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GOVERNMENT NOTICES

DEPARTMENT OF LABOUR

No. R. 104

3 February 2006

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)

**APPROVAL OF THE CONSTITUTION OF THE CHEMICAL INDUSTRIES AND
TRAINING AUTHORITY (CHIETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the CHEMICAL INDUSTRIES AND TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE



PO BOX 961 AUCKLAND PARK 2006 GAUTENG ☎ 2 CLAMART ROAD RICHMOND 2092 JOHANNESBURG

Telephone (011) 726-4026 ☎ Fax (011) 726-7777 ☎ info@chieta.org.za ☎ www.chieta.org.za

Attention: Sam Morotoba
Senior Executive Manager
SETA Coordination
Department of Labour
Private Bag X117
Pretoria
0001

12 August 2005

Dear Mr. Morotoba,

**REVISED CONSTITUTION OF THE CHEMICAL INDUSTRIES EDUCATION
AND TRAINING AUTHORITY**

Please find attached the revised constitution of the Chemical Industries Education and Training Authority for approval by the Minister of Labour. The Constitution was approved by the Governing Board at a meeting on 12 August 2005.

Yours Sincerely,



Fazel Ernest
Governing Board Chairperson



**CONSTITUTION OF THE
CHEMICAL INDUSTRIES' EDUCATION AND
TRAINING AUTHORITY**

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1 INTRODUCTION

- 1.1 The headings to the clauses of this Constitution are for reference purposes only and shall not aid in the interpretation of the clauses to which they relate.
- 1.2 The singular shall include the plural and vice versa.

2 DEFINITIONS

- 2.1 "ACT" means the Skills Development Act (Act No 97 of 1998).
- 2.2 "BARGAINING COUNCIL" means the National Bargaining Council for the Chemical Industries.
- 2.3 "CHAIRPERSON" means the Chairperson of the Governing Board who, by virtue of that office, is also the Chairperson of the Executive Committee.
- 2.4 "CHAMBER" means the Chamber established in terms of clause 16 of this Constitution.
- 2.5 "CHEMICAL INDUSTRIES" mean the activities of the chemical sector in the Republic of South Africa as defined in the scope of coverage gazetted by the Minister and recorded in Annexure A".
- 2.6 "CHIETA" means the Chemical Industries Education and Training Authority.
- 2.7 "CODE OF CONDUCT" means the Code of Conduct in terms of section 13(3) of the Act and as contained in Annexure "E".
- 2.8 "COMMITTEE" means any permanent committee, "ad hoc" committee or sub-committee of the CHIETA.
- 2.9 "CONSENSUS" means unanimous agreement.
- 2.10 "DAY" means ordinary working day.
- 2.11 "DEPARTMENT" means the Department of Labour.
- 2.12 "DEPUTY-CHAIRPERSON" means Deputy-Chairperson of the Governing Board who, by virtue of that office, is also the Deputy-Chairperson of the Executive Committee.

- 2.13 "**DIRECTOR-GENERAL**" means the Director-General of the Department of Labour.
- 2.14 "**EDUCATION AND TRAINING STANDARDS**" means registered statements of desired education and training outcomes and their associated assessment criteria as defined in Section 1 of the SAQA Act.
- 2.15 "**EXECUTIVE COMMITTEE**" means the Executive Committee established in terms of Clause 13 of this Constitution.
- 2.16 "**EXECUTIVE OFFICER**" means the Executive Officer appointed in terms of clause 11.3 of this Constitution.
- 2.17 "**GOVERNING BOARD**" means the Governing Board established in terms of Clause 7 of this Constitution.
- 2.18 "**GRANTS**" mean monies paid or payable to companies that have provided training according to the requirements of the Skills Development Act and the Sector Skills Plan of the CHIETA.
- 2.19 "**LEARNERSHIPS**" mean learnerships as determined in Chapter 4 of the Act.
- 2.20 "**LEVIES,**" mean levies payable in terms of the relevant sections of the Skills Development Levies Act.
- 2.21 "**LEVY TRANSFER**" means levies, penalties and interest on penalties allocated to the CHIETA by SARS in terms of Section 8 (3) (b) of the Skills Development Levies Act.
- 2.22 "**MEMBER**" means a member representing organised labour; organised employers, including small business; relevant government departments; and if the Minister, after consultation with those members considers it appropriate for the sector – any interested professional body; and any bargaining council with jurisdiction in the sector.
- 2.23 "**MINISTER**" means the Minister of Labour.
- 2.24 "**NSA**" means the National Skills Authority established in terms of Section 4 of the Act.

- 2.25 **"NSF"** means the National Skills Fund established in terms of Section 27 of the Act.
- 2.26 **"NQF"** means the National Qualifications Framework as defined in Section 1 of the SAQA Act.
- 2.27 **"SAQA"** means the South African Qualifications Authority established in terms of Section 3 of the South African Qualifications Authority Act 58 of 1995.
- 2.28 **"SAQA ACT"** means the South African Qualifications Authority Act 58 of 1995.
- 2.29 **"SARS"** means the South African Revenue Services.
- 2.30 **"SECTOR"** means the Chemical Industries.
- 2.31 **"SECRETARY"** means the secretary appointed in terms of Clause 11.4 of this constitution.
- 2.32 **SECRETARIAT** means the employees of the CHIETA.
- 2.33 **"SETA"** means the Sector Education Training Authority established in terms of Section 9(1) of the Act.
- 2.34 **"SKILLS DEVELOPMENT LEVIES ACT"** means the Skills Development Levies Act (Act No. 9 of 1999).
- 2.35 **"SUB-SECTORS"** means the nine (9) distinct sub-sectors that constitute the five Chambers reflected in Annexure "D".

3 NAME OF SETA AND LEGAL STATUS

- 3.1 The name of this SETA is the Chemical Industries Education and Training Authority (the "CHIETA").
- 3.2 The CHIETA is a legal entity and alone bears responsibility and liability for its actions and obligations unless otherwise stated in this Constitution.
- 3.3 The identity and legal status of the CHIETA is distinct from the members that constitute it.

4 SCOPE OF COVERAGE OF THE CHIETA

- 4.1 The scope of coverage of the CHIETA is the Chemical Industries sector determined by the Minister in terms of Section 9(2) of the Act. The scope of coverage is outlined in Annexure "A" of this Constitution.

5 OBJECTIVES

- 5.1 The objectives of the CHIETA are to promote the purposes of the Act within the sector.
- 5.2 The purposes of the Act are-
- 5.2.1 to develop the skills of the South Africa workforce-
 - 5.2.1.1. to improve the quality of life of workers, their prospects of work and labour mobility;
 - 5.2.1.2. to improve productivity in the workplace and the competitiveness of employers;
 - 5.2.1.3. to promote self-employment; and
 - 5.2.1.4. to improve the delivery of social services.
 - 5.2.2 to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
 - 5.2.3 to encourage employers-
 - 5.2.3.1. to use the work-place as an active learning environment;
 - 5.2.3.2. to provide employees with the opportunities to acquire new skills;
 - 5.2.3.3. to provide opportunities for new entrants to the labour market to gain work experience; and
 - 5.2.3.4. to employ persons who find it difficult to be employed,

- 5.2.4 to encourage workers to participate in learnership and other training programmes;
- 5.2.5 to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;
- 5.2.6 to ensure the quality of education and training in and for the workplace;
- 5.2.7 to assist-
 - 5.2.7.1. work-seekers to find work;
 - 5.2.7.2. retrenched workers to re-enter the labour market; and
 - 5.2.7.3. employers to find qualified employees.

6 STRUCTURE OF CHIETA

- 6.1 The CHIETA is made up of:
 - 6.1.1 a Governing Board;
 - 6.1.2 an Executive Committee;
 - 6.1.3 an Audit Committee;
 - 6.1.4 a Joint Stakeholder Forum;
 - 6.1.5 Regional Co-ordinating Committees;
 - 6.1.6 a Secretariat; and
 - 6.1.7 Chambers, as set out in Annexure "D".

7 GOVERNING BOARD

- 7.1 The Governing Board is the highest decision making structure of the CHIETA and its role is to ensure the effective control and governance of the affairs of the CHIETA through the implementation of appropriate management systems, policies and procedures and by providing support and guidance to the Executive Committee, Chambers and other

committees established in terms of this Constitution. The Governing Board is accountable to the Minister and reports to the Director General.

7.2 The Governing Board has all such powers as are necessary to enable it to perform its functions; and has such other powers conferred by the Act or the Skills Development Levies Act.

8 COMPOSITION OF THE GOVERNING BOARD

8.1 As contemplated in Annexure "B", the Governing Board consists of twenty six (26) members made up of:

8.1.1 nine (9) voting members representing organised labour;

8.1.2 nine (9) voting members representing organised employers including small and medium enterprises;

8.1.3 four (4) non-voting members representing the interest of relevant government departments;

8.1.4 three (3) non-voting members representing the interest of professional bodies; and

8.1.5 one (1) non-voting member representing the bargaining council.

8.2 The Executive Officer and the Secretary may participate in the Governing Board, but may not vote on any issue.

8.3 The Joint Stakeholder Forum chairperson may participate in the Governing Board but may not vote on any issue.

8.4 The number of members representing organised labour must at all times be equivalent to the number of members representing organised employers.

8.5 Any registered Trade Union or registered Employer Association that falls within the registered scope of the CHIETA may approach the Governing Board to nominate a member or members in accordance with the procedure outlined in Annexure "C".

9 APPOINTMENT OF MEMBERS

9.1 The members of the Governing Board will be appointed as follows:

- 9.1.1 nine (9) members to represent organised labour shall be nominated by Trade Unions referred to in Annexure "B";
- 9.1.2 nine (9) members to represent organised employers shall be nominated by Employer Associations referred to in Annexure "B";
- 9.1.3 four (4) members to represent government shall, each be nominated by the National Departments of Trade and Industry, Minerals and Energy; Science and Technology and Environmental Affairs ;
- 9.1.4 three (3) members to represent the professional bodies and one (1) member to represent the bargaining council must be appointed by the Minister in terms of Section 11(d) of the Act.
- 9.2 Each constituency represented on the Governing Board must be represented by members who are sufficiently representative of designated groups.
- 9.3 Once appointed a member represents the constituency that nominated him/her and will enjoy all rights and obligations conferred to members in terms of this Constitution.
- 9.4 The names of all members appointed to the Governing Board must appear in a register maintained by the Secretary.
- 9.5 Before every annual meeting of the Governing Board organisations representing organised labour and organised employers must by a written agreement, determine:
- 9.5.1 rules relating to vacancies, including vacancies arising out of a stakeholder organisation losing its status in the sector; and
- 9.5.2 procedures for regulating the determination of mandates.
- 9.6 The organisations referred to in clause 9.1 must also specify and confirm the names of the members and alternates before the annual meeting.

10 TERM AND CONDITIONS OF MEMBERS

- 10.1 Both a member and alternate may hold office for twenty four (24) months and will be eligible for re-appointment at the end of that term.

- 10.2 A member or alternate whose term of office has expired and who is not re-appointed may, with the written consent of the organisation or institution concerned, continue to act as a member until the successor has assumed office.
- 10.3 Despite clause 10.1 a nominating organisation may withdraw any of its member/s or alternate/s upon submission of at least 21 days written notice to the Secretary and such a member or alternate will vacate office immediately, upon:
- 10.3.1 commencement of resignation of the member from the organisation; or
 - 10.3.2 the organisation ceasing to be sufficiently representative of the sector.
- 10.4 If a vacancy of any member or an alternate arises, the organisation or institution affected may by a written notice to the Secretary appoint another representative or alternate for the unexpired duration of the predecessor's term.
- 10.5 A member who, without good cause, is absent from three consecutive meetings will be disqualified from continuing in that office for the remainder of that term.
- 10.6 The CHIETA may remove any member or alternate from office if he/she transgresses the Code of Conduct of the CHIETA or commits misconduct and neglect of duty provided the affected member is given a fair hearing as required by the Code of Conduct. The Code of Conduct is annexed as "E".
- 10.7 Unless agreed to otherwise, the CHIETA will compensate all members and, in their absence, their alternates for reasonable expenses incurred, whilst acting in an official, authorised capacity, in respect of travelling, accommodation and meals as set out in CHIETA policy.

11 OFFICE BEARERS OF THE GOVERNING BOARD

- 11.1 The Governing Board shall comprise of Elected Office Bearers represented by the Chairperson and the Deputy-Chairperson and Appointed Office Bearers represented by the Executive Officer, the CHIEF Financial Officer and the Secretary.

11.2 Chairperson and Deputy-Chairperson

- 11.2.1 The members will, subject to the provisions of clause 11.2.2 and 11.2.3, at the first meeting of the Governing Board elect a Chairperson and Deputy-Chairperson from amongst the voting members. Thereafter, at the first meeting of each new Governing Board (ie at each new two year term of office) appoint from among its voting members a Chairperson and Deputy-Chairperson who will each hold office for a period of two years or for such shorter period as he/she may be a voting member of the Governing Board.
- 11.2.2 If the Chairperson is appointed from members representing organised labour then the Deputy-Chairperson may be appointed only from members representing organised employers and vice versa.
- 11.2.3 If the Chairperson or Deputy-Chairperson is a member nominated from organised labour, only members of organised labour may participate in the election of their appointee and the same principle will apply to members representing organised employers where the appointee is a member nominated by them.
- 11.2.4 The term of office of the Chairperson and Deputy-Chairperson commences at the start of the new two year period and expires at the end of the biennial general meeting.
- 11.2.5 Nominations for the office of the Chairperson or Deputy-Chairperson of the Governing Board will be submitted in writing to the Executive Officer.
- 11.2.6 Whenever a vacancy arises in the office of the Chairperson or Deputy-Chairperson, the provisions of clause 11.2.1 to 11.2.5 above will apply as the context may require to the filling of such vacancies.
- 11.2.7 A person elected in terms of clause 11.2.6 shall hold office for the unexpired period of his / her predecessor.

