
Memorandum of Understanding between ESETA and



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PART V. ANNEXURE B

PART 1: INTRODUCTION

1. Definitions

For the purpose of this agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated

- 1.1. "**The Agreement**" means the agreement together with all schedules and Appendices attending hereto or referred to here in which schedules and appendices shall be signed and dated by the parties thereto;
- 1.2. "**SAQA**" means the South African Qualifications Authority established by section 3 of the SAQA Act;
- 1.3. "**National Qualification Framework**" means the National Qualifications Framework (NQF) approved in terms of the SAQA act for the registration of national standards;
- 1.4. "**Accreditation**" means the certification, usually for a particular period of time, of a person, a body or an institution as having the capacity to fulfill a particular function in the quality assurance system set up by SAQA with certain additional requirements as laid down by a particular ETQA;
- 1.5. "**ETQA**" means a body accredited by SAQA in terms of section 5(1)(a) of the SAQA act, responsible for monitoring and auditing Training Providers, against SAQA criteria in having the capability in delivery training as required by national standards or qualifications utilising an Quality Management system which is suitable;
- 1.6. "**CHIETA**" means Sector Education and Training Authority for The Chemical Industry as an accredited ETQA with SAQA;
- 1.7. "**ESETA**" means Energy Sector Education and Training Authority as an accredited ETQA with SAQA;
- 1.8. "**Learner**" means an individual who is participating in a learning program with a purpose of achieving credits for standards or qualifications;
- 1.9. "**Learning program**" means the combination of courses, modules or units of learning (learning material and methodology) by which learners can achieve the learning outcomes for a specific qualification;
- 1.10. "**Moderation**" means the process which ensures that assessments of the outcomes described in the National Qualifications Framework standards and qualifications is fair, valid and reliable;

- 1.11. **"Moderator"** means the person who moderates assessments;
- 1.12. **"Party"** means a signatory to this agreement;
- 1.13. **"Quality Assurance"** means the process of ensuring that the degree of excellence specified is achieved;
- 1.14. **"SAQA Act"** means the South African Qualification Authority established in section 3 of the SAQA Act;
- 1.15. **"Skills Development Act"** means the Skills Development Act, 1998 (Act No. 97 of 1998)
- 1.16. **"Registered Assessor"** means an Assessor with specific Subject Matter Expertise which is registered with the relevant ETQA

2. Parties to the Memorandum

- 2.1. The parties are both ETQA's which;
 - 2.1.1. Have been accredited and assigned functions by SAQA under section 5(1)(b)(i) of the SAQA Act as bodies responsible for accreditation, monitoring and auditing of learner achievements in terms of national standards and qualifications: or
 - 2.1.2. Have been established as ETQA's in terms of their founding legislation and are performing functions as an ETQA in the sector

3. Purpose of the Memorandum

- 3.1. Formalise the relationship between the Parties
- 3.2. To promote a coherent and effective quality assurance system for education and training in the sector
- 3.3. To provide terms and conditions under which:
 - 3.3.1. Clarification will be reached in the manner the parties must co-operate with each other, co-ordinate the performance of their functions and promote the consistency of their respective quality assurance policies and procedures;
 - 3.3.2. The expectations of the parties with respect to their respective accredited providers can be clarified.
- 3.4. This memorandum does not in any way limit any statutory powers and functions of the parties.

PART 2: PRINCIPLES OF CO-OPERATION

4. Principles of co-operation

In order to achieve the purpose of this memorandum, the parties have adopted and will comply with the principles of co-operation as set out below.

- 4.1. The parties agree that, in the performance of their quality assurance functions they will:
 - 4.1.1. promote a coherent and effective quality assurance system;
 - 4.1.2. promote and ensure the consistency of their quality assurance policies, procedures and system as a whole;
 - 4.1.3. avoid unnecessary duplication and not encroach unnecessarily on the quality assurance functions or responsibilities of the other party;
 - 4.1.4. co-operate with each other in mutual trust and good faith;
 - 4.1.5. assist and support each other in respect of agreed services between the parties of this agreement;
 - 4.1.6. inform each other of, and consult each other on, matters of common interest;

