as per Organising Framework for Occupations – OFO) :

\_\_\_\_\_

#### 4. Learnership identification

4.1 How **was** the need for this learnership identified?

(tick the relevant box or boxes)

SETA sector **skills** plan

Skills plans from “adjacent” SETAs

SETA commissioned research

Workplace skills plans

Scarce skills list

Generally available research (specify): \_\_\_\_\_

\_\_\_\_\_

Other (specify): \_\_\_\_\_

4.2 What needs will the learnership address? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4.3 What **is** the specific purpose of the learnership? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5 Learnership outline in case of unit standards based qualification

Learnership title		Credit value of this learnership					
Qualification title		Qualification registration number					
ETQA accredited for qualification	NQF registration level	Credit value of qualification					
Purpose of the learnership							
Entry level requirements for the Learnership							
Unit Standard Title	US number	NQF Level	Credit value	Specific Outcomes for each Unit Standard	Percentage of learning at: Training Provider   Work Place	Specified Practical Workplace Experience Activities	Notional Hours
<b>Fundamental Unit Standards</b>							
				•		•	
				•		•	
				•		•	
				•		•	
TOTAL							TOTAL
<b>Core Unit Standards</b>							
				•		•	
				•		•	
				•		•	
				•		•	
TOTAL							TOTAL
<b>Elective Unit Standards</b>							
				•		•	
				•		•	
				•		•	
				•		•	
TOTAL							TOTAL



**7. Declaration by SETA**

**We declare that this application is a true and accurate reflection of the learnership, the qualification associated with the learnership and the rationale for the learnership.**

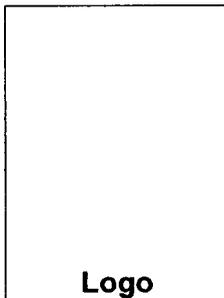
Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

at \_\_\_\_\_

SETA Executive Officer: \_\_\_\_\_  
Name Signature

ETQA Manager: \_\_\_\_\_  
Name Signature

Learnership Manager: \_\_\_\_\_  
Name Signature

**Annexure B****LEARNERSHIP AGREEMENT****PART A: TERMS AND CONDITIONS OF AGREEMENT****23. Declaration of the parties**

We understand that this Agreement is legally binding.

We understand that it is an offence in terms of the Skills Development Act 97 of 1998 ('the Act') to provide false or misleading information in this Agreement.

We agree to the following rights and duties.

**24. Rights and duties of learners, employers and training providers****(1) Rights of the Learner**

The learner has the right to:

- (a) receive an induction to the learnership;
- (b) be educated and trained under the learnership;
- (c) access to the required resources for the achievement of the specified outcomes for the structured learning component as well as the specified practical workplace experience activities of the learnership;
- (d) be assessed and have access to the assessment results for the structured learning component as well as the specified practical workplace experience activities of the learnership;
- (e) receive a written statement of results within 21 working days of the final assessment required in this learnership agreement;
- (f) if successful, be awarded a certificate of achievement for the qualification associated with the learnership within 45 working days of the learner's final assessment;

- (g) in the case of a section 18(2) learner, receive the agreed learnership allowance for the duration of the learnership;
- (h) raise grievances in writing with the SETA or the ETQA accredited for the qualification associated with the learnership concerning any shortcomings in the quality of the education and training under the learnership.

## (2) Duties of the Learner

The learner must:

- (a) carry out all occupationally related work for the employer required for the practical workplace experience activities specified in the learnership;
- 2.2.2 comply with the employer's workplace policies and procedures;
- 2.2.3 be available for, and participate in, all structured learning and practical workplace experience activities required by the learnership;
- 2.2.4 attend all theoretical learning sessions and practical learning activities with the training provider;
- 2.2.5 complete timesheets and projects **and** participate in any assessment activities that are required for the final assessment at the end of the learnership; and
- 2.2.6 undertake all learning relating to the learnership conscientiously.

## 2.3 Rights of the Employer

The employer **has** the **right** to require the learner to:

- perform duties in terms of this Agreement; and
- comply with the rules and regulations concerning the employer's workplace policies and procedures.