- 11.2.8 The Deputy-Chairperson will perform the duties and functions of the Chairperson whenever the Chairperson is absent or for any reason unable to act or to perform those functions and duties.
- 11.2.9 If at any meeting both the Chairperson and Deputy-Chairperson are absent or unable to act or fulfil their functions and duties, members of the Governing Board present in the meeting must appoint a Chairperson to perform such functions and duties for the duration of that meeting.
- 11.2.10 The Chairperson or Deputy-Chairperson is subject to the Code of Conduct and may be removed from office for serious neglect of duty, serious misconduct, incapacity or any other fair reason.
- 11.2.11 The Chairperson and the Deputy-Chairperson shall perform the functions and duties entrusted to them by this Constitution.

11.3 The Executive Officer

- 11.3.1 The Governing Board must appoint a person to the position of Executive Officer.
- 11.3.2 The Executive Officer must perform such functions as may be assigned to him/her by the Act and/or by the Governing Board.
- 11.3.3 The Executive Officer must attend all meetings of the Governing Board and participate in discussions but may not vote.
- 11.3.4 If the Executive Officer is absent or for any reason unable to perform his/her functions, the Executive Committee may designate an employee of the CHIETA to act as Executive Officer until the Executive Officer resumes office or until a new Executive Officer is appointed.
- 11.3.5 The Governing Board must determine the Executive Officer's term of office and conditions of service.
- 11.3.6 The Executive Officer will, if required, act as the electoral officer of the Governing Board.

11.3.7 The Executive Officer is the accounting officer of the CHIETA and, with the assistance of any relevant person and/ or organisation, must prepare monthly financial statements, in accordance with generally accepted accounting principles, showing the CHIETA's:

11.3.7.1. transactions for the month;

11.3.7.2. income and expenditure;

11.3.7.3. assets and liabilities; and

11.3.7.4. financial position as at the end of that period.

11.4 Secretary

11.4.1 The Executive Officer must appoint a Secretary for the CHIETA.

11.4.2 The Secretary must attend all meetings of the Governing Board but may not vote.

11.4.3 Notice of matters for consideration will be submitted to the Secretary at least five days prior to the date on which he/she is required to give notice of such meeting.

11.4.4 The Secretary in consultation with the Executive Officer must prepare the agenda for each meeting and serve members of the Governing Board with a notice of all meetings at least 14 days before ordinary meetings sits.

11.4.5 The Secretary must take minutes at the meetings and serve the members with copies of the minutes within 14 days of that meeting.

11.4.6 The Secretary must record all resolutions taken by the Governing Board in accordance with the provisions of this Constitution.

11.4.7 The Secretary will be responsible for the administration and secretarial work arising from the functioning of the Governing Board and for performing the functions and duties imposed on him/her by this Constitution.

11.5 Functions of the Governing Board

- 11.5.1 The Governing Board is responsible for the following functions:
- 11.5.1.1. developing a sector skills plan within the framework of the national skills development strategy;
 - 11.5.1.2. implementing the CHIETA's sector skills plan by-
 - 11.5.1.2.1. establishing learnerships;
 - 11.5.1.2.2. approving work-place skills plans;
 - 11.5.1.2.3. allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and
 - 11.5.1.2.4. monitoring education and training in the sector;
 - 11.5.1.3. promoting learnerships by-
 - 11.5.1.3.1. identifying work-places for practical work experience;
 - 11.5.1.3.2. supporting the development of learning materials;
 - 11.5.1.3.3. improving the facilitation of learning; and
 - 11.5.1.3.4. assisting in the conclusion of learnership agreements;
 - 11.5.1.4. registering learnership agreements;
 - 11.5.1.5. when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse

- the levies, allocated to it in terms of section 8(3)(b) and 9(b), in its sector;
- 11.5.1.6. liaising with the National Skills Authority on-
- 11.5.1.6.1. the national skills development policy;
 - 11.5.1.6.2. the national skills development strategy; and
 - 11.5.1.6.3. its sector skills plan;
- 11.5.1.7. submitting to the Director-General-
- 11.5.1.7.1. any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
 - 11.5.1.7.2. plans and reports on the implementation of its sector skills plan and service level agreement;
- 11.5.1.8. liaising with the employment services of the Department and any education body established under any law regulating education in the Republic to improve information-
- 11.5.1.8.1. about employment opportunities; and
 - 11.5.1.8.2. between education and training providers and the labour market.
- 11.5.1.9. subject to section 14 of the Act, appointing staff necessary for the performance of the CHIETA's functions;
- 11.5.1.10. promoting the national standard established in terms of section 30b;

- 11.5.1.11. concluding service level agreements for each financial year with the Director-General concerning the performance of the CHIETA's functions in terms of this Act and the National Skills Development Strategy and the CHIETA's annual business plan; and
 - 11.5.1.12. performing any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.
- 11.5.2 The Governing Board may delegate, any of its powers and duties to the Executive Committee, Chambers, committees, members and employees, provided that the CHIETA may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation.
- 11.5.3 The Governing Board delegates its powers and duties to the extent contemplated in the CHIETA's "Delegation of responsibilities document" annexed as "H" which may be amended by the Governing Board from time to time.
- 11.5.4 The CHIETA must perform its functions in accordance with the Act, the Skills Development Levies Act and this constitution.

12 MEETINGS OF THE GOVERNING BOARD

12.1 Ordinary meetings

- 12.1.1 The Governing Board will hold quarterly meetings and one of these meetings will be considered to be the annual general meeting on an agreed date.
- 12.1.2 At least five (5) members each side of organised labour and organised employers shall constitute a quorum for a meeting of the Governing Board.
- 12.1.3 If, after 30 minutes (unless good reasons to the contrary are furnished) of the scheduled time for the meeting, there is no quorum the meeting will be postponed to a later date within a

month, provided if on that date, a quorum is not present the meeting will continue as if a quorum were present and all decisions made at that meeting will be minuted as such and circulated to all members.

- 12.1.4 The Secretary, together with the Chairperson and Deputy Chairperson, must prepare a written notice of every Governing Board meeting stating the date, time and venue of the meeting as well as the agenda for that meeting.
- 12.1.5 All notices of meetings must be sent to the members of the Governing Board at least fourteen (14) days before the scheduled date of that meeting and the Secretary must retain proof of distribution.
- 12.1.6 A motion proposed at a meeting will not be considered unless it has been seconded. The Chairperson may require a motion to be submitted in writing, in which case the Chairperson will read the motion to the meeting.
- 12.1.7 Decisions and resolutions will be occasioned through consensus. Should consensus not be achieved, then all motions must be decided by a majority of votes of those voting members present. The manner of voting must be by a show of hands or in any other manner as may be agreed by those voting members present.
- 12.1.8 Each member has one vote on any matter before the Governing Board. Organised employers and organised labour will always have an equal number of votes at each meeting despite the absence of any members from the meeting.
- 12.1.9 Any member may raise matters of a serious or urgent nature at a meeting without prior notice if he/she procures the consent of the members present at the said meeting.
- 12.1.10 The Chairperson must preside over all meetings of the Governing Board and must sign the minutes of the Governing Board meetings after those minutes have been confirmed at the next meeting.

- 12.1.11 The Deputy Chairperson must preside over meetings of the Governing Board whenever the Chairperson is absent, or for any reason, unable to preside.
- 12.1.12 At every annual general meeting the Governing Board must:
- 12.1.12.1. consider the annual financial statements of the CHIETA and auditor's reports on those statements;
 - 12.1.12.2. consider the Chairperson's and the Executive Committee's annual reports;
 - 12.1.12.3. consider the budget of the CHIETA for the next financial year;
 - 12.1.12.4. approve dates for its ordinary meetings for the next financial year; and
 - 12.1.12.5. appoint conciliators and arbitrators to resolve disputes within the CHIETA in accordance with the Dispute Resolution Procedure as set out in annexure F of this constitution.
- 12.1.13 The Governing Board may invite persons who are not members to attend meetings and participate in discussions, but they may not vote.

12.2 Extraordinary Meetings

- 12.2.1 The Executive Officer, with the approval of the Chairperson and Deputy Chairperson, may convene an extraordinary meeting of the Governing Board whenever he/she deems it necessary and will convene such a meeting at the written request of no fewer than 25% of voting members stating the purpose of such meeting.
- 12.2.2 No matters, other than those for which the extraordinary meeting was convened, will be transacted at such meeting.
- 12.2.3 The Governing Board may invite persons that are not members to attend meetings and participate in discussions, but may not vote.

12.3 Minutes of Governing Board Meetings

12.3.1 The Secretary keeps minutes of each meeting and shall include such minutes with the agenda of the next Governing Board meeting.

12.3.2 At every ordinary meeting of the Governing Board, the minutes of the preceding ordinary meeting and any extraordinary meetings held subsequently, will be read and confirmed by the signature of the Chairperson.

12.3.3 Any objections to the minutes will be raised and dealt with before confirmation of the minutes thereafter the meeting will take the minutes as having been read.

12.4 Register of Resolutions

12.4.1 The Secretary will keep a complete register of Governing Board resolutions adopted in terms of this Constitution and all members shall have access to the register.

13 EXECUTIVE COMMITTEE

13.1 The principal role of the Executive Committee is the implementation of appropriate management systems, policies and procedures approved by the Governing Board so as to ensure effective government of the affairs of the CHIETA. The Executive Committee works as the operational arm of the CHIETA, maintaining the daily operational requirements of the CHIETA. The Executive Committee is vested with the power to promote the aims and objectives of the CHIETA.

13.2 Composition of the Executive Committee

13.2.1 The Executive Committee is composed of:

13.2.1.1. the Chairperson of the Governing Board;

13.2.1.2. the Deputy-Chairperson of the Governing Board;

13.2.1.3. the Executive Officer;

13.2.1.4. one (1) ordinary member of the Governing Board representing organised employers; and

13.2.1.5. one (1) ordinary member of the Governing Board representing organised labour.

13.2.2 The Executive Committee may co-opt any person to attend any meeting for a specific period or purpose, but such person will not be entitled to participate in any voting.

13.2.3 The Executive Committee will be supported by a full time Secretariat consisting of the Executive Officer, the Secretary and any other persons as may be determined by the Governing Board.

13.3 Meetings of the Executive Committee

13.3.1 The Executive Committee will decide on the number of meetings to be held provided that one ordinary meeting is held per month.

13.3.2 Special meetings may be called at any time by the Executive Officer with a view to disposing of urgent business.

13.3.3 50% of the voting members of EXCO constitute a quorum, provided that both labour and employers are equally represented by members. They must be present before a meeting can begin or continue.

13.3.4 The Executive Committee may determine its own procedures for the conducting of its meetings and affairs.

13.3.5 Each voting member has one vote on any matter before the Executive Committee, provided if at the meeting the members representing organised employers or organised labour are not equal in number, the side that is in the majority must withdraw as many of their members from voting at that meeting as may be necessary to ensure that the two sides are of equal numerical strength at the time of voting.

13.3.6 The Secretary must prepare a written notice of every Executive Committee meeting showing the date, time and venue of the meeting and the business to be transacted and must send the

notice to each member of the Executive Committee at least seven days before the date of the meeting. Shorter notice may be authorised for special meetings.

13.3.7 The Secretary will keep minutes of all meetings and distribute these within seven days after the meeting.

13.4 Functions of the Executive Committee

13.4.1 The Executive Committee will be responsible for the following functions:

13.4.1.1. investigating and reporting to the Governing Board on any matter relating to the sector;

13.4.1.2. informing the Governing Board of the appointment of employees to positions within the agreed establishment, to assist the CHIETA in performing its functions as well as on terms and conditions of employment;

13.4.1.3. recommending to the Governing Board where there is a need to appoint employees in excess of the agreed establishment;

13.4.1.4. handling disputes concerning the interpretation or application of this Constitution;

13.4.1.5. exercising and performing any function and duty conferred or imposed on it by this Constitution or delegated to it by the Governing Board.

14 AUDIT COMMITTEE

14.1 Membership of Audit Committee

14.1.1 The Audit Committee shall comprise of six participants, with the majority of the participants not being from the Governing Board.

14.1.2 The Audit Committee will elect the Chairperson of the Audit Committee from time to time.

- 14.1.3 The Chairperson of the Audit Committee may not be a member or a political office bearer.
- 14.1.4 Participants on the Audit Committee will serve on the committee in their individual capacity.
- 14.1.5 The Chairperson must have the ability to preside over meetings and to direct the discussions along constructive lines.
- 14.1.6 Other participants may also include-
 - 14.1.6.1. two participants who must have a sound financial knowledge;
 - 14.1.6.2. participants who have the necessary standing and expertise to provide the Governing Board with an assurance that the risks associated with CHIETA are being appropriately managed; and
 - 14.1.6.3. one participant who has legal expertise.
- 14.1.7 The participants shall serve on the Audit Committee for a period of three years renewable to a maximum of six years.

14.2 Meetings

- 14.2.1 A minimum of two meetings shall be held during a year.
- 14.2.2 Special meetings of the Audit Committee may be convened as required. Any participant of the Audit Committee may call a special meeting. The Internal or External Auditors may request a meeting if they consider that one is necessary.

14.3 Quorum

- 14.3.1 The quorum for meetings will be 50% of participants.

14.4 Notice of meetings

- 14.4.1 Notice shall be given in writing to all members of the Audit Committee and other interested parties, of each meeting to be

held, at least 14 days prior to the date on which such meeting is to be held.