PART 3: PROMOTING CONSISTENCY

5. Promoting consistency of quality assurance policies and procedures

The parties agree that their respective quality assurance policies and procedures must be compatible. To this end, the parties will endeavor to ensure consistency in the following areas:

- 5.1. quality managing of ETQA functions;
- 5.2. learning programme approval;
- 5.3. accrediting, monitoring and evaluating education and training providers;
- 5.4. registering assessors;
- 5.5. registering moderators;
- 5.6. moderating and verifying learner achievements;
- 5.7. certifying of learners;

- 5.8. maintaining a SAQA accepted database and submission of reports to SAQA
- 5.9. delegating ETQA functions to education and training providers and other appropriate bodies
(The Eseta will not delegate ETQA functions to other bodies)
- 5.10. research and best practice bench-marking regarding quality assurance;
- 5.11. co-operating with and assisting moderating bodies approved by either party to this agreement to determine whether an assessment decision of one of the ETQA's is credible in terms of fairness, validity, reliability and practicability
- 5.12. fees and charges for the rendering of ETQA services (where applicable)

6. Prior notice of application and recommendations

The parties concerned will give each other reasonable prior notice in writing of, and adequate opportunity to make representations concerning;

- 6.1. any application by a party to SAQA for the extension or other variation of their accreditation as an ETQA that directly affects the interests of any other party; and
- 6.2. any recommendation by a party to a National Standards Body for new standards or qualifications or for modifications to existing standards or qualifications that directly affects the interests of any other party.
- 6.3. any change in accreditation status or scope of a constituent provider as relevant to either party to this agreement.

7. Co-operation with Moderating Bodies

The parties undertake to co-operate with and assist:

- 7.1. Any Moderating Body appointed by SAQA to determine whether their assessment decisions are fair, valid and reliable; and
- 7.2. Any Moderating Body appointed by the parties to ensure consistency across standards and qualifications

8. Data collection, record keeping and documents

The parties undertake:

- 8.1. to ensure the consistency of their data collection and their record keeping by agreeing on the types of data to be communicated and recorded
- 8.2. to agree the specification of the documentation to be completed as well as decide on the format for certification
- 8.3. To promote compatibility in the form and content of their official documents between sectors, including any certificates they may issue and application forms they may require.

9. Confidentiality

- 9.1. The parties acknowledge that any information supplied in connection with this agreement or in connection with each other's technical, industrial or business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("the receiving party") may consist of confidential or proprietary data, which is not available in the public domain
- 9.2. The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purpose of this agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purpose of this agreement.
- 9.3. The parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and will maintain the confidentiality of all personal information lodged by learners, candidates, the clients members and any other person to whom any such confidential or proprietary data may have been or will be disclosed.
- 9.4. Should this agreement be canceled for whatever reason, each party shall return to the other on demand, all documents, written instructions, notes, memoranda, disks or records and other documentation of whatsoever nature or description relating to the confidential information which it acquired or may acquire or came into its possession and any such confidential information stored by electronic means shall forthwith be destroyed.

10. Implementation of this Memorandum

- 10.1. The parties shall develop mechanisms and standard operating procedures for implementing this Memorandum of understanding.
- 10.2. The parties shall meet on a regular basis in order to monitor the effective implementation of this memorandum.
- 10.3. In this regard, the parties undertake:
 - 10.3.1. To ensure the participation of senior or adequately authorized representatives in the process of monitoring this agreement
 - 10.3.2. To meet at least on a quarterly basis
 - 10.3.3. To develop appropriate mechanisms and procedures for the implementation and monitoring of the Memorandum and to determine appropriate time schedules for this purpose; and
 - 10.3.4. To review the effectiveness of the Memorandum on an annual basis.

PART 4: GENERAL

11. Further agreements between parties

- 11.1. Where necessary or appropriate, the parties will conclude further agreements in order;
 - 11.1.1. To clarify their quality assurance roles, functions and responsibilities; and
 - 11.1.2. To establish further mechanisms and procedures for co-operation.
- 11.2. Where the two parties have overlapping jurisdictions and responsibilities, the parties concerned undertake to explore a proper and appropriate delineation of responsibilities and functions in order to eliminate unnecessary duplication or ambiguity in the quality assurance system including, where appropriate, delegating functions in accordance with the applicable legislation.

