



MEMORANDUM OF AGREEMENT

HWSETA DISCRETIONARY GRANT

For:

LEARNERSHIPS 2009-2010

Entered into between:

**THE HEALTH AND WELFARE SECTOR EDUCATION AND
TRAINING AUTHORITY**

AND

**NAME OF
ORGANISATION:.....**

SDL NO:.....

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1. Definitions

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this clause, bear the meanings ascribed to them:

- 1.1 "Agreement" means this Memorandum of Agreement and any annexure to it;
- 1.2 "Bank Account" means the bank account opened by the Organisation to be used solely for the funds allocated to it by the HWSETA in terms of this Agreement;
- 1.3 "Budget" means the budget approved by the HWSETA, as set out in Annexure "A";
- 1.4 "Funding" means the funding granted to the Organisation by the HWSETA in terms of clause 6;
- 1.5 "Period" means this Agreement will be valid for the duration of the learnership;
- 1.6 "HWSETA" means the Health and Welfare Sector Education and Training Authority duly established in terms of the Skills Development Act 97 of 1998;
- 1.7 "Learner" means a learner who has signed a Learnership Agreement;
- 1.8 "Learnership Agreement" means the tripartite agreement signed between the Organisation, the Training Provider, and each Learner;
- 1.9 "Organisation" means _____
- 1.10 "SDA" means the Skills Development Act, 97 of 1998;
- 1.11 "Section 18(1) Learner" means a Learner who was employed by the Organisation prior to the conclusion of the Learnership Agreement and who concluded a Learnership Agreement in terms of section 18(1) of the SDA;
- 1.12 "Section 18(2) Learner" means a Learner who was not employed by the Organisation prior to the conclusion of the Learnership Agreement and who concluded a Learnership Agreement in terms of section 18(2) of the SDA;
- 1.13 "Signature Date" means the date of signature of this Agreement by the party signing last in time;
- 1.14 "Training Provider" means the institution that provides theoretical education and training to the learners.

2. Introduction

- 2.1 This agreement is to be completed by all organisations qualifying for funding.
- 2.2 During September 2009 – October 2009, the HWSETA called for an expression of interest for funding for learnership programmes for the year 2009-2010.
- 2.3 The Organisation submitted an application for the funding of specific learnerships.
- 2.4 The HWSETA approved the Organisation's application and the terms on which the funding is granted is set out below.

6. Funding

- 6.1 The HWSETA will grant the Organisation funding in an amount of R_____
- 6.2 The HWSETA will pay the funds into the Bank Account opened by the Organisation, in five tranches:
 - 6.2.1 payment of the first tranche will be made within 30 days after the organisation has met all the conditions stipulated in the Conditional Letter of Approval which includes the terms and conditions contained in the Learnership Agreement and the MOA, and the registration of the learners by the HWSETA
 - ◆ 3 months payment of a learner's allowance (18.2 learners)
 - ◆ 50% of the approved course fee (18.1 and 18.2) learners)
 - ◆ A once-off uniform allowance where applicable (18.2) learners)
 - 6.2.2 payment of the second tranche will be made within 30 days after approval of the first quarterly report submitted in terms of clause 8.2 and will be broken down as follows
 - ◆ 3 months payment of a learner's allowance (18.2) learners)
 - 6.2.3. payment of the third tranche will be made within 30 days after approval of the second quarterly report submitted in terms of clause 8 and will be broken down as follows:
 - ◆ 3 months payment of a learner's allowance (18.2) learners)
 - ◆ 25% of the approved course fee (18.1) and 18.2) learners)
 - 6.2.4. payment of the fourth tranche will be made within 30 days after approval of the third quarterly report submitted in terms of clause 8 and will be broken down as follows:
 - ◆ 3 months payment of a learner's allowance (18.2) learners)
 - 6.2.5. payment of the fifth tranche (25% of the approved course fee – 18.1 and 18.2 learners) will be made within 30 days after submission of proof of completion of the learnership supported by
 - a) Statement of results from the ETQA or certificates and;
 - b) Expenditure report.
- 6.3. Notwithstanding clause 6.2. the HWSETA will only make payment of any tranche that may be due once it is satisfied that the Organisation has properly complied with all its obligations under this Agreement.
- 6.4. The Organisation shall:
 - 6.4.1. open a bank account except for public sector organisations;
 - 6.4.2. spend the funds in accordance with the Budget;
 - 6.4.3. ensure that any withdrawal of any of the funds received from the HWSETA from the Bank Account, whether by way of cheque, credit transfer or any other means, requires the signature of at least two of the Organisation's office bearers or senior employees;
 - 6.4.4. not issue "cash" cheques drawn against the Bank Account unless the prior written authorisation of the HWSETA has been obtained. If the HWSETA