14.5 Agenda of meetings

14.5.1 The agenda of the meetings shall be prepared and distributed at least seven (7) days prior to the meeting date. Any person attending the meeting may add items to the agenda two (2) days before the agenda is finalised. Such items should be provided to the secretary of the Audit Committee.

14.6 Reporting procedure

14.6.1 The Chairperson of the Audit Committee must report to the Governing Board within two weeks after the Audit Committee meeting. It must report annually to the Governing Board summarising the activities, recommendations and decisions of the Audit Committee during the previous financial year. Where appropriate the Audit Committee may also report to the Minister of Labour.

14.6.2 Any material findings should immediately be reported to the Chief Executive Officer.

14.6.3 The Audit Committee must report on the effectiveness of internal audit in the annual report of the CHIETA.

14.6.4 The Audit Committee must adhere to its Terms of Reference and the requirements of the Public Finance Management Act 1999 (the "PFMA") and relevant treasury regulations issued in terms of the PFMA.

15 FUNCTIONS OF THE SECRETARIAT

15.1 The Secretariat will be responsible for the following functions:

15.1.1 compiling the Sector Skills Plan from information collected from chemical sector employers, chamber Skills Plans, the critical skills matrix and any other relevant research report;

- 15.1.2 generating standards in accordance with the scarce/critical skills identified by the sector;
- 15.1.3 consolidating learnerships submitted by employers in the sector for the Chambers and the sector;
- 15.1.4 maintaining a database of learnership agreements;
- 15.1.5 administering and reporting to the Chambers on adherence to standards and qualifications;
- 15.1.6 maintaining a database of providers, verifiers and assessors;
- 15.1.7 managing and overseeing a procedure for receipt of levy transfers and disbursing of grants for the CHIETA;
- 15.1.8 developing and managing the financial strategy of the CHIETA and reporting quarterly on the CHIETA's financial position to the Governing Board;
- 15.1.9 compiling financial reports for submission to the Director-General;
- 15.1.10 distributing information to the Governing Board, all committees established in terms of this constitution, Employment Services and the Department;
- 15.1.11 collating quarterly reports from the Chambers in respect of the sub-sectoral employment situation;
- 15.1.12 ensuring an open line of communication between all structures of the CHIETA and other SETAs;
- 15.1.13 managing and overseeing the Procurement Procedure, in terms of Section 76 (4)c of the Public Finance Management Act;
- 15.1.14 investigating and reporting to the Governing Board on any matter relating to the sector or undertaking such investigation as may be required by the activities of the Governing Board;

- 15.1.15 making recommendations to EXCO in respect of the appointment of employees, the conditions of employment and employment policies and procedures;
- 15.1.16 maintaining and amending a schedule of participating Trade Unions, Employers' Associations, and committees approved by the Governing Board; and
- 15.1.17 preparing quarterly reports for submission to the Governing Board.

16 JOINT STAKEHOLDER FORUM

16.1 Composition of Joint Stakeholder Forum

- 16.1.1 Ten (10) representatives from the Chambers will be nominated as members of the Joint Stakeholder Forum, provided that each Chamber established in terms of clause 17 of this Constitution will nominate a maximum of two (2) representatives,
- 16.1.2 Ten (10) representatives from the Regional Coordinating Committees will be nominated as members of the Joint Stakeholder Forum, provided that each Regional Coordinating Committee as contemplated in clause 18 of this Constitution, will nominate a maximum of two (2) representatives, except for the Gauteng and Mpumalanga Committees which will together be required to nominate (2) representative each.
- 16.1.3 Representatives from the CHIETA Divisions including the CEO may participate in the discussions of the relevant matters pertaining to their area of work.
- 16.1.4 Wherever possible, small, medium and micro enterprises will be represented, as well as companies from remote areas.
- 16.1.5 The Joint Stakeholder Forum will be mindful of gender and equity profiles amongst its representatives.
- 16.1.6 To ensure continuity in meetings and optimum participation each representative of the Joint Stakeholder Forum will be entitled to

nominate an alternate of their choice provided that the alternate represents the same constituency as the principal representative.

16.1.7 In the interests of capacity building, principal representatives will be entitled to attend at least one meeting a year together with the alternate.

16.2 Functions of Joint Stakeholder Forum

16.2.1 The functions of the Joint Stakeholder Forum are to:

- 16.2.1.1. provide a forum for communication between the CHIETA Office, CHIETA constitutional structures, which are the Executive Committee, the Governing Board and the Chambers, and regional structures comprised of the employers, and employee organisations in the chemical sector;
- 16.2.1.2. facilitate and recommend decisions from both the Chambers and Regions to the Governing Board;
- 16.2.1.3. enable the CHIETA, and representatives of Regional and Chamber stakeholders to discuss emerging policy issues and operational matters, and engage in joint projects of mutual interest;
- 16.2.1.4. identify and channel issues of strategic interest to the relevant CHIETA structures pertaining to for example research, constituency support, sector skills planning, and critical and scarce skills;
- 16.2.1.5. contribute to the identification of critical skills, the development of appropriate learnerships, and the dissemination of information to learners in these areas; and
- 16.2.1.6. identify best practices in manufacturing, training provision, learner selection, quality management systems, etc, and serve as a conduit to share this information with interested stakeholders

17 CHAMBERS

17.1 Establishment of Chambers

17.1.1 A total of five (5) Chambers is established in line with sub-sectors of the CHIETA as set out in Annexure "D".

17.1.2 The Governing Board may create additional or reduce the number of Chambers in line with the changing nature of the business by way of:

17.1.2.1 merging the Chambers, or

17.1.2.2 splitting of Chamber(s).

17.2 Composition of Chambers

17.2.1 Every Chamber shall consist of an equal number of representatives from organised employers on the one hand and organised employees on the other.

17.2.2 The Chambers may include representatives from:

17.2.2.1 relevant Government Departments;

17.2.2.2 relevant Professional Bodies; and

17.2.2.3 other organisations that may add value.

17.2.3 The number and names of the representatives constituting the Chamber must be submitted to the Secretary.

17.2.4 The Chamber may invite any person to attend any meeting of the Chamber for a specific period or purpose, but such person will not be entitled to participate in any voting.

17.2.5 The Chambers shall follow the procedures for the convening of meetings, including the chairing, quorum, decision-making and recording of minutes of its meetings, set by the CHIETA secretariat

17.2.6 The CHIETA will attend to the administrative and liaison function of the Chambers

17.3 Functions of the Chambers

17.3.1 The Chambers will perform their functions by:

- 17.3.1.1. submitting a Chamber Skills Plan, qualifications matrix and contributing towards a critical/scare skills list for the relevant sub-sector(s);
- 17.3.1.2. monitoring the implementation of the Chamber Skills Plan;
- 17.3.1.3. making recommendations on the nature, content and administration of learnerships to the Executive Committee;
- 17.3.1.4. making recommendations to the Executive Committee and the Board on the qualifications development standards and qualifications in the Sector;
- 17.3.1.5. making recommendations to the Executive Committee on the assessment of education and training standards and qualifications;
- 17.3.1.6. making recommendations to the Executive Committee on the registration of assessors and the monitoring of assessments;
- 17.3.1.7. making recommendations to the Executive Committee on the accreditation of training and assessment providers;
- 17.3.1.8. contributing towards all other activities necessary for the development and implementation of the NQF;
- 17.3.1.9. collating information in respect of the employment situation in the sub-sector;
- 17.3.1.10. reporting to the Executive Committee on offers of financial assistance to the Chambers by donors and

ensuring that any such offers are managed through the CHIETA's normal financial systems;

17.3.1.11. monitoring the distribution of levy grants to companies in terms of the agreed formula;

17.3.1.12. exercising and performing any function, power and duty that is conferred upon it in terms of this Constitution or which is delegated to it by the Governing Board except where such power, function or duty may not be delegated.

17.3.2 The Chambers do not have decision-making powers. Any recommendations arising from the performance of the above functions may be proposed in writing by a Chamber to the Executive Committee. If the Executive Committee has the power to decide on particular recommendations then it may do so, if the Executive Committee does not have the power then it may refer the proposal to the Governing Board for a decision.

18 REGIONAL CO-ORDINATING COMMITTEES

18.1 Establishment of the Regional Coordinating Committees

18.1.1 Up to six (6) Regional Co-ordinating Committees may be established to cover activities of the regional stakeholders in the nine provinces. The geographical location of the Regional Co-ordinating Committees will be as follows:

18.1.1.1. Committee for Gauteng, Limpopo and North West (other than the South of North West covered by the committee for Sedibeng);

18.1.1.2. Committee for Mpumalanga;

18.1.1.3. Committee for Sedibeng, incorporating the Vaal Triangle, Free State and the southern part of the North West;

18.1.1.4. Committee for the Western Cape, incorporating the Northern Cape;

18.1.1.5. Committee for Kwa Zulu Natal; and

18.1.1.6. Committee for the Eastern Cape.

18.2 Composition of Regional Co-ordinating Committees

18.2.1 Every Regional Co-ordinating committee shall consist of:

18.2.1.1. an equal numbers of representatives from employers and employees, covering all active sub-sectors/chambers in the region provided the number shall not exceed 5 representatives per constituency

18.2.1.2. up to three (3) representatives for public and private providers;

18.2.1.3. representatives from relevant Government departments as may be required from time to time and

18.2.1.4. representatives from critical interest group, may be invited on an "ad hoc" basis.

18.2.2 Officials of the CHIETA other than the nominated representative may attend meetings of the committee as may be required for the efficient discharge of business.

18.2.3 Wherever possible, small, medium and micro enterprises will be represented, as well as companies from remote areas.

18.2.4 The Regional Co-ordinating Committee will be mindful of gender and equity profiles amongst its representatives.

18.2.5 Each representative of the Regional Co-ordinating Committee will nominate an alternate of their choice provided that the alternate represents the same constituency as the principal representative.

18.2.6 In the interests of capacity building, alternate representatives may attend at least one meeting a year together with the principal member.

18.3 Functions of Regional Co-ordinating Committee

18.3.1 The Regional Co-ordinating Committee must work closely with the relevant CHIETA regional office for the purpose of identifying, facilitating, managing and co-ordinating the Broad Regional Forum, and contributing to the implementation of the Regional Strategy. Other functions are to:

- 18.3.1.1. Identify and channel issues of strategic interest to the relevant CHIETA structures or divisions, including Chambers, the ETQA structures, Skills Planning, and the Standard Generating Body
- 18.3.1.2. Contribute to the identification of critical skills, the development of appropriate learnerships, and the dissemination of information to learners in these areas
- 18.3.1.3. Identify Best Practices in manufacturing, training provision, learner selection, quality management systems, etc., and serve as a conduit to share this information with interested stakeholders
- 18.3.1.4. Encourage the participation and development of BEE firms and co-operatives in the Region, and the alignment of Equity with Skills Development amongst stakeholder Workplace Skills Plans
- 18.3.1.5. Proactively update and build capacity amongst CHIETA stakeholders and chemical-related Professional Bodies, Educational institutions, Non-governmental Organizations, Community-based organizations and community-based co-operatives about CHIETA initiatives
- 18.3.1.6. Engage and communicate with local area committees for the management of the existing apprenticeships

and where local committees are not in existence, ensure that some representation of organizations that are still in apprenticeships is secured.

19 OFFICE BEARERS OF THE JOINT STAKEHOLDER FORUM, CHAMBERS AND REGIONAL COORDINATING COMMITTEES

19.1 The Joint Stakeholder Forum, Chambers and Regional Coordinating Committees shall comprise of Elected Office Bearers represented by the Chairperson and the Deputy-Chairperson

19.2 Chairperson and Deputy-Chairperson

19.2.1 The members will, subject to the provisions of clause 19.2.2 and 19.2.3, at the first meeting of the relevant committee elect a Chairperson and Deputy-Chairperson from amongst their organised employer and organised labour members. Thereafter, at the first meeting of each new Committee (i.e. at each new two year term of office) appoint from among its voting members a Chairperson and Deputy-Chairperson who will each hold office for a period of two years or for such shorter period as he/she may be a voting member of the Committee,

19.2.2 If the Chairperson is appointed from members representing organised labour then the Deputy-Chairperson may be appointed only from members representing organised employers and vice versa.

19.2.3 If the Chairperson or Deputy-Chairperson is a member nominated from organised labour, only members of organised labour may participate in the election of their appointee and the same principle will apply to members representing organised employers where the appointee is a member nominated by them.

19.2.4 The term of office of the Chairperson and Deputy-Chairperson commences at the start of the new two-year period and expires at the end of the biennial general meeting.

- 19.2.5 Nominations for the office of the Chairperson or Deputy-Chairperson of the relevant committee will be submitted in writing to the Executive Officer.
- 19.2.6 Whenever a vacancy arises in the office of the Chairperson or Deputy-Chairperson, the provisions of clause 19.2.1 to 19.2.5 above will apply as the context may require to the filling of such vacancies.
- 19.2.7 A person elected in terms of clause 19.2.6 shall hold office for the unexpired period of his / her predecessor.
- 19.2.8 The Deputy-Chairperson will perform the duties and functions of the Chairperson whenever the Chairperson is absent or for any reason unable to act or to perform those functions and duties.
- 19.2.9 If at any meeting both the Chairperson and Deputy-Chairperson are absent or unable to act or fulfil their functions and duties, members of the committee present in the meeting must appoint a Chairperson to perform such functions and duties for the duration of that meeting.
- 19.2.10 The Chairperson or Deputy-Chairperson is subject to the Code of Conduct and may be removed from office for serious neglect of duty, serious misconduct, incapacity or any other fair reason.

20 COMMITTEES

- 20.1 The Governing Board will establish such standing and "ad hoc" committees as may be required from time to time.
- 20.2 Such committees shall be allocated such powers and functions as may be required for them to perform their functions.