## 2.4 Duties of the Employer

The employer must:

- 2.4.1 comply with all duties in terms of the Skills Development Act and applicable legislation including:
- **Basic Conditions of Employment Act 75 of 1997;**
  - **Labour Relations Act 66 of 1995;**
  - **Employment Equity Act 55 of 1998;**
  - **Occupational Health and Safety Act 85 of 1993 (or Mine Health and Safety Act 27 of 1996);**
  - Compensation for Occupational Injuries and Diseases Act **130 of 1993;**
  - Unemployment Insurance Act 30 of 1996.
- 2.4.3 provide the facilities **and** resources required for the specified practical workplace experience activities of the learnership;
- 2.4.4 provide the learner with supervision, mentoring **and** coaching at work;
- 2.4.5 provide the learner with appropriate education **and** training to competently perform the specified workplace experience activities required by the learnership;
- 2.4.6 release the learner during normal working hours to attend off-the-job structured learning **required** by the learnership;
- 2.4.7 conduct on-the-job assessment for the specified workplace experience activities, or cause it to be conducted;
- 2.4.8 keep up to date records of workplace learning **and** periodically discuss progress with the learner and the training provider;
- 2.4.9 if the learner **was** not in the employment of the employer at the time of concluding this Agreement, –
- (a) **enter into a contract of employment with the learner for the duration of the learnership;**
  - (b) **advise the learner of the terms and conditions of his or her employment, including the learner allowance; and**

(c) **advise the learner of the employer's workplace policies and procedures.**

- 2.4.10 pay the learner the agreed learner allowance for the duration of the learnership;
- 2.4.11 apply the same disciplinary, grievance and dispute resolution procedures to the learner **as** to any other employee;
- 2.4.12 submit the signed learnership agreement to the **SETA** for registration.

## **25 Rights of the Training provider**

The training provider has the right to access the learner's portfolio of evidence and workplace learning related assessments.

## **26 Duties of the Training provider**

The training provider must:

- 2.6.1 provide the structured learning specified in the learnership;
- 2.6.2 provide the learner support **as** required by the learnership;
- 2.6.3 record, monitor and retain details of the education **and** training provided to the learner in terms of the learnership and periodically discuss progress with the learner and the employer;
- 2.6.5 conduct off-the-job assessments for the structured learning component specified in the learnership, or cause it to be conducted; and
- 2.6.6 ensure that the assessment against the outcomes of the qualification associated **with** the learnership is conducted at the end of the learnership; and
- 2.6.7 issue a written statement of results in respect **of** the learner's final assessment for the qualification associated with the learnership within 21 working days

**of** the assessment, to the learner, the SETA and the ETQA accredited for the qualification.

### 3. Termination of this Agreement

This learnership agreement terminates:

**3.1** on the termination date stipulated in Part B of this Agreement; or

**3.2** on an earlier date if:

**3.2.1** the learner has successfully completed the final assessment and fulfilled all requirements associated with the specified workplace experience activities of the learnership;

**3.2.2** the learner is fairly dismissed by the employer for a reason related to the learner's conduct or capacity as an employee;

**3.2.3** the SETA approves the termination of the Agreement in terms of the Learnership Regulations, 2006.

### 4. Disputes

**4.1** If there is a dispute concerning any of the following matters, it may be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA):

**4.1.1** the interpretation or application of any provision **of** this Agreement, the learner's contract of employment or a sectoral determination made in terms of section 18(3) of the Act;

**4.1.2** Chapter 4 of the Act;

**4.1.3** the termination of this Agreement or, in the case of a section 18(1) learner, the learner's contract of employment.

- 4.2 If there is a dispute regarding the quality of education and training provided by the training provider or regarding the quality of the learner's learning performance, it may be referred to the ETQA accredited for the learnership qualification for resolution in accordance with the applicable policies and procedures of the ETQA.

