

MEMORANDUM OF AGREEMENT

Entered into by and between

THE NATIONAL DEPARTMENT OF PUBLIC WORKS

(Hereinafter referred to as NDPW)

(Duly represented by JAMES MASEKO, in his capacity as Director General of the National Department of Public Works, or his duly assigned representative)

**AND**

CONSTRUCTION EDUCATION AND TRAINING AUTHORITY

(Hereinafter referred to as "CETA")

(Duly represented by THEMBA DLAMINI in his capacity as Chief Executive Officer of the CETA, or his duly assigned representative)

**AND**

XXXXX Province or Municipality

(Duly represented by XXXXX in his/her capacity as XXXXX of the XXXXX Province or Municipality, or his/her duly assigned representative)

## **1. INTRODUCTION**

- 1.1 The NDPW, CETA and XXXXX Province or Municipality are entering into this Memorandum of Agreement (MOA) recognising that the Skills Development Act No. 97 of 1998, the Skills Development Levies Act No. 9 of 1999, the Public Finance Management Act No. 1 of 1999, and the Municipal Financial Management Act No. 56 of 2003 lay the basis for the delivery of skills development in South Africa.
- 1.2 The CETA being tasked with the development of skills of South Africans in the construction sector will allot funds from the Skills Development Levy to the Expanded Public Works Programme (EPWP) for the purpose of training manager contractors and supervisors employed on EPWP labour-intensive infrastructure projects.
- 1.3 This MOA defines the general obligations of the NDPW, CETA and XXXXX Province or Municipality, thereby establishing the roles and responsibilities of the NDPW, CETA and XXXXX Province and Municipality in the operation, management and delivery of training and skills development in terms of the MOA.
- 1.4 The MOA furthermore establishes the targets the NDPW, CETA and XXXXX Province or Municipality will seek to achieve and also prescribe the reporting and monitoring process.
- 1.5 The MOA also establishes the governance structure and mechanisms for the provision of contractor training and skills development through the labour-intensive infrastructure projects under the EPWP.

## **2. PREAMBLE**

### **WHEREAS**

The NDPW, CETA and XXXXX Province or Municipality embarked on a joint training programme.

### **AND WHEREAS**

XXXXX Province or Municipality has agreed to allocate on-site training projects to Learner Contracting Companies for labour intensive construction and maintenance of low-volume roads, pipelines, sidedrains, sidewalks and other mutually agreed labour-intensive projects for the period of the learnership agreements.

### **AND WHEREAS**

The CETA agreed to the provision of Construction Contractor – NQF Level 2 (LIC) and Construction Supervisor – NQF Level 4 (LIC) learnerships for labour-intensive contracts, and has agreed to make application to the Department of Labour for the provision of financing in order that the CETA can make provision for 3,000 learnerships for labour-intensive contractors.

### **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

## **3. DEFINITIONS**

In this agreement, unless the context indicates otherwise-

“Accredited Training Provider” means a body that delivers learning programs, which culminate in specified National Qualifications Framework standards or qualifications and/or manages the assessments thereof.

“Agreement” means agreement as set out in this document, including all annexures hereto.

“CETA”	means the Construction Education and Training Authority, a sector education and training authority established in terms of section 9(1) of the Skills Development Act of 1998.
“EPWP”	means the Expanded Public Works Programme, a national programme of the government of South Africa, approved by Cabinet.
“Executive Committee”	means duly authorised representatives of NDPW, CETA, and XXXXX Province or Municipality, appointed to co-ordinate, control, and oversee the implementation of the Learnership on XXXXX Province or Municipality.
“Labour-intensive infrastructure projects”	means total or sections of infrastructure projects, selected by the XXXXX Province or Municipality, designed and constructed, provided to the sub-employer as contracts of work, in terms of the Code of Good Practice for Special Public Works Programmes as gazetted by the Department of Labour, and in accordance with the tender and design guidelines for labour intensive projects, issued by the National Department of Public Works and suitable for training and development of emerging labour intensive construction contractors.
“Lead Employer”	means XXXXX Province or Municipality.
“Learner”	means a person identified as a learner in terms of Part B2 of a Learnership Agreement.
“Learner Contracting Company”	means the juristic entity formed by natural persons who have entered into Learnership Agreements as the team of a manager and a number of supervisors, which individuals are to receive training and independent project experience in terms of the Learnership Agreement (Construction Contractor –

NQF Level 2 (LIC) for Contractors (Construction Supervisor – NQF Level 4 (LIC) for supervisors).