21 CODE OF CONDUCT

- 21.1 The CHIETA is bound by a Code of Conduct annexed as Annexure "E". All members of the CHIETA are subject to the Code of Conduct and may be removed from office for serious neglect of duty or serious misconduct.

22 DISPUTE RESOLUTION PROCEDURE

22.1 Any dispute about the interpretation or application of this Constitution will be dealt with in accordance with the CHIETA Dispute Resolution Procedure as outlined in Annexure "F"

23 TENDER PROCEDURE

23.1 The CHIETA is bound by a Procurement Policy developed by the Governing Board in accordance with Section 76 (4) c of the Public Finance Management Act.

24 FINANCES

24.1 The CHIETA is financed through:

24.1.1 Levy transfers received from SARS as set out in section 14(a) of the Act;

24.1.2 Money paid into the CHIETA by the NSF for specific purposes;

24.1.3 Income earned on surplus moneys deposited or invested;

24.1.4 Income earned on services rendered in the prescribed manner;
and

24.1.5 Money from any other source.

24.2 The CHIETA is a public entity and its finances shall at all times be managed in accordance with the Public Finance Management Act, 1999.

24.3 The CHIETA must open and maintain a bank account in its name at a registered bank of its choice, approved by the Governing Board, in the Republic of South Africa.

24.4 The money received by the CHIETA may only be invested in:

24.4.1 Savings accounts;

24.4.2 Permanent shares;

24.4.3 Fixed deposits at a registered bank or other financial institution;
and

24.4.4 Any other manner approved by the Minister.

- 24.5 The Governing Board must determine a policy and procedure for the payment of the CHIETA's expenses. All payments must accord with that policy.
- 24.6 The CHIETA must-
- 24.6.1 prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and
 - 24.6.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in paragraph (a) of any other information that it is required to submit in terms of the Public Finance Management Act.
- 24.7 Money received by the CHIETA may only be used to:
- 24.7.1 fund the performance of its functions and
 - 24.7.2 pay for its administration within the prescribed limits' or as determined by the Minister from time to time.
- 24.8 The Executive Officer must submit financial statements for approval to the Executive Committee on a monthly basis and to the Governing Board on a quarterly basis.
- 24.9 Annual financial statements must also be prepared by the Executive Officer. These statements must consist of:
- 24.9.1 balance sheet detailing the CHIETA's affairs;
 - 24.9.2 income and expenditure;
 - 24.9.3 cash flow; and
 - 24.9.4 levy transfers received and grants disbursed by the CHIETA.
- 24.10 The CHIETA's first financial year will commence on date of registration of the CHIETA. Thereafter the financial year shall begin on the first day of April each year and end on the last day of March of the following year.

- 24.11 At the end of each financial year the Governing Board must submit to the Minister, a statement of the CHIETA's estimated income and expenditure for the following financial year.
- 24.12 The Governing Board must approve an acceptable standard for accounting practices for the CHIETA and:
- 24.12.1 keep proper records of all the CHIETA's financial transactions, assets and liabilities and
- 24.12.2 within six months after the end of each financial year prepare accounts reflecting income and expenditure and the balance sheet showing its assets, liabilities and financial position as at the end of that financial year.
- 24.13 The Executive Officer must, no later than three months after the end of each financial year, prepare and submit a statement of the CHIETA's financial activities for the financial year showing:
- 24.13.1 all monies received by the CHIETA in terms of the Skills Development Levy Act and any other sources;
- 24.13.2 expenditure incurred on behalf of the CHIETA in terms of: Remuneration and/or allowances for officials and employees, amounts paid to members of the CHIETA and alternates as compensation for travelling, accommodation and subsistence expenses incurred by them in respect of attendance at meetings or in the course of performing work on behalf of the CHIETA, payments made to CHIETA employees and education and training providers; office accommodation; printing and stationery requirements, miscellaneous operating expenditure and
- 24.13.3 the CHIETA's assets, liabilities and financial position as at the end of the financial year.
- 24.14 The annual financial statements must be signed by the Executive Officer and the Chairperson of the Governing Board and be submitted to the appointed auditors for auditing and preparation of the report as required by the Act.

- 24.15 Original copies of the audited statements and the auditors' reports must be made available for inspection by members at the offices of the CHIETA. The members are entitled to make copies of the audited statements and auditors' reports.
- 24.16 The Executive Officer must, in consultation with the Chambers and Committees, prepare for submission to the annual general meeting of the Governing Board, an annual budget for the next financial year.
- 24.17 The Governing Board must submit to the Auditor-General the CHIETA's accounts, financial statements and financial management reports to be audited.
- 24.18 The Auditor-General must submit a report on the audit conducted to the CHIETA expressing an opinion as to whether the CHIETA has complied with the provisions of the Act, this Constitution and standard accounting practice. A copy of this report must be submitted to the Minister.

25 WINDING UP OF CHIETA

- 25.1 The Minister may, wind up or take over the administration of the CHIETA as contemplated in sections 9(A) and 15 of the Act.

26 AMENDMENTS TO THE CONSTITUTION

- 26.1 Only the Minister may, after consultation with the CHIETA, amend this Constitution in accordance with Section 13(2) of the Act.
- 26.2 If the Governing Board wishes to propose constitutional amendments to the Minister a resolution by at least 66% of all members must be secured after at least:
- 26.2.1 one month's notice of a motion to amend had been given to the Executive Officer; and
- 26.2.2 two weeks' notice of that motion had been given to all other members of the Governing Board.

26.3 The Executive Committee will issue a written notice together with full details of the proposed amendment(s) and forward the notice to the members no later than thirty days before the date of the relevant Governing Board meeting to consider the proposed amendments.

26.4 Unless the Minister approves, the proposed amendments to the constitution will not be incorporated into the constitution or have any force.

26.5 The Executive Committee may incorporate amendments to the CHIETA Constitution without prior approval of the members if the Minister prescribes such amendments in terms of Section 13(2) of the Act.

26.6 A copy of amendment(s) approved by the Minister in terms of clauses 25.2 or 25.5 of this Constitution shall be forwarded to all members of the Governing Board.

27 RULES AND REGULATIONS

27.1 The CHIETA shall be bound by the Rules and Regulations annexed hereto as Annexure "G".

ANNEXURE "A" - SCOPE OF COVERAGE

03	11600	Production of organic fertiliser
03	33100	Manufacture of coke oven products
03	33200	Petroleum refineries/synthesisers
03	33300	Processing of nuclear fuel
03	33410	Manufacture of basic chemicals, except fertilisers and nitrogen compounds
03	33420	Manufacture of fertilisers and nitrogen compounds
03	33421	*Manufacture raw materials and chemical compounds used in agriculture
03	33430	Manufacture of plastics in primary form and synthetic rubber
03	33501	*Chemically-based general household and personal care products
03	33502	*Manufacture, sale and/or distribution of diversified speciality chemicals for industrial use
03	33520	Manufacture of paints, varnishes and similar coatings, printing ink and mastics
03	33530	Manufacture of pharmaceuticals, medicinal chemicals and botanical products
03	33541	Manufacture of soap and other cleaning compounds
03	33543	Manufacture of beauty products
03	33592	Manufacture of explosives and pyrotechnic products
03	34000	Manufacture of other non-metallic mineral products
03	34110	Manufacture of glass and glass products

03	34112	Manufacture of glass containers; glass kitchenware and tableware; scientific and laboratory glassware, clock and watch glasses and other glass product n.e.c.
03	36400	Manufacture of accumulators, primary cells and primary batteries
03	39005	Power coating
03	41210	*Manufacture of industrial gases in compressed, liquefied or solid forms
03	61410	Wholesale trade in solid, liquid and gaseous fuels and related products
03	87140	Industrial research, e.g. fuel research

ANNEXURE "B" - ORGANISATIONS IN SECTOR AND REPRESENTATION

Organised Employers	Number of Members
Base chemicals	1
Explosives	1
Fast-moving consumer goods	1
Fertilisers	1
Glass	1
Petroleum	1
Pharmaceuticals	1
Speciality chemicals	1
Surface coatings	1
Organised Labour	
Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU)	3
South Africa Chemical Workers Union (SACWU)	3
Solidarity Union	2
United Association of South Africa (UASA)	1
General Industries Workers Union of South Africa (GIWUSA)	1 (Observer status)
Government Departments	
Department of Trade and Industry	1
Departments of Minerals and Energy	1

Department of Environmental Affairs	1
Department of Science and Technology	1
Professional Bodies	
South African Pharmacy Council	1
South African Chemical Institute	1
Engineering Council of South Africa	1
Bargaining Council	
Bargaining Council for the Chemical Industry	1
TOTAL	27 of which (18 have voting powers)

ANNEXURE "C" - NOMINATION OF MEMBERS

1. Nominations by organised employers

Organised employers listed in Annexure "B" may nominate 9 members to represent their interests on the Governing Board.

2. Nominations by organised labour

Trade unions listed in Annexure "B" may nominate 9 members to represent their interests on the Governing Board.

3. Application to the Governing Board by new organisations wishing to nominate members

3.1. Any organisation which is not listed in Annexure "B" may apply to the Governing Board to participate in the nomination of members to represent organised employers or organised labour (as the case may be).

3.2. The organisation must submit -

3.2.1. their constitution or founding document;

3.2.2. the size of their membership;

3.2.3. a motivation for consideration by the Governing Board; and

3.2.4. any other information the Governing Board considers relevant.

3.3. The Governing Board must consider the organisation's representations as contemplated in clause 3.2 as well as

3.3.1. any representation from a chamber if the organised employer would fall within that chamber; or

3.3.2. any representation from organised labour which may organise in the same sector as the organisation.

3.4. If the Governing Board is of the view that the organisation is sufficiently representative of organised employers or organised labour within the sector, then the Governing Board must list the organisation in Annexure "B". The organisation may thereafter participate in the nomination of members.

4. Inviting stakeholder participation

- 4.1. The Governing Board must review the list of organised employers and organise labour every two years. If the Governing Board deems it appropriate the Governing Board must call on organised employers and trade unions (not employers and employees) to participate by nominating members in the Governing Board. The purpose of such an invitation is to ensure that the Governing Board is properly represented by members representing organised employers and organised labour and that the representation is reviewed on a biannual basis.

5. Consulting on proportional representation

- 5.1. Once every two years the Governing Board invites organised employers and trade unions (respectively) to nominate representatives as members.
- 5.2. Organised employers assisted by the Chair or Deputy Chair of the Governing Board (whichever office bearer has been elected by organised employers) would then by way of consultation attempt to reach agreement on the number of members to proportionally allocate each organisation to represent organised employers on the Governing Board.
- 5.3. Trade unions assisted by the Chair or Deputy Chair of the Governing Board (whichever office bearer has been elected by organised labour) would then by way of consultation attempt to reach agreement on the number of members to proportionally allocate each organisation to represent organised labour on the Governing Board.
- 5.4. Once organised employers and organised labour have reached agreement (respectively) on the number of members an organisation may nominate then the organisation may decide on the appropriate person to sit as a member on the Governing Board as contemplated in clause 8 of the constitution.
- 5.5. If agreement cannot be reached then the principle of proportional representation must be applied.

6. Resolving disputes

If there is a dispute regarding the interpretation or application of this schedule which cannot be resolved amicably and informally then the organisations may refer a dispute for arbitration as contemplated in Annexure "F" of the constitution.

ANNEXURE "D" - CHAMBERS OF THE CHIETA

1. Chamber 1: constituted by the sub-sectors, Base Chemicals and Petroleum
2. Chamber 2: constituted by the sub-sectors Speciality Chemicals and Surface Coatings
3. Chamber 3: constituted by the sub-sectors Explosives and Fertilisers
4. Chamber 4: constituted by the sub-sectors Pharmaceuticals and Chemically Related Consumer Goods
5. Chamber 5: constituted by the sub-sector Glass

ANNEXURE "E" - CODE OF CONDUCT

- 1 **INTRODUCTION**
 - 1.1 Policy
 - 1.2 Understanding the Code
- 2 **COMPLIANCE WITH LAWS AND REGULATIONS**
- 3 **CONFLICT OF INTEREST**
 - 3.1 Outside Activities, Employment and Directorships
 - 3.2 Relationships with Clients, Customers and Suppliers
- 4 **BUSINESS PRACTICES**
 - 4.1 Gifts, Hospitality and favours
 - 4.2 Remuneration
- 5 **CHIETA FUNDS AND PROPERTY**
- 6 **ACCOUNTING STANDARDS**
- 7 **SECURITY OF INFORMATION**
 - 7.1 Obtaining and Safeguarding Information
 - 7.2 Access to Information
- 8 **CONTRAVENTION OF THE CODE**
- 9 **DISCIPLINARY PROCEDURE**

1 INTRODUCTION

1.1 Policy

The CHIETA, its members and employees, are committed to a policy of fair dealing and integrity in the conduct of their business. This commitment, which is actively endorsed by the CHIETA, is based on a fundamental belief that business should be conducted honestly, fairly and legally. The Governing Board expects all members and employees of the CHIETA to share its commitment to high moral, ethical and legal standards.

1.2 Understanding the Code

This document outlines the CHIETA's Code of Conduct ("the Code"), which applies equally to all members of the CHIETA. Compliance with the Code by all members is mandatory.

2 COMPLIANCE WITH LAWS AND REGULATIONS

Members must comply with all applicable laws and regulations, which relate to their activities for and on behalf of the CHIETA.

3 CONFLICT OF INTERESTS

3.1 Members are expected to perform their duties conscientiously, honestly and in accordance with the best interests of the CHIETA. Members must not use their positions and or knowledge gained through their relationship with the CHIETA for private or personal advantage, or in such a manner that a conflict or an appearance of conflict arises between the CHIETA's interests and their own personal interests.