**PART B: DETAILS OF THE LEARNERSHIP AND THE PARTIES TO THIS AGREEMENT****Please take note of the following:**

- If the learner is not already in the employ of the employer, the learner and employer must conclude a contract of employment.
- If the learner is under 21 years then the learner's parent or guardian must be a party to this Agreement and must complete section 3. The parent or guardian ceases to be a party to this Agreement once the learner turns 21.
- If a group of employers are party to this Agreement, one of the employers must perform the function of a lead employer. The lead employer must complete section 4. Details of the other employers must be attached on a separate sheet.
- If the employer and the accredited training provider are the same entity, the employer must complete sections 4 and 5.
- If a group of training providers are party to this Agreement, one of the providers must perform the function of lead training provider. The lead training provider must be accredited for the qualification and must complete section 5. Details of the other training providers must be attached on a separate sheet.
- A copy of the learning programme outline and implementation plan must be attached.
- If the employer has concluded an agreement with an ESDA in terms of which the ESDA is to perform some or all of the employer's obligations or exercise some or all of the employer's rights in terms of the learnership agreement, section 6 must be completed.

**25. Learnership details**

- (1) Name of learnership: \_\_\_\_\_
- (2) Department of Labour registration number of learnership: \_\_\_\_\_
- (3) Commencement date of learnership agreement: \_\_\_\_\_
- (4) Termination date of learnership agreement: \_\_\_\_\_

- (5) Occupation that this learnership is related to (as per the Organising Framework of Occupations (OFO): \_\_\_\_\_
- (6) Name of the qualification: \_\_\_\_\_
- (7) SAQA Qualification ID number: \_\_\_\_\_

## 26. Learner details

- (1) Fullname: \_\_\_\_\_
- (2) Identity number: \_\_\_\_\_
- (3) Date of birth: \_\_\_\_\_
- (4) Sex:  Male  Female
- (5) Race:  African  Indian  
 Coloured  White
- (6) Do  Other (specify): \_\_\_\_\_ you  
have a disability, as contemplated by the Employment Equity Act 55 of 1998?<sup>9</sup>  
 Yes (specify): \_\_\_\_\_  No
- (7) Home address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>9</sup> The Employment Equity Act defines a disability as a long-term or recurring physical or mental impairment which substantially limits prospects of entry into, or advancement in, employment.

- (8) Telephone number: \_\_\_\_\_
- (9) Postal address (if different from above): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (10) E-mail address: \_\_\_\_\_

(11) Are you a South African citizen?

Yes

No (specify and attach documents indicating your status, for example: permanent residence, study permit, etc):

\_\_\_\_\_

(12) Highest level qualification:

(Tick the relevant box)

NQF level/ nomenclature		Other nomenclature	
8	<input type="checkbox"/>	Doctoral degrees, PhD	<input type="checkbox"/>
7	<input type="checkbox"/>	Masters degrees	<input type="checkbox"/>
6	<input type="checkbox"/>	4 year Degrees	<input type="checkbox"/>
5	<input type="checkbox"/>	National diplomas and higher certificates	<input type="checkbox"/>
4	Further Education & Training Certificate <input type="checkbox"/>	Grade 12, matriculation exemption NTC 4	<input type="checkbox"/>
3	<input type="checkbox"/>	Grade 11, NTC 3	<input type="checkbox"/>
2	<input type="checkbox"/>	Grade 10, NTC 2	<input type="checkbox"/>
1	General Education & Training Certificate <input type="checkbox"/>	Grade 9, School leaving certificate, NTC ■ ABET level 4	<input type="checkbox"/>

(13) What is the title of your highest qualification? \_\_\_\_\_

(14) Have you previously undertaken a learnership?

Yes (specify title and code):

\_\_\_\_\_

No

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(15) Were you employed by your employer before concluding this Agreement?

Yes

No

(16) If you were unemployed before concluding this Agreement, state for how long: \_\_\_\_\_

(17) If you are employed, when did you start work with your employer?

\_\_\_\_\_

**27. Parent or Guardian details**

(To be completed if learner is a minor –i.e. **an** unmarried person under 21 years)

(1) Full name: \_\_\_\_\_

(2) Identity number: \_\_\_\_\_

(3) Home address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(4) Postal address (if different **from** above): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(5) Telephone number (home and work): \_\_\_\_\_

(6) E-mail address: \_\_\_\_\_

**28. Employer details**

(1) Legal name of employer: \_\_\_\_\_

(2) Trading **name** (if different from above): \_\_\_\_\_

(3) Are you liable for the skills development levy?