“Learnership Agreement”	means an agreement entered into between an Employer, a learner and a Training Provider in terms of section 14 of the Skills Development Act No 97 of 1998.
“Management Plan”	means the management plan for the management of the learnerships under the EPWP as prepared by NDPW and CETA and which forms part of this agreement.
“Management Committee”	means the Executive Committee, as well as duly authorised representatives of the appointed Training Provider, the appointed mentoring company, and of the learners.
“MOA”	means Memorandum of Agreement as set out in this document entered into by and between the NDPW, CETA and XXXXX Province or Municipality.
“Municipal Finance Management Act”	means the Municipal Finance Management Act, 2003 (Act No 56 of 2003).
“NDPW”	means the National Department of Public Works
“Operating Staff”	means full time senior member/s of the XXXXX Province or Municipality involved in decision making and implementation of EPWP learnerships.
“Part B of a Learnership Agreement”	means that part of the Learnership Agreement wherein the Learner provides his personal particulars.
“Parties to the Agreement”	means the NDPW, CETA and XXXXX Province or Municipality.

“Public Bodies”	means a department (National or Provincial), trading entity, constitutional institution, municipality, public entity or municipality.
“Public Finance Management Act”	means the Public Finance Management Act, 1999 (Act No 1 of 1999).
“SAQA”	means the South African Qualifications Authority established by Section 3 of the SAQA Act.
“SETA”	means Sector Education and Training Authority.
“Skills Development Act”	means the Skills Development Act (Act No. 97 of 1998).
“Standard Advertisement”	means the form of advertisement to be used by XXXXX Province or Municipality in the advertising of the learnerships and which is “Annexure EB” to the attached management plan.
“Sub-Employer”	means the Learner Contracting Company.
“Working days”	means all calendar days, excluding all Saturdays, Sundays, National Public Holidays and the construction Christmas shutdown.
XXXXX	means XXXXX Provincial department or Municipality.

#### **4. INTERPRETATION**

4.1 The head-notes to various clauses of this Agreement are used for ease of reference and will have no bearing on the interpretation of the terms of this Agreement. Such headings shall not be deemed to govern, modify or affect the scope, meaning or any part on it, nor shall such heading otherwise be given any legal effect.

4.2 The law applicable to this Agreement is the law of the Republic of South Africa.

## **5. OBLIGATIONS OF THE CETA**

5.1 The CETA will disburse funds allocated in terms of its CETA learnership funding model to be used for learnerships for (XXXXX number) of learner contractors (Construction Contractor - NQF Level 2 (LIC)) and (XXXXX number) of learner supervisors (Construction Supervisor – NQF Level 4 (LIC)) in XXXXX to be trained and/or assessed over the period of the learnerships to a relevant NQF qualification by which the person will be capable of carrying out labour-intensive construction works.

5.2 The CETA will supply a list of accredited training providers to the EPWP to facilitate the written assessments of potential learners, according to the attached management plan.

5.3 The CETA will supply a list of accredited training providers to the EPWP to facilitate the training described in 5.1 above, according to the attached management plan. The CETA, together with NDPW will liaise with the various local and provincial government bodies responsible for the labour-intensive infrastructure projects, the Learners, and the Learner Contracting Companies.

5.4 The CETA shall appoint a representative to sit on the Executive and Management Committees, and ensure compliance with CETAs roles and responsibilities.

5.5 The CETA will provide quarterly progress and quality reports to the National Department of Public Works and the Department of Labour.

5.6 The CETA will ensure that all accredited training providers comply with the conditions of their accreditation. The CETA will further provide adequate project management to ensure effective quality assurance throughout the training and/or assessment of the learners. CETA will supply monthly moderation reports to the Management committee.