3.2 A conflict could arise where a member, family members or a business with which the member or family member is associated obtains a gain, advantage or profit by virtue of the employee and/or member's position or knowledge gained through that position.

3.3 If members perceive that a course of action, which has been pursued, is being pursued or is intended to be pursued, may give rise to a conflict of interest or a perceived conflict of interest, they must immediately disclose all known facts to the Executive Officer. The Executive Officer will, in

consultation with the Executive Committee, make a determination, which determination is final and binding.

3.4 Members who hold, or have been invited to hold, outside directorships should take particular care to ensure compliance with all provisions of this Code. When outside business directorships are being considered, prior approval must be obtained from the Executive Officer.

3.5 Relationships with Clients, Customers and Suppliers

Members should ensure that they are independent from any business organisation having a contractual relationship with the CHIETA or providing goods or services to the CHIETA if that association might influence or create the impression of influencing their decisions or the performance of their CHIETA duties. Under these circumstances, Members should not invest in, nor acquire a financial interest, directly or indirectly, in such an organisation or should disclose such relationship to the Governing Board

4 BUSINESS PRACTICES

4.1 Gifts, Hospitality and Favours

Gifts, hospitality and entertainment may only be offered to a third party if they are consistent with customary business practice, modest in value, not in contravention of any applicable law and where public disclosure thereof would not embarrass the CHIETA.

4.2 A member shall not accept gifts, hospitality or other favours from suppliers of goods or services. However, acceptance of the following would not be considered contrary to such policy:

4.2.1 advertising matter of limited commercial value;

4.2.2 occasional business entertaining such as lunches, cocktail parties or dinners; and

4.2.3 occasional personal hospitality such as tickets to local sporting events or theatres.

4.3 A member may not accept personal favours or other preferential treatment that might in return place the recipient under any obligation.

4.4 Should a member receive unsolicited gifts, not within reasonable and acceptable limits, he/she must immediately advise the Executive Officer of such unsolicited gifts, who will resolve to return the gifts, or alternatively donate them to a reputable charity. A register of such returns will be maintained by the secretariat.

5 CHIETA FUNDS AND PROPERTY

5.1 Members must at all times ensure that the CHIETA's funds and property are used only for legitimate business purposes. When the CHIETA's funds are to be spent, it is the responsibility of the member to use good judgement and to ensure that appropriate value is received by the CHIETA for such expenditures.

5.2 Any member, who becomes aware that the CHIETA's funds or property may be used in a fraudulent or improper manner, should immediately and in confidence advise the Executive Officer of such incident in the manner prescribed below or contact the CHIETA Antifraud hotline.

6 ACCOUNTING STANDARDS

The CHIETA's books and records must reflect all business transactions in an accurate and timely manner in conformity with generally accepted accounting principles. Non-disclosure of revenues, expenses, assets or liabilities is not permitted. Members responsible for the accounting and record-keeping functions are expected to be diligent in enforcing proper practices.

7 SECURITY OF INFORMATION

In the regular course of business, the CHIETA accumulates a considerable amount of information. The following principles are to be observed:

7.1 Obtaining and Safeguarding Information

Only information necessary to the CHIETA's business shall be collected, used and retained. Personal information should be obtained directly from the person or organisation concerned. Only reputable and reliable sources should be used to supplement this information.

7.2 Access to Information

No confidential information may be disclosed by any employee or member, including but not limited to information regarding products, plans, business transactions, personal information, salaries, without prior authorisation unless in the ordinary course of business.

8 CONTRAVENTION OF THE CODE

- 8.1 Any contravention of the Code is considered to be a serious offence. Any member who suspects that they may have contravened the Code should immediately advise the Executive Officer or report the matter to the CHIETA Antifraud hotline.
- 8.2 Members suspecting a contravention of the Code by another member should report this, preferably in writing, to the Executive Officer. By following this process, confidentiality will be maintained and the matter will be investigated impartially.
- 8.3 A contravention of the Code may result in disciplinary action being taken that could result in the termination of employment or membership to the CHIETA.

9 DISCIPLINARY PROCEDURE

- 9.1 If a member is reasonably suspected of having breached this Code then the Governing Board may convene a hearing into the matter.
- 9.2 The Chairperson of the Governing Board must notify the member in writing of the charges against him or her.
- 9.3 The member must be afforded an opportunity to represent his / her case. This includes calling witnesses, giving oral evidence and presenting documentary evidence.
- 9.4 The Chairperson must chair the hearing.
- 9.5 If the Chairperson, on a balance of probability finds that the member has indeed transgressed the Code then the Chairperson may make a recommendation in writing to the Governing Board to sanction the member by issuing a written warning or by removing the member.
- 9.6 The Chairperson must set out briefly the charge against the member, the evidence led at the hearing as well as his / her finding and recommendation.
- 9.7 The Governing Board makes the final decision on the appropriate sanction of the member.
- 9.8 If the member is removed by way of this disciplinary process then the organisation which the member represented may then nominate a new member for appointment to the Governing Board.
- 9.9 If the transgression constitutes a criminal offence then the Chairperson must report the matter to the South African Police Services.

ANNEXURE "F" - DISPUTE RESOLUTION**1 INTRODUCTION**

The objective of this procedure is to outline a process for resolving disputes in instances where the dispute arises from or relates to the interpretation or application of the Constitution of the CHIETA.

2 DISPUTE RESOLUTION PROCEDURE

- 2.1 Any party to a dispute concerning the interpretation or application of this Constitution may serve a notice of the dispute to the Executive Officer of the CHIETA
- 2.2 The referring party must:
 - 2.2.1 lodge the dispute in writing
 - 2.2.2 adequately describe the nature of the dispute, and
 - 2.2.3 serve the dispute to every other affected party.
- 2.3 The Executive Officer must within 7 days of receipt of the dispute notify the members of the Executive Committee and inform every other affected party of the nature of the dispute.
- 2.4 The Executive Committee must within 30 days of notice consult with the affected parties in order to ascertain the nature and extent of the disputes, including the referral of the dispute to the arbitrator.
- 2.5 The parties to the dispute must agree on a mutually acceptable arbitrator, or failing such agreement the Chairperson of the CHIETA may appoint a suitable arbitrator on behalf of the parties.
- 2.6 The arbitrator must conduct the arbitration in a manner that he or she 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 formality.
- 2.7 Within 14 days of conclusion of the arbitration proceedings:

- 2.7.1 the arbitrator must issue a signed arbitration award with reasons;
and
 - 2.7.2 the Executive Officer must provide a copy of the award to every party to the dispute.
- 2.8 The arbitration award shall be final and binding on the parties to the dispute.

3 VARIATION OF AN AWARD

- 3.1 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:
- 3.1.1 erroneously sought or made in the absence of any party affected by the award;
 - 3.1.2 in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
 - 3.1.3 granted as a result of a mistake common to the parties to the proceeding.

4 AWARD OF ARBITRATION COSTS

- 4.1 The costs of the arbitration must be borne equally by the parties to the dispute.
- 4.2 The arbitrator may however make a different and appropriate award of costs if:
- 4.2.1 a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings;
or
 - 4.2.2 the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.

ANNEXURE "G" - RULES AND REGULATIONS OF THE CHIETA

- 1 A motion proposed at a meeting may not be considered unless it has been seconded.
- 2 The Chairperson may require a motion, which has a proposer and seconder to be submitted in writing in which case the Chairperson must read the motion to the meeting.
- 3 No motion may be withdrawn or amended without the consent of the member proposing and the member seconding the same motion.
- 4 Unless this Constitution provides otherwise, all motions must be decided by majority of votes of those voting members present. Voting can take place on a show of hands or secret ballot.
- 5 Where at least 75% of the members have reached agreement on a matter referred to them, via letter, fax or telephone, by the Chairperson without convening a meeting and have conveyed their agreement to the Governing Board via letter or telefax, such resolution shall be deemed to be a resolution of the Governing Board, shall be recorded in the minutes of the next ordinary meeting and the Register of Resolutions.
- 6 If a member is unable to attend a meeting, his/her views on any matter on the agenda concerned may be communicated to the meeting in writing but shall not count as a vote by the member concerned.
- 7 No member may participate in a discussion or vote on a matter in which he/she has a direct or indirect pecuniary, financial or other material interest, unless he/she first discloses the extent of his/her interest and obtains the permission of the meeting to participate in the discussion or vote on the matter or both.
- 8 If a member, without obtaining the Governing Board's permission, participates in the proceedings in connection with the matter in which he/she does have a direct or indirect pecuniary, financial or other material interest and vote on such matter, such vote shall be deemed invalid.
- 9 The ruling by the Chairperson on any point of order or procedure shall be binding.

ANNEXURE "H" - CHIETA DELEGATION OF RESPONSIBILITY

TYPE OF DECISION	LEVEL OF AUTHORITY	LIMITATION
Authorised Spending Limit	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Authorise amounts in excess of R500 000
	<ul style="list-style-type: none"> Executive Committee 	<ul style="list-style-type: none"> Authorise budgeted amounts up to R500 000
	<ul style="list-style-type: none"> CEO/ Management 	<ul style="list-style-type: none"> Authorise budget amounts up to R99 000
Appointment of "A" & "B" Bank Signatories	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Limits placed by existing policies and legislation
Authorisation of cheque / electronic transfers as an "A" signatory	<ul style="list-style-type: none"> CEO 	<ul style="list-style-type: none"> Authorisations to be approved by at least two signatories Prohibited from authorising payments where the signatory receives directly any benefit from such payment.
	<ul style="list-style-type: none"> Chairperson of Governing Board. 	
	<ul style="list-style-type: none"> Vice Chairperson of Governing Board 	
	<ul style="list-style-type: none"> Office Manager 	<ul style="list-style-type: none"> Authorisation to be approved by at least two signatories Prohibited from authorising payments where the signatory receives directly any benefit from such payment. May authorise up to an amount of R25 000 as well as recurring expenditure that has been approved in the annual business plan budget e.g. salaries, rental, telephone etc. in the absence of the CEO on condition that the Chief Financial Officer is the counter signatory on all transactions

TYPE OF DECISION	LEVEL OF AUTHORITY	LIMITATION
Authorisation of cheque / electronic transfers as an "B" signatory"	<ul style="list-style-type: none"> • Division Managers 	<ul style="list-style-type: none"> • Authorisations to be approved by at least two signatories, one of which shall be an "A" signatory • Prohibited from authorising payments where the signatory receives directly any benefit from such payment.
Approval of financial policies and procedures	<ul style="list-style-type: none"> • EXCO 	<ul style="list-style-type: none"> • Approve and make recommendation to the Board for ratification
	<ul style="list-style-type: none"> • Governing Board 	<ul style="list-style-type: none"> • Ratification • Limits placed by existing policies and legislation
Approval of Annual Budget	<ul style="list-style-type: none"> • Executive Committee 	<ul style="list-style-type: none"> • Approve and make recommendation to the Board for ratification
	<ul style="list-style-type: none"> • Governing Board 	<ul style="list-style-type: none"> • Ratification • Limits placed by existing policies and legislation
Approval of Annual Financial Statements	<ul style="list-style-type: none"> • Audit Committee 	<ul style="list-style-type: none"> • Review and make recommendations to the Board
	<ul style="list-style-type: none"> • EXCO 	<ul style="list-style-type: none"> • Approve and make recommendation to the Board for ratification
	<ul style="list-style-type: none"> • Governing Board 	<ul style="list-style-type: none"> • Ratification • Limits placed by existing policies and legislation

TYPE OF DECISION	LEVEL OF AUTHORITY	LIMITATION
Audit Function	<ul style="list-style-type: none"> • Auditor General 	<ul style="list-style-type: none"> • In terms of the PFMA, the Office of the Auditor-General or his/her appointed nominee will provide the external audit function.
	<ul style="list-style-type: none"> • Governing Board 	<ul style="list-style-type: none"> • Appointment of Audit Committee • Appointment of internal auditors
	<ul style="list-style-type: none"> • Audit Committee 	<ul style="list-style-type: none"> • Perform oversight function for internal audit
Appointment of Staff	<ul style="list-style-type: none"> • Governing Board 	<ul style="list-style-type: none"> • Appoint CEO & CFO • Limited in accordance with recruitment and selection policy of CHIETA
	<ul style="list-style-type: none"> • Executive Committee 	<ul style="list-style-type: none"> • Appointment of Senior Management positions • Approval of unbudgeted positions
	<ul style="list-style-type: none"> • CEO 	<ul style="list-style-type: none"> • Appointment of all other budgeted staff positions
Approval to instigate legal action	<ul style="list-style-type: none"> • Executive Committee 	<ul style="list-style-type: none"> • Approve all legal action
	<ul style="list-style-type: none"> • CEO 	<p>Approve legal action for:</p> <ul style="list-style-type: none"> • Recovery of Debt • Labour related and CCMA action • Any other legal action related to CHIETA operations

TYPE OF DECISION	LEVEL OF AUTHORITY	LIMITATION
Approval of Sector Skills Plan	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Ratification of Sector Skills plan
	<ul style="list-style-type: none"> Executive Committee 	<ul style="list-style-type: none"> Approve and recommend to Board for ratification
Approval of Human Resources (HR) Policies and Procedures	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Ratification of all (HR) policies and procedures
	<ul style="list-style-type: none"> Executive Committee 	<ul style="list-style-type: none"> Approve and recommend to Board for ratification
Approval of Annual Reports	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Approve Chairperson and CEOs Annual report
	<ul style="list-style-type: none"> Executive Committee Chairperson 	<ul style="list-style-type: none"> Develop annual report for ratification by the Board
	<ul style="list-style-type: none"> CEO 	<ul style="list-style-type: none"> Develop annual report for ratification by the Board
Amendment of CHIETA constitution	<ul style="list-style-type: none"> Minister of Labour 	<ul style="list-style-type: none"> Approve Constitution and any amendments to the Constitution
	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Propose amendments to the constitution to the Minister with resolution of at least 66.6% of all voting members.
	<ul style="list-style-type: none"> Executive Committee 	<ul style="list-style-type: none"> Issue written notice with full details of the proposed amendment(s) to Board no later than thirty days before the date of the relevant Board meeting to consider proposed amendments
Appointment of Executive Committee	<ul style="list-style-type: none"> Governing Board 	<ul style="list-style-type: none"> Appoint Chairperson and Deputy Chairperson Ratification of ordinary members of the Executive committee

No. R. 105

3 February 2006

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)**APPROVAL OF THE CONSTITUTION OF THE TRANSPORT EDUCATION AND
TRAINING AUTHORITY (TETA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the TRANSPORT AND EDUCATION TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE



CONSTITUTION OF THE TRANSPORT EDUCATION AND TRAINING AUTHORITY (TETA)

PREAMBLE

This Constitution seeks to give effect to the spirit of transformation that is embodied in the Skills Development Act, 1998 (Act No. 97 of 1998) read together with the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999), as amended and the Treasury Regulations (TR), while at the same time recognising the unique requirements of the diverse sub-sectors that make up the Transport Sector.