provides such authorisation the Organisation must retain the vouchers and receipts supporting any such "cash" cheques;

- 6.4.5. immediately refund the HWSETA any unspent funding received from the HWSETA if the Organisation is liquidated or de-registered, or when this Agreement is terminated or expires;
- 6.4.6. immediately refund the HWSETA any unspent funds received from the HWSETA if requested to do so by the HWSETA;
- 6.4.7. repay the HWSETA on demand any funds received from the HWSETA spent on any projects, functions or activities which in the sole discretion of the HWSETA are not reasonably connected to the project approved in terms of this Agreement;
- 6.4.8. not incur any debt or other liability or obtain any credit facilities either in the name of or on behalf of the HWSETA;
- 6.4.9. not issue loans to third parties with funds received from the HWSETA;
- 6.4.10. not incur any obligation or expenditure which is not contemplated in the Budget; and
- 6.4.11. not grant any part of the HWSETA funding to any other institution or organisation unless this has been expressly stated in this Agreement.
- 6.4.12. shall not be entitled to receive all the funding as per this agreement should the approved number of learners either not commence, or drop out or be terminated from the learnership for any reason.

7. Record Keeping

7.1. The Organisation shall keep at its head office:

- 7.1.1. originals of all documents evidencing its expenditure in terms of this Agreement;
- 7.1.2. records of all assessments and or testing whether written or practical of the learners; and
- 7.1.3. adequate financial records in accordance with generally accepted accounting principles

8. Reports

- 8.1. The Organisation shall submit a quarterly employer report to the HWSETA containing the details of each learner and their status, an income and expenditure account, details of the theoretical tuition and training received by Learners for that period, and the results of all examinations written by Learners for that period.
- 8.2. The first report shall be submitted within 30 days after completion of the 1st quarter (i.e. 3 months) of training
- 8.3. Aside from the quarterly employer reports the HWSETA can, on 7 days notice, request such reports from the Organisation as the HWSETA deems necessary.
- 8.4. The Organisation must immediately report the termination of any Learnership Agreement and/or dismissal of any Learner to the HWSETA.
- 8.5. The Organisation will notify the HWSETA in writing within 15 business days of any event that might affect the completion of the learnerships.

9. Inspections and Audits

- 9.1. The HWSETA, its employees, accountants, auditors or any other person appointed by the HWSETA shall be entitled, on 7 days written notice, to inspect and/or audit the Organisation's financial records insofar as they relate to the expenditure of funds received under this Agreement.
- 9.2. The HWSETA, its employees or any person appointed by the HWSETA shall be entitled, on 7 days written notice, to inspect and/or audit the Training Provider's facilities where theoretical tuition and training is received by the Learners and the Organisation's workplace where the practical training is received by the Learners.
- 9.3. The HWSETA, its employees or any person appointed by the HWSETA shall be entitled, on ten days written notice, to interview, speak to, or address any of the Learners in respect of any issues relating to the learnerships, the Learnership Agreements or this Agreement.