5.7 The CETA shall ensure payment within 20 working days within receipt of correct invoice.

- 5.8 The CETA shall fulfil the ETQA responsibilities in terms of the SAQA Act.
- 5.9 The CETA shall maintain a database of all learners.
- 5.10 The CETA shall ensure that a clause is inserted into the Learnership Agreement for the training projects that states that the learnership allowance related to on-site experience is included within the contract price for the contractor.

**6. OBLIGATIONS OF THE DEPARTMENT OF NATIONAL DEPARTMENT OF PUBLIC WORKS**

- 6.1 NDPW, together with CETA and the public bodies will formulate ongoing guidelines and processes for the selection of Learners and for the provision of on-site training projects to the Learner Contracting Companies, in accordance with the attached management plan.
- 6.2 NDPW shall inform, advise and advocate the implementation of the EPWP Contractor Learnership Programme with various Public Bodies.
- 6.3 NDPW will facilitate the selection process of learners together with the appointed accredited training provider, CETA and XXXXX Province or Municipality as outlined in the attached management plan.
- 6.4 NDPW will appoint, provide, monitor and evaluate independent mentoring services to all the Learners through specialist mentors evaluated by the Executive Committee and invited specialists (including the financial service provider).
- 6.5 NDPW shall appoint a representative to sit on the Executive and Management Committees, and ensure compliance of NDPWs roles and responsibilities.
- 6.6 NDPW shall facilitate the workers life skills training which shall be conducted by the appointed Department of Labour training providers.
- 6.7 NDPW and XXXXX Province or Municipality, as assisted by the registered assessor and/or mentors will identify areas of technical training required by the learners and seek the funding therefore.



6.8 NDPW shall be responsible for the coordination of overall management and implementation of the programme.

**7. OBLIGATIONS OF XXXXX PROVINCE OR MUNICIPALITY**

7.1 XXXXX Province or Municipality will ensure that suitable contracts, in accordance with the conditions of the EPWP are designed timeously and that sufficient funding as specified in the management plan is available for the execution of these by Learner Contracting Companies.

7.2 XXXXX Province or Municipality agrees to award these contracts on a negotiated price basis and that the final prices have gone through a due approval process of the XXXXX Province or Municipality.

7.3 XXXXX Province or Municipality agrees to strictly follow the selection process and requirements, as stipulated in the attached management plan and standard advertisement for the selection of Learners.

7.4 XXXXX Province or Municipality will announce the programme, in accordance with the attached standard advertisement and will pay for all costs associated with advertising these learnerships in the media as per attached management plan.

7.5 XXXXX Province or Municipality will sign as the Lead Employer for the Learnership Agreement, will act as the Lead Employer for Learners, and provide work for the Learner Contracting Companies, as described in the attached management plan.

7.6 XXXXX Province or Municipality will agree to waive any requirements for performance guarantees or sureties on the training projects for the Learner Contracting Companies.

7.7 XXXXX Province or Municipality will agree that Retention will be limited to the maximum of 10% until it reaches 5% of the contract value after which no more payments will be retained.

7.8 XXXXX Province or Municipality will agree to pay Learner Contracting Companies on training contracts within 20 working days within receipt of payment certificate and will be liable to pay penalties as stipulated in the

contract if they fail to do so.

- 7.9 XXXXX Province or Municipality shall ensure that a clause is inserted into the contract documentation for the training projects that states that the learnership allowance related to on-site experience is included within the contract price.
- 7.10 XXXXX Province or Municipality will ensure registration, completion and signature of Learnership Agreement as the Lead Employer for the Learnership Agreement.
- 7.11 XXXXX Province or Municipality together with the Accredited Training Provider will ensure that no training will commence until Learnerships Agreements are signed by all parties (XXXXX Province or Municipality, Learner and Accredited Training Provider) with each party allowed 10 working days to procure the signature.
- 7.12 XXXXX Province or Municipality shall ensure that the operating staff will attend the pre-learnership commencement workshop.
- 7.13 XXXXX Province or Municipality shall sign, for the purposes of the learnership, a Contract of Employment with all learners for the duration of the training.

## **8. OVERALL MANAGEMENT**

- 8.1 NDPW, CETA and XXXXX Province or Municipality will form a management team consisting of representatives of all parties to this MOA that will facilitate the implementation of the learnerships. This team will be chaired by representative of NDPW and will be responsible for the management of the learnership programme in accordance with the attached management plan.