As per the requirements of the PFMA, as amended, the provisions of this Act will take preference over the TETA Constitution, where the Constitution is in conflict with the PFMA and its regulations.

The signatories to this Constitution, and the parties represented by them, acknowledge that the ultimate purpose of the Constitution is threefold:

- To create an environment in which all the people employed – or seeking employment in the Transport Sector, have access to relevant learning opportunities of a pre-determined standard.
- To contribute to the economic growth of the Sector through the development of skilled human resources.
- To ensure that effective financial stewardship and adequate systems of good governance and risk management are in place.



An institutional framework is now created to implement national, sector and workplace education and training initiatives in order to develop the skills and knowledge of the people in the Transport Sector, and to manage this function in a sound and transparent manner, giving effect to the spirit and intention of the Skills Development Act, 1998 (Act No. 97 of 1998), the Skills Development Levies Act, 1999, (Act No. 9 of 1999), Employment Equity Act, 1998 (Act No. 55 of 1998), the Labour Relations Act, 1995 (Act No. 66 of 1995), the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and any other relevant legislation having an impact on people at work.

PURPOSE OF THE CONSTITUTION

The purpose of this constitution is to provide a governance as well as an institutional framework to devise and implement national, sectoral and workplace strategies that are aligned to the objectives of national economic and social development. These strategies will be developed within the context of:

- Enhancing the financial management and ensuring effective stewardship and risk management over TETA assets.
- Supporting the development and improvement of skills development interventions.
- Providing an assurance of quality in education and training.
- Enhancing access to learning opportunities.
- Encouraging active employer and employee participation.
- Supporting the objectives of the Skills Development Act and The Public Finance Management Act.



- Addressing the needs of the South African labour market including:
 - Employers
 - Current employees
 - Unemployed people
 - New and potential entrants into the labour market
 - Small, medium and micro enterprises

Accordingly, the following Sector Education and Training Authority is hereby established:

1. INTERPRETATION

1.1 Any term used in this Constitution, and which is not defined hereinafter, but which is defined in the Act, shall, unless indicated otherwise, bear the same meaning as that assigned to it in the Act.

1.2 In the interpretation of this Constitution: –

1.2.1 The singular includes the plural and vice versa.

1.2.2 The masculine includes the feminine and vice versa.

1.2.3 **Natural persons** include juristic persons and vice versa.

1.2.4 Where any definition confers a substantive right or imposes a substantive obligation, such provision shall be binding notwithstanding the fact that it does not appear in any other place in this constitution.



1.3 Definitions:

In this Constitution, unless the context should indicate a different meaning, the following words and phrases shall have the following meanings assigned to them:

1.3.1. **“Act”** means the Skills Development Act, 1998 (Act No. 97 of 1998).

1.3.2. **“Alternate”** means a person appointed in writing to act on behalf of a member of the Board, a Standing Committee, or Chamber Committee, in the absence of the elected representative.

1.3.3. **“Board”** means the Accounting Authority of TETA as contemplated in terms of Section 49 of the PFMA, and shall consist of nominated members appointed in accordance with this Constitution.

1.3.4. **“Chamber”** means a body formally established by the TETA as contemplated in Section 12 of the Act, for the purpose of managing the affairs of its sub-sector, as well as performing the functions so delegated to it by TETA and exercising the powers necessary to manage its affairs and perform such functions.

1.3.5. **“Chamber Mancom”** means the Chamber Management Committee consisting of the Chief Executive Officer (ex officio) Chamber Executive Officer (ex officio), the Chairperson and Vice-Chairperson of the Chamber and the duly appointed Chamber members.



- 1.3.6. **“Chairperson”** means any person elected to chair any meeting of the Board, or its Chambers, or any Board Committee, or any *ad hoc* Committee and to fulfil any responsibilities or tasks assigned by the Board or as contained in the applicable Board Committee Charters.
- 1.3.7 **“Chief Executive Officer”** means the person appointed by the TETA Board in accordance with Section 13(3)(a)(xi) of the Act, and who serves in this capacity as a full time employee of TETA.
- 1.3.8 **“Committee”** means any Board Committee, ad hoc or sub-committee of TETA or its Chambers.
- 1.3.9 **“Constituency”** means the employer groups, employee groups and government departments that are registered with TETA.
- 1.3.10 **“Day”** means a business day, excluding Saturdays, Sundays and Public Holidays. Where any time lapse is expressed in days, if the last day of such computation is not a business day, the last day shall be deemed to be the next succeeding business day.
- 1.3.11 **“Department”** means the Department of Labour.
- 1.3.12 **“Employee Group”** means any organised and registered labour group as contemplated in Section 11(a) of the Act, which has been formed to promote or advance the collective interests of their members and is formally recognised by employers for that purpose.



- 1.3.13 “Employer Group”** means any organised employer group, including small business as contemplated in Section 11(b) of the Act and any other association of employers formed to promote or advance the collective interests of their members.
- 1.3.14 “Education and Training Standards”** means statements of desired education and training outcomes and their associated assessment criteria as defined in Section 1 of the SAQA Act, and registered in the terms of the said Act.
- 1.3.15 “ETQA”** means the Education and Training Qualifications Authority; established in the terms of the South African Qualifications Authority Act, No. 58 of 1995.
- 1.3.16 “Executive Authority”** means the Cabinet member who is accountable to Parliament for TETA or in whose portfolio it falls.
- 1.3.17 “Financial year”** means a year ending 31 March.
- 1.3.18 “Fruitless and wasteful expenditure”** means expenditure which was made in vain and would have been avoided had reasonable care been exercised.
- 1.3.19 “Irregular expenditure”** means expenditure, other than authorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation.



- 1.3.20** “Levies Act” means the Skills Development Levies Act, 1999 (Act No. 9 of 1999).
- 1.3.21** “Levy Income” means the total funds available to TETA, which includes levy transfers, donor funds, and interest payments from investments, service fees, transfers from Industry Training Boards and income from any other source.
- 1.3.22** “Majority Vote” means a vote taken on any issue at any meeting held in terms of this Constitution and shall, further, mean 50%, plus one of all employer representatives present and entitled to vote at such meeting and 50% plus one of all employee representatives present and entitled to vote at such meeting, and further provided that a quorum is present at such meeting.
- 1.3.23** “Member” or “Representative” means a person appointed as such in terms of the TETA Constitution, and shall include persons mandated by those bodies contemplated in Section 11 (c) and (d) of the Act, and shall also include a person who is a consultant appointed by an employer group or an employee group to represent its interests and to serve as a member or representative.
- 1.3.24** “Minister” means the Minister of Labour, unless otherwise indicated.
- 1.3.25** “Natural Person” means that TETA may sue or can be sued.



- 1.3.26 **“NQF”** means the National Qualifications Framework as defined in section 1 of the SAQA Act.
- 1.3.27 **“Office Bearers”** Is the elected chairperson and vice chairperson of the TETA Board in consultation with the CEO of the organisation.
- 1.3.28 **“Permanent employee”** means any employee of TETA who is employed in terms of the conditions and provisions of the Basic Conditions of Employment Act as amended.
- 1.3.29 **“PFMA”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended.
- 1.3.30 **“Public Entity”** means a national or provincial public entity as per the definitions of the Public Finance Management Act, as amended.
- 1.3.31 **“Professional body”** means bodies or organisations whose activities are directed at improving and enhancing the professional status of role players in that particular industry: - Without derogating the generality of the foregoing, such activities could include provision of professional registration of role players, research and development facilities, provision of training and development programmes, the formulation of codes of conduct and related practices and procedures that would protect and preserve the professional integrity of the role players.



- 1.3.32 **“Quorum”** means the requisite number of members who must be present at any meeting for decisions of that meeting to have any binding effect.
- 1.3.33 **“Requisitionist”** means one third of the members of the Board or Chamber who call for a special Board of Chamber meeting.
- 1.3.34 **SAQA** means the South African Qualifications Authority.
- 1.3.35 **“SAQA Act”** means the South African Qualifications Authority Act, 1995 (Act No 58 of 1995).
- 1.3.36 **“Sector”** means the transport national economic sector as determined by the Minister of Labour.
- 1.3.37 **“TETA”** means the Transport Sector Education and Training Authority.
- 1.3.38 **“TR”** means the Treasury Regulations For Departments, Trading Entities, Constitutional Institutions And Public Entities issues in terms of the PFMA and as amended from time to time.
- 1.3.39 **“Vice Chairperson”** means any person who is elected to act, in the absence of the Chairperson, in the latter's stead.

2. NAME

The name of this Sector Education and Training Authority shall be referred to as TETA.



3. LEGAL STATUS

3.1 TETA is established in accordance with sections 9 and 13 of the Act read together with the SAQA Act, and the Levies Act.

3.2 TETA is a juristic person with perpetual succession, and TETA will:

3.2.1 Have a separate identity and existence distinct from its members and representatives.

3.2.2 Hold property and assets distinct from its members and representatives.

3.2.3 Not carry on any business, which has for its object the acquisition of gain for itself or its representatives or members.

3.2.4 Not distribute any profits by way of dividends or any other means to its members or representatives.

3.2.5 Be required to use its funds solely for the objects for which it has been established, with any surplus funds being invested in line with the provisions of the PFMA and TR.

3.2.6 Be entitled to raise funds, generate income and charge fees in terms of the relevant legislation.

3.2.7 Be capable at law of suing and being sued, of investing funds and of operating banking and other accounts, of entering into contracts and of doing or performing all such other acts or things which a company incorporated



with limited liability may do or perform subject to the provisions of this Constitution and the Act;

3.2.8 Continue to exist notwithstanding changes in its members or representatives.

3.3 TETA may appoint any competent person to act on its behalf to sign all documents and to take any steps necessary in any proceedings at law brought by or against TETA.

4. PLACE OF BUSINESS

The place of business of TETA shall be at such place as the Board may determine from time to time.

Physical Address: 2nd Floor, Sonsono Building
344 Pretoria Avenue
Randburg
2125

Postal Address: Private Bag X10016
Randburg
2125

5. THE OBJECTIVES OF TETA

The objectives of TETA are to:

- 5.1 Encourage and facilitate the development of competence of employees and potential employees in the sector.
- 5.2 Encourage increased levels of investment in education and training and facilitate an optimum return on this investment.



- 5.3 Position this sector as the '*sector of career choice*' for prospective learners and entrants into the labour market.
- 5.4 Encourage employers and employees to adopt a culture of life long learning through:
 - 5.4.1 Utilising the workplace as an active learning environment.
 - 5.4.2 Providing employees with opportunities to acquire new and appropriate skills.
 - 5.4.3 Providing opportunities for new entrants and potential entrants into the sector labour market, and enhancing access to opportunities to gain work experience.
 - 5.4.4 Enhancing access to learning opportunities and to facilitate the recognition of prior learning.
 - 5.4.5 Ensuring the quality of education and training within the transport sector.
- 5.5 Supporting the prime objectives of the Employment Equity Act, 1998 (Act No. 55 of 1998).
- 5.6 Expand the provision of education and training in this sector through sound partnerships with public and private sector service providers.
- 5.7 Encourage greater co-operation between the public and private sectors.



- 5.8 Co-operate with SAQA and other SETAs, in support of the objectives of the Act.

6. SCOPE OF COVERAGE & JURISDICTION

- 6.1 The scope of coverage of the SETA is the Transport Sector as determined by the Minister and which has been defined in terms of Section 9(2) of the Skills Development Act, 1998 and by notice No. 316 published in the government gazette of 31 March 2005.

7. POWERS OF TETA

- 7.1 TETA shall, subject to the provisions of the Act, be governed by its Constitution, read in conjunction with the PFMA and all other applicable legislation and managed by the Board. TETA shall, subject to the provisions of the Act, the PFMA and *TR* have all such powers as may be necessary to enable it to carry out its functions and fulfill its objectives, and without limiting the generality thereof, it shall have the following specific powers:

7.1.1 Be accountable and responsible for the governance of TETA in terms of the Act, the PFMA, TR and where applicable the Companies Act.

7.1.2 Confirm the appointment of any representative member of Employee and Employer groups, and his or her alternate, duly nominated to serve on the Board and Board committees.