10. Duration

- 10.1. The Agreement commences on the Signature Date and shall endure for a period of (Please tick where appropriate)

12 Months	18 Months	24 Months	36 Months

- 10.2. If any of the Learners do not complete their learnership during this period the Organisation may apply for an extension of this Agreement in respect of those learnerships and for additional funding. Any extension or additional funding granted is at the sole and absolute discretion of the HWSETA.
- 10.3. Notwithstanding clause 10.1, the HWSETA may terminate this Agreement at any time on the terms set out in clause 11.

11. Breach and Termination

- 11.1. If the Organisation has not complied with any of its material obligations set out in the Agreement, the HWSETA will be entitled to request the Organisation in writing to comply with its obligations within ten days of receiving the request and, to withhold payment of further contributions until such obligations are met.
- 11.2. If the Organisation refuses or fails to comply with its obligations under the Agreement within ten working days of receiving the HWSETA's written request, the Organisation shall be deemed to be in material breach of this Agreement, and the HWSETA may –
 - 11.2.1. cancel the Agreement; and
 - 11.2.2. claim repayment of all funds paid to the Organisation by the HWSETA in terms of this Agreement.
- 11.3. Notwithstanding clauses 11.1 and 11.2, the HWSETA may immediately and without notice terminate this Agreement and claim repayment of all funds paid to the Organisation by the HWSETA in terms of this Agreement if the Organisation:
 - 11.3.1. spends the money on any item other than those agreed to in the Budget;
 - 11.3.2. fails to furnish the HWSETA with any of the information, documents or reports required in terms of this Agreement;

- 11.3.3. fails or refuses to allow the HWSETA or its appointed financial officer, accountant, auditor or other suitably qualified person to inspect and/or audit the Organisation's financial statements and/or books of records; or
- 11.3.4. the Organisation and/or the Training Provider is de-accredited.
- 11.4. The HWSETA remains entitled to rely on any other common law remedy for breach of contract, including the right to claim damages.

12. Indemnity

The Organisation indemnifies and would not hold the HWSETA responsible against any claim for loss or damages arising out of this Memorandum of Agreement, including legal costs, brought against the HWSETA by any person as a result of the incompetence, negligence and/or wilful misconduct of the Organisation or any of its agents or employees.

13. Arbitration of Disputes

- 13.1. Any dispute between the parties in connection with the interpretation, application or termination of this Agreement, unless resolved by the parties, must be determined by arbitration in terms of this clause.
- 13.2. This clause does not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 13.3. The arbitrator must be appointed by agreement between the parties, or failing such agreement by the Chairperson of the Johannesburg Bar Council.
- 13.4. The arbitration shall take place in Sandton and the parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.
- 13.5. The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible then the arbitrator must arbitrate the dispute.
- 13.6. The arbitration must be conducted in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.
- 13.7. A party to the dispute may give evidence, call witnesses, question witnesses of any other party, and address concluding arguments to the arbitrator.
- 13.8. The parties are entitled to legal representation during the arbitration.
- 13.9. If the party who referred the dispute fails to appear in person or to be represented at the arbitration proceedings, the arbitrator may dismiss the matter.
- 13.10. If a party other than the party who referred the dispute fails to appear in person or be represented at the arbitration proceedings, the arbitrator may:
 - 13.10.1. continue with the arbitration proceedings in the absence of that party; or
 - 13.10.2. adjourn the arbitration proceedings to a later date.
- 13.11. Within 14 days of the conclusion of the arbitration proceedings the arbitrator must issue an arbitration award with reasons, signed by the arbitrator.
- 13.12. The arbitration award is final and binding on the parties to the dispute and may be made an order of court.
- 13.13. The parties will be liable in equal shares for the fees of the arbitrator pending the arbitrator's award.

14. Transfer of Obligations

The Organisation may not transfer their obligations in terms of this MOA to a third party. .