## **9. COMMENCEMENT**

- 9.1 The parties agree that this agreement will commence on signing of this MOA.

## **10. AMENDMENT OR VARIATION**

- 10.1 This agreement constitutes the whole agreement between the parties. None of the parties shall be bound by any condition, warranty, representation or undertaking, whether express or implied, except as set forth in this agreement.
- 10.2 No variation or amendment to this agreement shall have any force or effect, unless reduced in writing and signed by all parties.

## **11. BREACH**

- 11.1 If any party commits a breach of any terms of this agreement and fails to rectify such breach within 14 (fourteen) working days after a written request from the aggrieved party, then the aggrieved party shall be entitled to terminate this agreement, without prejudice, to exercise any other rights or remedies which the party may have in law including the right to:-
- 11.1.1 Claim specific performance; or
- 11.1.2 Refer the breach to arbitration.

## **12. ARBITRATION**

- 12.1 Should there be a dispute between the parties in connection with any matter, which dispute cannot be resolved amicably between the parties, such dispute shall be referred to the Arbitration Foundation of South Africa and be resolved in terms of its rules and regulations. The decision of the Arbitrator shall be final and binding on all parties.

## **13. DISPUTE RESOLUTION**

- 13.1 Any dispute arising from this agreement shall be referred to the parties who are signatory to this agreement and they shall endeavour to settle the matter themselves without intervention of the third party.

- 13.2 Should the parties failed to resolve the dispute in terms of clause 13.1, within thirty (30) days, then the dispute shall be resolved through arbitration in terms of clause 12.

**14. CESSION OF RIGHTS**

- 14.1 No party may cede its rights or delegate its authority in terms of this agreement without prior written consent of the other parties

**15. DOMICILIUM AND NOTICES**

- 15.1 Each party will be entitled from time to time by written notice to the other party to change any of its domicilium addresses to any other address within the Republic of South Africa, provided that one of the addresses shall always be a street address at which the service of legal processes can be effected.

- 15.2 Any notice which is delivered by hand at the addressee's domicilium address shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery; or

- 15.3 Is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its domicilium shall be deemed, until the contrary is proved the addressee, to have been received by the addressee on the seventh day after the date of posting;

- 15.4 If transmitted by telefax to the addressee at its domicilium the same shall be deemed to have been received by the addressee on the date of transmission or, if the transmission is made outside of normal business hours, on the first business day following after the date of transmission;

- 15.5 The parties choose the following addresses as their domicilium citandi et executandi for all purposes of serving any notice, the payment of any sum, the serving of any legal process or for any other purpose arising from this agreement.

**CONSTRUCTION EDUCATION AND TRAINING AUTHORITY (CETA):**

1<sup>st</sup> Floor, Building No 5, Momentum Business Park  
Main Road, Midrand 1685

Telephone No. 011 265 5900

Facsimile No. 011 265 5924

**NATIONAL DEPARTMENT OF PUBLIC WORKS (NDPW)**

Cnr Vermeulen and Bosman Street, Pretoria

Private Bag X65 PRETORIA 0001

Telephone No.           012 337 3000

Facsimile No.           012 328 4217

**XXXXX PROVINCE OR MUNICIPALITY**

Address Line 1

Address Line 2

Postal Code

Telephone No.           XXXXXX

Facsimile No.           XXXXXX

THUS SIGNED AT ..... ON THIS ..... DAY OF ..... 20....

.....

**CEO CETA**

(Who by his/her signature hereto warrants that he/she is authorised to sign on behalf of the CETA)

AS WITNESSES:

- 1. ....
- 2. ....

THUS SIGNED AT ..... ON THIS ..... DAY OF ..... 20....

.....

**XXXXX**

(Who by his/her signature hereto warrants that he/she is authorised to sign on behalf of National Department of Public Works)

AS WITNESSES:

- 1. ....
- 2. ....

THUS SIGNED AT ..... ON THIS ..... DAY OF ..... 20....

.....

**XXXXX**

(Who by his/her signature hereto warrants that he/she is authorised to sign on behalf of XXXXX Province or Municipality)

AS WITNESSES:

- 1. ....
- 2. ....