- 7.1.3 Establish and approve the Board and Board Committee Charters taking into account the requirements of good governance practices and the unique composition and make up of the Board.
- 7.1.4 Establish and approve the number, powers and roles of Board Committees.
- 7.1.5 Establish Chambers and Committees as is more specifically provided for in terms of Sections 12 and 13(3)(vii) of the Act, and to dissolve such Committees and amend the number of Chambers as provided for in this Constitution.
- 7.1.6 Appoint a Chief Executive Officer in terms of Section 13 (3)(a)(xi) of the Act and such other employees as may be necessary for the effective functioning of TETA.
- 7.1.7 Approve the strategic business plan of TETA.
- 7.1.8 Delegate specific functions and the commensurate powers to the Board, Board Committees, management, Chambers, outside organisations and persons, without abrogating its responsibility.
- 7.1.9 Ensure that appropriate business structures, processes and systems are in place to achieve the business strategy, goals and objectives of TETA.
- 7.1.10 Ensure that TETA has and maintains effective, efficient and transparent systems of financial and risk management and internal control.



- 7.1.11 Be responsible for the management, including the safeguarding of the assets and for the management of the revenue, expenditure and liabilities of TETA.
- 7.1.12 Take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of TETA.
- 7.1.13 Receive the levy income and other income and to manage the same in accordance with the Levies Act read together with the PFMA, TR and Generally Accepted Accounting Standards.
- 7.1.14 Approve the general strategic, financial and operational policies of TETA.
- 7.1.15 Approve the annual TETA budget and approve or disapprove the audited financial statements of TETA, including its Chambers.
- 7.1.16 Determine the remuneration payable to Board members, Board Committees and consultants providing advice to the Board and its members.
- 7.1.17 Determine the scale of remuneration for the Chief Executive Officer, and approve such scales of remuneration for all other staff as recommended by the Chief executive Officer with due regard to representations made by the appropriate Board Committees and Chambers.



7.1.18 Stipulate the terms and conditions of employment of the Chief Executive Officer and other TETA employees.

7.1.19 Establish parameters within which all general procurement and administrative matters should take effect; taking into account the requirements for effective Supply Chain Management principles and practices as is required by the TR.

7.1.20 Regulate any other matter that may impact upon the good governance of TETA as a whole.

7.1.21 Execute any other power allowed by law.

8. FUNCTIONS OF TETA

TETA will execute the following functions:

- 8.1 Facilitate strategic human resource development planning within the sector.
- 8.2 Propose education and training standards qualifications to bodies registered with SAQA and be responsible for developing education and training standards and qualifications.
- 8.3 Monitor and measure achievements in terms of those standards and qualifications.
- 8.4 Accredite providers, assessors and moderators of education and training in this sector.
- 8.5 Assure the quality of education and training in this sector without itself being a provider of education and training.



- 8.6 Analyse and prioritise education and training needs within this sector and develop skills development strategies to address identified priorities.
- 8.7 Enhance access to learning opportunities including:
- 8.7.1 The establishment of career paths and progression pathways.
 - 8.7.2 The establishment of NQF qualifications.
 - 8.7.3 The establishment of learnerships and skills programmes.
- 8.8 Manage and administer all learnerships within the transport sector.
- 8.9 Manage and measure the administration of levy disbursements in this sector.
- 8.10 Promote a culture of lifelong learning within the sector and encourage active employer and employee organisation participation in the strategies and activities of TETA.
- 8.11 Promote and market TETA through regular communication with all stakeholders and potential stakeholders.
- 8.12 Perform any other function required by SAQA in terms of TETA's registration.
- 8.13 Perform any other function that must be performed by TETA in terms of this Act or any other applicable law.



- 8.14 Develop a sector skills plan within the framework of the national skills development strategy;
- 8.15 Implement a sector skills plan by:
- 8.15.1 Approving and monitoring workplace skills plans.
 - 8.15.2 Establishing learnerships.
 - 8.15.3 Allocating grants as per the approved TETA grant criteria.
 - 8.15.4 Monitoring and measuring education and training in this sector.
- 8.16 Promote learnerships by:
- 8.16.1 Identifying appropriate workplaces where individuals can gain practical work experience.
 - 8.16.2 Improving and supporting learning through the development of learning methodologies, standards and curricula.
 - 8.16.3 Assisting in the conclusion, registration and monitoring of learnerships agreements.
- 8.17 Liaise with the National Skills Authority as well as other SETA's on issues including:
- 8.17.1 National skills strategy.
 - 8.17.2 Skills development policy.
 - 8.17.3 Its own sector skills plan.



- 8.18 Report to the Accounting Officer of the Department of Labour on the implementation of its sector skills plan, its income and expenditure;
- 8.19 Liaise with the employment services of the Department and Education Boards and other regulatory bodies in terms of education laws of South Africa in order to improve the quality of information:-
- 8.19.1 About employment opportunities.
 - 8.19.2 Between education providers and the labour market.
- 8.20 Facilitate the involvement of the relevant government departments in the activities of TETA in order to:
- 8.20.1 Address the competency requirements for socio-economic development.
 - 8.20.2 Address the learning needs of the transport sector.
 - 8.20.3 Promote training in small, medium and micro enterprises to enhance quality, productivity, sustainability and job creation.
 - 8.20.4 Perform any other duties imposed by the Act, PFMA, TR and Protocol on Corporate Governance within the Public Sector or not specifically mentioned, in order to fulfil the objectives of TETA.



- 8.21 Receive the levy payment for the sector and effect the appropriate allocation of grants to employers as approved by TETA.

9. TETA CONSTITUENCY

The TETA constituency in the Transport Sector shall be determined as follows:

- 9.1 The Chief Executive Officer shall from time to time compile and maintain a schedule of employers and employee groups whose members carry on their business activities or are employed, as the case may be, in the sector, together with Government Departments relevant to the sector.
- 9.2 The name of any employer or employee group shall be removed from the schedule:
- 9.2.1 Upon the written request of that organisation, or
- 9.2.2 As directed by the Minister.
- 9.3 The trade unions, employer organisations and relevant government departments whose core functions fall within the Transport Sector must be maintained on a stakeholder database.



10. COMPOSITION OF THE TETA BOARD

- 10.1 Members nominated onto the TETA Board should have the appropriate experience and skills to ensure an appropriate duty of skill and care as per the requirements of the PFMA, Companies Act and King Report on Corporate Governance.
- 10.2 The powers, which the Constitution of the TETA confers upon the Board members, may normally be exercised only by them collectively, acting as the Board. Their fiduciary duties, however, rest upon them individually and require that:
- 10.2.1 They act only within their powers and use their powers only for the purposes for which they were conferred.
- 10.2.2 They act with the required skill and care.
- 10.2.3 They avoid conflict of interest and use their powers only for the benefit of TETA.
- 10.2.4 They do not use information acquired in their capacity as directors for personal gain.
- 10.2.5 They retain their independence of action and do not enter into agreement to fetter the discretion they have as directors.
- 10.3 In accordance with the principle of equal representation from employer and employee groups, the Board shall consist of a maximum of 36 members made up of 32 voting and 4 non-voting members.



10.4 The voting members of the Board shall be:

10.4.1 Two members per Chamber nominated by the employee group (non-executive directors).

10.4.2 Two members per Chamber nominated by the employer group (non-executive directors).

10.5 The non-voting members of the Board shall, (if deemed appropriate and appointed by the Minister) be:

10.5.1 The Chief Executive Officer of TETA.

10.5.2 One member from the Department of Transport.

10.5.3 One member representing Professional Bodies, whose activities and interests fall primarily within the Transport Sector.

10.5.4 One member from Bargaining Boards established in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), with jurisdiction in this sector.

11. ROLE AND FUNCTIONS OF THE TETA BOARD

The comprehensive roles and functions of the TETA Board are contained in Sections 50, 51, 52, 54, 55, 56 and 57 of the PFMA, the Companies Act as well as the Act, read in conjunction with the Board Charter.



- 11.1 The primary purpose of the Board is to ensure that TETA fulfils its legal mandate, objectives and obligations in terms of this constitution, the Act, the Employment Equity Act 1998 (Act No. 55 of 1998), the PFMA and a variety of other applicable legislation. Accordingly, the Board must retain full and effective control over TETA, manage and monitor the performance of the entity and Chief Executive Officer. Ensure that decisions on material matters, risk management, systems and controls are in the hands of the Board. Representatives on the Board shall bring independent judgement to bear on issues of governance, strategy, structure, risk management, performance, resources and standards of conduct. The role will specifically include, but will not be limited to:
- 11.1.1 Providing strategic leadership to TETA.
 - 11.1.2 Reviewing the performance of the Board and Board Committees against the approved charters.
 - 11.1.3 Ensuring the sound governance of TETA, including appropriate code of business ethics, risk management and fraud prevention.
 - 11.1.4 Approval of formal delegations of authority with limitations and conditions.
 - 11.1.5 Approval of levels of materiality.
 - 11.1.6 Compilation and approval of tolerance levels acceptable to the Board.



- 11.1.7 Determining and approval of TETA strategies and policies.
- 11.1.8 Measuring and monitoring the performance of TETA against its business strategies and plans.
- 11.1.9 Appointing the Chief Executive Officer, in accordance with relevant employment legislation and the policies of TETA, and determining and reviewing the terms and conditions of employment.
- 11.1.10 Managing the performance of the Chief Executive Officer and TETA, in accordance with agreed performance output and outcomes.
- 11.1.11 Ensure the preparation of financial statements for each financial year in accordance with Generally Accepted Accounting Practice (GAAP).
- 11.1.12 Report on instances of material losses through criminal conduct, irregular expenditure, fruitless and wasteful expenditure and unauthorised expenditure.
- 11.1.13 The effective financial and operational management of TETA including the approval of budgets and all capital expenditure, fund raising and income generation.
- 11.1.14 Ensure that TETA complies with any tax, duty, pension, medical aid and audit commitments as required by legislation.



11.1.15 Ensure the development, implementation and maintenance of proper records of the financial affairs of TETA.

11.1.16 Promoting the objectives and interests of TETA.

12. BOARD CHAIRPERSON and VICE-CHAIRPERSON

12.1 The Board, at its first formal meeting, and every second year thereafter, shall elect from its members in terms of sub-clause 10.2.1 and 10.2.2:

12.1.1 The Chairperson and Vice-Chairperson.

12.2 Once those persons have been elected, the duties of the previous Chairperson and Vice-Chairperson shall terminate.

12.3 In the absence of the Chairperson at a Board meeting, the Vice-Chairperson will perform the Chairperson's functions, and in the event of both being absent, TETA Board members must appoint an *ad hoc* chairperson from amongst the Members to perform these functions for that meeting.

12.4 - Ineligibility for Remuneration:

Other than for a sitting and travel allowance no member of the Board or representative appointed in terms of the Constitution shall be remunerated by TETA for services rendered in that capacity.



13. REMOVAL AND REPLACEMENT OF MEMBERS AND OFFICE BEARERS

13.1 The Board may remove a member or representative from the Board, Chamber Mancom or any committee for any of the following reasons:

13.1.1 For breach of the TETA Code of Conduct and Board Charter.

13.1.2 For incapacity, where such incapacity of a member reasonably justifies removal.

13.1.3 For engaging in activities that have or may have the effect of undermining the integrity or reputation of TETA and/or its Chambers and/or any of its Board Committees or sub-committees.

13.1.4 For being absent from three consecutive TETA Board or Chamber Mancom meetings or sub-committee meetings without good cause and prior to tender of apology, provided that in the case of a Chamber Mancom representative, the TETA Board shall act on the advice of that Chamber.

13.1.5 For any wilful or negligent infringement of any term or condition of this Constitution, the PFMA or operating practice or procedure or rules of order governing meetings, which has the effect of undermining the reputation, work of TETA, misleading any other member or representative or in any way placing TETA, its members or employees in an embarrassing or disadvantageous position.

13.2 In the event of the anticipated removal of the Chairperson of the Board, Chamber Mancom or any of the Board Committees, the



Chief Executive Officer shall pursue the matter under the direction of the remainder of the members of the Board or Chamber Mancom, together with the Board Secretary.

- 13.3 Whenever a vacancy occurs in a Ministerial nominee member's position, the TETA Board must inform the Minister concerned of the vacancy in writing as soon as possible and request that a suitable replacement be appointed from the Ministers office.
- 13.4 Whenever a vacancy occurs in the Board or Chamber Mancom in respect of any employee, or employer representative position, the relevant TETA structure must as soon as practicable invite nominees from the relevant Chamber to fill the vacancy. In appointing a new member from the nominees of employees' and or employer organisations, TETA shall continue to ensure a representative coverage of the industries, occupations and enterprises that make up the sector, including small business.
- 13.5 Any person appointed to fill a vacancy that arises shall occupy such position from the time of appointment until the expiry of the term of office of the previous incumbent.
- 13.6 In addition to the above, it remains the prerogative of an employer organisation, and an employee organisation to replace any one or more of its representatives sitting on one or more TETA bodies by giving at least 10 day's notice in writing to the effect, delivered to the Chief Executive Officer. A representative so replaced shall have no right of appeal to TETA.

14. DELEGATION OF FUNCTIONS

- 14.1 The Board may, from amongst its members, appoint Board committees with powers to execute the functions of the Board



upon such terms and conditions (Board committee charters) as it may resolve from time to time, and to amend or withdraw such powers from time to time.

- 14.2 The Board may in terms of the provisions of Section 56 of the PFMA delegate its powers entrusted or delegated to the Board as the Accounting Authority in terms of the PFMA and the Act, to an official within TETA to sign all documents on behalf of TETA and to take any steps necessary in connection with any legal proceedings brought by or against TETA.
- 14.3 The Board may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of the delegations.
- 14.4 Such delegations do not divest the Board of the accountability concerning the exercise of the delegated power or the performance of the assigned duty.
- 14.5 To the extent that the Chief Executive Officer has not been empowered to execute any function of the Board, he shall be empowered to act on behalf of the TETA Board in an emergency. In such emergency the Chief Executive Officer shall immediately report in writing his actions, and his reasons for having acted, to the office bearers and the whole Board at the next Board meeting.
- 14.6 The Board may delegate certain functions to be executed from time to time by the Office Bearers.