15. Interpretation

- 15.1. Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 15.2. Unless the context clearly indicates a contrary intention, any word connoting:
 - 15.2.1. any gender denotes either male or female;
 - 15.2.2. the singular includes the plural and vice versa;
 - 15.2.3. natural persons includes artificial persons and vice versa;
 - 15.2.4. insolvency includes provisional or final sequestration, liquidation or judicial management.
- 15.3. A reference to a business day/working day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 15.4. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day.
- 15.5. A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 15.6. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 15.7. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 15.8. The eiusdem generis rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 15.9. Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.

16. General and Miscellaneous

16.1. Sole Record of Agreement

This Agreement and Annexure "A" constitute the sole record of the Agreement between the parties with regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

No Amendments Except in Writing

No addition to, variation of, or agreed cancellation of, the Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

16.2. **Waivers**

No relaxation or indulgence which a party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in the future.

16.3. **Survival of Obligations**

Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

16.4. **Approvals and Consents**

An approval or consent given by a party under the Agreement shall only be valid if in writing and shall not relieve the other party from responsibility for complying with the requirements of the Agreement nor shall it be construed as a waiver of any rights under the Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in the Agreement.

17. Notices and Legal Process

17.1. Each party chooses as its address for all purposes under this Agreement, whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from the Agreement, as follows:

HWSETA at: No 2 Bradford Road
BEDFORDVIEW
2007

and

The Organisation at: _____

17.2. Any notice required or permitted under the Agreement shall be valid and effective only if in writing.

17.3. Any party may by notice to the other party change its chosen address to another physical address in the Republic of South Africa and such change shall take effect on the seventh day after the date of receipt by the party who last receives the notice.

17.4. Any notice to a party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.

17.5. Notwithstanding anything to the contrary herein, a written notice actually received by a party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

Thus done and signed at **Bedfordview** on this day of2010

For HWSETA
Name: Mr V. Nkalitshana
Position: Learnership Manager

This done and signed at on this day of2010

For the Organisation
Name: _____
Position: _____

Annexure “A” – Budget

The HWSETA will only fund organisations according to the budget completed here:

LEARNERSHIP	18(1) LEARNERS			18(2) LEARNERS					TOTAL
	No of learners	Course Fees (Per Learner)	Sub-Total 18(1)	No of Learners	Course Fees (Per Learner)	Uniform (Per Learner)	Allowance (Per Learner)	Sub-Total 18(2)	
Community Health Work (12 Months)									
Child & Youth Care Work (12 Months)						N/A			
Social Auxiliary Work (12 Months)						N/A			
Community Development: HIV/AIDS Support (12 Months)									
Basic Pharmacist Assistant (12 Months)						N/A			
Post Basic Pharmacist Assistant (12 Months)						N/A			
Phlebotomy Technique (24 Months)									
Nursing – Enrolled (12 Months)									
Bridging (24 Months)									
Diagnostic Radiography (36 Months)									
Clinical Specialisation (12 Months)									
PB Diploma Primary Health Care (12 Months)									

Please Note:

1. “Course Fees” are inclusive of cost of training, books and Council Registration Fees.
2. “Learner Allowance” is the amount paid per learner, per month, multiplied by the period (months) of the learnership.

SEE EXAMPLE BELOW:

LEARNERSHIP	18(1) LEARNERS			18(2) LEARNERS					TOTAL
	No of learners	Course Fees (Per Learner)	Sub-Total 18(1)	No of Learners	Course Fees (Per Learner)	Uniform (Per Learner)	Allowance (Per Learner)	Sub-Total 18(2)	
Ancillary Health Care (12 Months)	5	7,000.00	35,000.00	3	7,000.00	1,000.00	14,400.00	67,200.00	102,200.00

ANNEXURE “B”

NAME OF ACCOUNT HOLDER:	
NAME OF BANK:	
ACCOUNT NO:	
BRANCH CODE:	
TYPE OF ACCOUNT:	

Please provide details of the contact person who will be dealing with the Learnerships and funding thereof:

CONTACT PERSON:	
TELEPHONE PERSON:	
FAX NO:	
EMAIL:	