Yes

No

If yes, what is your SDL number: \_\_\_\_\_

(4) Name of SETA with which you are registered: \_\_\_\_\_

(5) What is the Standard Industrial Classification (SIC) code that applies to your core business: \_\_\_\_\_

(6) Are you acting as the Lead Employer?

Yes

No

(7) Business address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(8) Postal address (if different from 4.7): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(9) Name of contact person: \_\_\_\_\_

(10) Telephone No: \_\_\_\_\_

(11) Fax No: \_\_\_\_\_

(12) E-mail address: \_\_\_\_\_

**29. Training Provider details**

(1) Legal name of Training Provider: \_\_\_\_\_

(2) Trading name (if different from above): \_\_\_\_\_

(3) Are you acting **as** the Lead Training Provider?

Yes

No

(4) Are you liable for the skills development levy?

Yes

No

If yes, what is your SDL number: \_\_\_\_\_

(5) Name of SETA with which you are registered: \_\_\_\_\_

(6) What is the Standard Industrial Classification (SIC) code that applies to your core business: \_\_\_\_\_

(7) Name of ETQA that **has** accredited your institution: \_\_\_\_\_

(8) Accreditation number and review date: \_\_\_\_\_

(9) Business address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(10) Postal address (if different **from 5.10**): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(11) Name of contact person: \_\_\_\_\_

(12) Telephone number: \_\_\_\_\_

(13) Fax number \_\_\_\_\_

(14) E-mail address: \_\_\_\_\_

**30. ESDA details (if applicable)**

(1) Legal name of **ESDA**: \_\_\_\_\_

(2) Trading name (if different **from** above): \_\_\_\_\_

(3) Registration number: \_\_\_\_\_

(4) Business address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(5) Postal address (if different from 6.4): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(6) Name of contact person: \_\_\_\_\_

(7) Telephone number: \_\_\_\_\_

(8) Fax number \_\_\_\_\_

(9) E-mail address: \_\_\_\_\_

(10) If the learner is a section 18(1) learner, list below the obligations and duties of the employer that are transferred to the **ESDA**:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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- (11) If the learner is a section 18(2) learner, list below the obligations and duties of the employer that remain within the responsibility of the employer:

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- (12) Attach a copy of the agreement between the employer and the ESDA.

**31. Terms and conditions of employment**

- (1) **Are** the learner's terms of employment determined by a document of general application (for example, sectoral determination, bargaining council agreement, collective agreement.)

Yes (specify): \_\_\_\_\_  No

- (2) Attach a copy of a document reflecting the learner's conditions of employment (for example: contract of employment, written particulars of employment.)

**32. Signatories**

**Learners signature:**

**Parent or Guardian's signature**

(Only if the learner is a minor)

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness signature:

Witness signature:

\_\_\_\_\_

Date:  
\_\_\_\_\_

Date:  
\_\_\_\_\_

**Employer or Lead Employer's  
signature**

\_\_\_\_\_

Date:

\_\_\_\_\_

Witness signature:

\_\_\_\_\_

Date:

\_\_\_\_\_

**Training Provider or Lead Training  
Provider's signature**

\_\_\_\_\_

Date:

\_\_\_\_\_

Witness signature:

\_\_\_\_\_

Date:

\_\_\_\_\_

**Official use only**

<b>Learnership Agreement Number</b>	_____
<b>Registration date of the Agreement</b>	_____
<b>Signature of SETA Official (Learnership Manager)</b>	_____

**TO BE COMPLETED BY EACH TRAINING PROVIDER IF A GROUP OF TRAINING PROVIDERS IS PARTY TO THE AGREEMENT**

**Training Provider 1**

Legal name of training provider: \_\_\_\_\_

Name of ETQA that **has** accredited your **institution:** \_\_\_\_\_

Accreditation number and review date: \_\_\_\_\_

Name of contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Training Provider 2**

Legal name of training provider: \_\_\_\_\_

Legal name of training provider: \_\_\_\_\_

Accreditation number and review **date:** \_\_\_\_\_

Name **of** contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

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**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TO BE COMPLETED BY EACH EMPLOYER IF A GROUP OF EMPLOYERS IS PARTY TO THE AGREEMENT**