12. Agent

This understanding does not constitute either of the parties as the agent of the other for any purpose whatsoever and neither party will be entitled to act on behalf of, or to represent the other unless duly authorized thereto in writing by the other party to do so. This agreement is not merely a delegation of functions but acts to involve participation and involvement of all parties, which form part of the system of assuring the quality of education and training.

13. Financial arrangements between parties

- 13.1. Each party recognises that it is responsible for financing its own quality assurance functions and activities with respect to their constituent training providers. However, the parties agree to undertake co-operative quality assurance projects where such projects are necessary or appropriate and will promote the coherence of the system. The parties to the project concerned will agree the terms of financing the co-operative project.
- 13.2. For programme approval and programme specific quality assurance and support services, the parties shall agree to costs, (where applicable)

14. Amendments and New parties to the Memorandum

Any amendment to this Memorandum will give rise to the drafting of a new MOU that must be in writing, and must be agreed to and signed by all the parties. The same is applicable if the parties agree to introduce a new party to the MOU.

15. Review of the Memorandum

All parties to this agreement will annually review the memorandum through their internal review processes. Should this review determine the need to make amendments to the memorandum, the suggested changes should be communicated to the other party and measures implemented to bring the changes into effect.

16. Dispute resolution

Should any dispute or difference arise between the parties with regard to interpretation and/or implementation of any one or more of the provisions of this agreement, either party shall be entitled to submit such dispute or difference to arbitration in pursuance of 17 below.

No such submission to arbitration may, however, be effected unless the parties shall during a period of at least 14 (fourteen) days after such dispute has arisen, have *bona fide* endeavored to settle the dispute on a amicable basis.

17. Arbitration

Differences concerning the application or interpretation of the Memorandum:

The parties adopt the following procedure for the resolution of any differences that may arise between the parties concerning the application or interpretation of this Memorandum:

The parties must initially make all reasonable efforts to settle any such difference; if the difference remains unresolved, any party may refer it for arbitration by an arbitrator agreed to by the parties to the difference. If agreement cannot be reached on an arbitrator, then the chairperson of the South African Qualifications Authority must appoint an arbitrator to determine the matter;

The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality. The arbitrator's determination is final and binding on the parties; and the parties to the dispute must share the costs of the arbitration equally.

18. Obligation of parties

Parties to this agreement shall provide ready access to one another's representative as may be necessary to enable him/her to perform the services contemplated in this agreement.

Each party will comply at its own expense with any national, provincial and/or municipal enactments, regulations, bylaws, notices, directions, orders for, requirements, or demands of any Government, municipality and/or any other authority affecting this agreement from time to time provided that if one party is prejudicially affected by any amendments subsequent to the effective date, such party shall be entitled to terminate the agreement with 30 (thirty) days written notice.

19. Termination of the Memorandum

Any party may withdraw from this memorandum by giving the other parties one month's notice in writing sent by registered post.

20. Communication

Any communication required or permitted under this agreement will be valid and effective only if in writing. Written notice or communication actually received by a party shall be regarded as adequate communication provided it is sent to and delivered in accordance with stated guidelines.

20.1. Sent by prepaid registered post to its domicilium citandi et executandi; or

20.1.1 Delivered by hand to the responsible person during ordinary business hours at the domicilium citandi et executandi and shall be deemed to have been received, in the case of sending by prepaid registered post on the fifth business day after posting (unless the contrary is proved) an in the case of delivery by hand, on the day of delivery.

21. Domicilium

The parties choose the addresses set out hereunder as their domicilia citandi et executandi for all purposes under this Agreement.

The party concerned, and delivered by registered mail to the other party must give notice of change of address in writing.

22. Signatures of the parties:

**Energy Sector Education and Training Authority at:
35 Prichard Street
19th Floor
1066 Old Mutual Building
JOHANNESBURG
2001**

Signed at.....on this theday of 2004

.....
Full Name and Signature: **ESETA - CEO**

Witnesses:

1. 2.
Name: Name:
Address: Address:

Memorandum of Understanding between the ESETA and

.....
.....

The SETA's details

Signed at.....on this theday of 2003

.....

Full Name and Signature: **SETA - CEO**

Witnesses:

1.	2.
Name:	Name:
Address:	Address:
.....
.....