**Employer 1**

Legal name of employer: \_\_\_\_\_

Name of contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Employer 2**

Legal name of employer: \_\_\_\_\_

Name of contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## Annexure C

## AGREEMENT BETWEEN EMPLOYER AND ESDA



## MINIMUM TERMS AND CONDITIONS OF AGREEMENT

An agreement between an employer and an ESDA as contemplated in Regulation 14 must contain the following minimum terms and conditions:

33. **A sufficient description of the parties, including legal names, trading names, relevant registration details, addresses, responsible persons and their contact details.**
34. **The scope of the agreement**
  - (1) If the agreement is in respect of contracts of employment or learnership agreements that have already been concluded, the agreement must –
    - (a) identify the relevant contracts of employment or learnership agreements to which the agreement applies;
    - (b) contain **an** acknowledgement that the agreement will apply to these contracts of employment or learnership agreements only once they have been amended in writing and signed by the parties to the contracts of employment or learnership agreements.
  - (2) If the agreement is in respect of contracts of employment or learnership agreements to be concluded by the employer at a future date, the agreement must identify the future contracts of employment **or** learnership agreements to which the agreement will apply.
35. **The duties of the ESDA under the agreement, including -**
  - (1) in respect of section 18(1) learners, the obligations and duties of the employer under the learnership agreement that have been transferred to the **ESDA**;
  - (2) in respect **of** section 18(2) learners, authority for the **ESDA** to perform the obligations and exercise the duties of the employer except those specifically identified in the learnership agreement or contract of employment **as** remaining within the responsibility of the employer.

36. **The duties of the employer under the agreement.**
37. **A warranty by the ESDA regarding the standard of services to be provided under the agreement.**
38. **The duration of the agreement.**
39. **Provision for amending the agreement.**
40. **Provision for terminating the agreement.**
41. **Provision for the expedited arbitration of any dispute regarding the interpretation or application of the agreement.**

**Annexure D**

**APPLICATION TO REGISTER AN ESDA**



Place: .....

Date: .....

(IN TRIPLICATE)

The Director-General  
Department of Labour  
Private Bag .....

**1. Details of Applicant**

1.1. Legal name of ESDA: \_\_\_\_\_

1.2. Trading name (if different from above): \_\_\_\_\_

1.3. Type of legal entity: \_\_\_\_\_

1.4. Registration number: \_\_\_\_\_

1.5. Business address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

1.6. Postal address (if different from above): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

1.7. Name of responsible person: \_\_\_\_\_

1.8. Telephone number: \_\_\_\_\_

1.9. Fax number \_\_\_\_\_

1.10. E-mail address: \_\_\_\_\_

**2. Identification of employment and skills development services to be provided**

- 2.1. Provide details of the industries/sectors and geographic regions in which you intend providing employment and skills development services:

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- 2.2. Identify the learnerships in respect of which you intend offering employment and skills development services:

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- 2.3. Provide details of any needs analysis conducted to determine expected demand for your services:

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**3. Documents to be attached to application**

- 3.1. Certified copy of entity registration documents
- 3.2. Proof of compliance with relevant statutory requirements
- 3.3. Copies of financial management policies and procedures
- 3.4. Copies of administrative and records management policies and procedures
- 3.5. A description of the governance structures of the organisation
- 3.6. Proof of **skills** of personnel
- 3.7. Proof of financial capacity
- 3.8. A needs analysis and expected demand report.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_  
at \_\_\_\_\_

Authorised ESDA official: \_\_\_\_\_  
Name Signature

Annexure E

CERTIFICATE OF REGISTRATION OF ESDA



This is to certify that Director-General: Labour **has** registered

[Name of ESDA]

.....

.....

of [Business address of ESDA)

.....

.....

.....

as an Employment and Skills Development Agency (“ESDA”) in terms of regulation 16 of the Learnership Regulations, 2006 subject to the following conditions:

.....

.....

.....

.....

.....

Director-General: Labour

Date: ..... 20...

**Annexure F**

## REGULATIONS REPEALED

<b>Regulations No.</b>	<b>Date</b>	<b>Title</b>	<b>Extent of Repeal</b>
R330	3 April 2001	Regulations Concerning the Registration of Intended Learnerships and Learnership Agreements	As a whole
			As a whole