15. ADMISSION AND REMOVAL OF REPRESENTATIVE GROUPS BY THE BOARD

15.1 Any employee group or employer group that is represented and registered in this sector may apply in writing to the Board for representation on the appropriate TETA Chamber.

15.2 After deliberation and consultation with the Chamber concerned, the Board may admit the employer or employee group to TETA if satisfied that the admission of that body will make TETA more representative of the interests of the sector.

15.3 After deliberation the Board may, after consultation with the respective employee or employer group concerned, remove it from the TETA if it is satisfied:

15.3.1 The group is no longer representative of employers or employees in the sector. In making such determination, it shall not bear the onus of proving non-representativity, but the group in question shall have the onus of proving representivity. The onus of proof shall be on balance of probabilities; and/or

15.3.2 If it is dysfunctional.

15.3.3 If its' conduct is such that it has brought, or is likely to bring, TETA into disrepute.



16. THE CHIEF EXECUTIVE OFFICER (CEO)

16.1 Appointment

16.1.1 The Chief Executive Officer shall have a critical and strategic role to play in the operational success of TETA's business, and shall manage the business on a day-to-day basis.

16.1.2 The Chief Executive Officer shall be appointed by the Board, and shall be a full time salaried employee of TETA.

16.1.3 The Board shall enter into a performance agreement with the Chief Executive Officer, which shall form the basis against which the performance of the Chief Executive Officer will be measured on at least a bi-annual basis.

16.2 The Duties and Functions of the Chief Executive Officer

16.2.1 As the Executive Director of the Board the Chief Executive Officer shall be the chief spokesperson of TETA and not the Board.

16.2.2 Develop and recommend to the Board a long-term strategy and vision for TETA that will generate acceptable levels of service delivery value and positive, reciprocal relations with relevant stakeholders.



- 16.2.3 Develop and recommend to the Board annual business plans and budgets that support TETA's business strategy.
- 16.2.4 Foster an environment within which ethical business practice is promoted, developed and maintained.
- 16.2.5 Be held accountable for employee's ethical conduct.
- 16.2.6 Exercise due care in delegating discretionary authority.
- 16.2.7 Strive consistently to achieve TETA's strategic, financial and operational goals and objectives, and ensure that the day-to-day business affairs of TETA are appropriately monitored and managed.
- 16.2.8 Ensure adequate performance in the quality and value of the services provided by TETA, and that TETA achieves and maintains a satisfactory liquid position to deliver on its legal mandate.
- 16.2.9 Ensure that TETA has an effective management team and to actively participate in the development of management and succession.
- 16.2.10 Develop and implement an integrated risk management system into TETA that addresses the wide variety of risk exposure inherent to the business of SETA's.
- 16.2.11 Ensure that effective and efficient systems of internal control are in place.



16.2.12 Formulate and oversee the implementation and maintenance of all TETA's policies.

16.2.13 Duty to manage the day-to-day activities of TETA.



17. BOARD COMMITTEES

- 17.1 Board committees are merely a mechanism to aid and assist the Board and its members or representatives in giving detailed attention to specific areas of their duties and responsibilities in a more comprehensive evaluation of specified issues such as utilisation of assets and resources, governance practices, risk management, input into policy development, audit focus and coverage, internal control, skills development, remuneration and procurement, etc.
- 17.2 Some committees will be standing committees appointed to perform a continuing function, while others have a specific task, and are disbanded once that task has been completed.
- 17.3 The Board in consultation with the Chief Executive Officer shall determine the number of Board Committees it wishes to establish to assist it to effectively advance the business of the Board.
- 17.4 In establishing Board Committees, the Board must determine their terms of reference, life span, powers role and function. The powers, role and functions, composition and size of the committee/s shall be contained in the applicable Charter, which is approved by the Board on an annual basis.
- 17.5 The Board must create reporting procedures and proper written mandates or "Charters" for its committees and ways of evaluating them.
- 17.6 Time should not be wasted on repeating a committee's deliberations at Board level.



- 17.7 The chairperson or vice-chairperson of the Board shall not be the chairperson of the Audit committee.
- 17.8 Board Committees shall not perform any management functions or assume any management responsibilities, as it only provides a forum for discussing business risk and control issues for developing relevant recommendations for consideration by the Board. The committees will make recommendations to the Board for its approval and final decision, while management is responsible for the implementation thereof.
- 17.9 The chairperson of the Board Committee shall be required to report orally or formally to the Board on a quarterly basis regarding the activities of the committee
- 18. ELECTION OF MEMBERS OF BOARD AND OR CHAMBER COMMITTEES, CHAIRPERSONS AND VICE-CHAIRPERSON, TERMS OF OFFICE AND FILLING OF CASUAL VACANCIES**
- 18.1 Election of Board and or Chamber Committee Members**
- The election of members of the Board and or Chambers representing employee groups and employer groups who are required to serve on the various Board and or Chamber Committees shall take place at the Board Meeting every 24 months after the conclusion of the election of Board members.
- 18.2 The Term of Office of Chamber Committee Members and Filling of Casual Vacancies**



18.2.1 Provided that a Committee member holds a position in any of the Chambers, he or she shall serve as a Committee member for a period of 24 months.

18.2.2 Should a casual vacancy arise in any Committee, for any reason whatsoever, that vacancy shall be filled by a person from the appropriate Chamber (representing an employee group or an employer group, as the case may be) on the written notice of the Chamber Mancom concerned to the Chief Executive Officer of TETA, and such replacement Committee member shall be ratified by the Board at its next Board meeting.

18.2.3 A replacement committee member shall serve in that capacity until the next election.

18.3 Election of Chairpersons and Vice-Chairpersons

18.3.1 The Chairperson and Vice-Chairperson of a Committee shall be elected from amongst members of a Committee or as prescribed in the Treasury Regulations at its first meeting after such Committee has been elected.



18.3.2 Of the two persons elected as Chairperson and Vice-Chairperson respectively, one shall represent an employee group and the other shall represent an employer group.

18.3.3 The Chairperson and Vice-Chairperson of a Committee shall serve in those positions for a period of 24 months.

18.3.4 At each succeeding election of a Chairperson and a Vice-Chairperson, the respective positions shall rotate between a representative of an employee group and a representative of an employer group.

18.3.5 The Chairperson of a Committee shall preside at all meetings of a Committee. In the Chairperson's absence, the Vice-Chairperson shall preside, and in the latter's absence the members present shall elect an *ad hoc* Chairperson.

19. CHAMBERS

19.1 The TETA hereby establishes the following Chambers for the following sub-sectors:



19.1.1 Aerospace

Means the industry in which employers and employees are associated for the transportation and activities involving aircraft and space vehicles including related components; their regulation, operation, design, manufacture, maintenance, repair, overhaul and testing; the provision of and regulation of airport, heliport, air traffic and airspace services; the servicing, calibration and maintenance of related equipment.

19.1.2 Forwarding and Clearing

Means the industry in which employers and employees are associated for the management of the international aspects of the procurement, acquisition, movement and storage of materials, parts and finished inventory into, through and out of organisations and its distribution channels, by the application of value added solutions.

19.1.3 Freight Handling

Means the industry in which employers and employees are associated for the purposes of the handling, storage and stock control of any cargoes through ports, airports, distribution centres, factories and other depots.

19.1.4 Maritime

Means the industry in which the employers and employees are associated for the purpose of activities on all vessels used at sea.



19.1.5 Rail

Means the industry in which employer groups and employees groups are associated for:

- 19.1.5.1 The purpose of the transportation of goods, passengers and livestock by rail;
- 19.1.5.2 The control, management, accomplishment, maintenance and exploitation of railways and rail services;
- 19.1.5.3 The maintenance, servicing, repair overhaul and testing of locomotives, rolling stock and support services.

19.1.6 Road Freight

Means the industry in which employers and employees are associated for the purpose of the transportation of goods by means of a goods vehicle, for reward, on a public road.

19.1.7 Road Passenger

Means the industry in which employers and employees are associated for the purposes of conveying passengers by bus transport for reward including the control, management and maintenance of these vehicles.



19.1.8 Taxi Transport

Means the industry in which employers and employees are associated for the purposes of transporting passengers by taxi for reward including the control and management of such vehicles.

19.2 The Powers and Functions of the Chambers

Each Chamber shall, as soon as practicable:

19.2.1 Establish the Chamber Mancom, which shall comprise:

19.2.1.1 An equal number of representatives from registered employer and employee groups, who are sufficiently representative and who have a direct interest in the sub-sector, which the Chamber represents.

19.2.1.2 Such members as Mancom may co-opt from time to time subject to the proviso that there shall be an equal number of co-opted members representing employer groups and employee groups.

19.3 Each Chamber Mancom shall:

19.3.1 Appoint, at its first formal meeting, the Chairperson and Vice-Chairperson for a period of 24 months on the understanding that these offices shall, on expiry of each 24 month period, rotate between employee representatives and employer representatives. The Chairperson and Vice-Chairperson shall not be from the same employer.



- 19.3.2 Appoint a Chamber Executive Committee or any other sub-committee if so resolved by the Chamber Mancom, with the proviso that an Executive Committee shall be appointed from the duly appointed members of the Chamber and shall include the Chairperson, the Vice-Chairperson and Executive Officer of the Chamber.
- 19.3.3 Nominate the stipulated number of Chamber representatives to the Board of TETA in accordance with the Constitution.
- 19.3.4 Draw up a levy disbursement plan and a budget and submit these for approval to the Board in the manner and on the dates prescribed by the Board.
- 19.3.5 Monitor the disbursement of grants in accordance with the approved levy disbursement plan.
- 19.3.6 To assist employers with the implementation of workplace skills plans in line with TETA criteria, by:
- 19.3.6.1 Establishing learnerships.
 - 19.3.6.2 Approving workplace skills plans.
 - 19.3.6.3 Approving grants in the prescribed manner to employers, and education and training providers.
- 19.3.7 Promote learnerships by:
- 19.3.7.1 Identifying workplaces for practical work experience.



19.3.7.2 Supporting the development of learning curricula.

19.3.7.3 Improving the facilitation of learning; and

19.3.7.4 Assisting in the conclusion of learnership agreements.

19.3.8 Ensure that learnership agreements are properly and expeditiously registered with TETA

19.3.9 Perform the functions of an ETQA in terms of the SAQA Act in respect of education and training providers operating within its sub-sector, as delegated to it by TETA.

19.3.10 Generally promote and market its services within the sub-sector.

20. MEETINGS

20.1 TETA Annual General Meeting

20.1.1 TETA shall hold its Annual General Meeting/s within six months as agreed by the Board, after the end of each financial year (the year-end being the 31st day of March in each year). The time, date and place of such meeting shall be determined by the TETA Board, which shall give at least 28 days notice of such Annual General Meeting to its stakeholder groups represented by the members. Such a notice shall also appear in national daily newspapers circulating in the Provincial capitals of the Republic of South Africa.



20.1.2 The business of TETA, when meeting as the annual general meeting, shall be:

20.1.2.1 To provide verbal and formal feedback of its performance to members and stakeholders and any other interested parties in attendance at the Annual General Meeting.

20.1.2.2 To answer any relevant questions pertaining to the Annual Report.

20.1.2.3 To provide, in general terms, an overview of the business for the forthcoming year.

20.1.2.4 To present the annual financial statements of TETA, and report of the Auditor-General.

20.1.2.5 To discuss any matter referred to in or arising out of the financial statements or the reports.

20.1.2.6 No other business other than that stated above shall be conducted at a TETA Annual General Meeting.

20.2 Other TETA Meetings and the Frequency Thereof

The Board, at their respective inaugural meeting, and thereafter at their respective final meeting in each financial year shall determine how many Board and Committee meetings shall take place and the dates of such meetings.



20.3 Chamber Management Committee Meetings

The Chamber Management Committee meetings shall be held at a time, place and frequency to be determined by each respective Chamber Executive Officer in consultation with the Chamber member representatives. However, every Chamber Management Committee shall meet at least four times per year.

20.4 Requisitioned Meetings

The Chairperson of the Board of TETA or a Chamber shall, at the written request of not less than one-third of the members of the Board or Chamber Mancom and within 14 days of the lodging of the requisition, issue a notice to members of the Board, or Chamber Mancom convening a meeting of the Board or Chamber Mancom for a date not less than 21 days and not more than 35 days from the date of notice.

20.4.1 The requisition shall state the purpose of the meeting, which shall be to transact business, which, in terms of this Constitution is required or permitted to be transacted by TETA or a Chamber. The requisition shall also be signed by the requisitionists and lodged at the office of TETA or the Chamber, as the case may be.

20.4.2 If the Chairperson does not, within 14 days from date of lodging of the requisition issue a notice as required under sub-clause 20.4 the requisitionists, may themselves on a 21 days notice and not more than 35 days convene a meeting, stating the purpose thereof, which shall not be materially different to that stated in the requisition. No meeting so convened shall be held after the expiration of 35 days from the date upon which the requisition was lodged.



20.4.3 Any meeting convened by the requisitionists under sub-clause 20.4. shall be convened in the same manner and quorum requirements as per any meetings of TETA Board or Chamber.

20.5 Procedure at Meetings and Quorum

20.5.1 The Board, Board Committees, Chamber Mancoms, and Chamber Sub-Committees shall regulate their meetings as they deem fit, but in accordance with good governance practices and common law procedures to be followed at meetings.

20.5.2 The quorum necessary for the transaction of business shall be 50 percent plus 1 of the employer representatives and 50 percent plus 1 of the employee representatives.

20.5.3 If within one hour after the time appointed for a meeting, a quorum is not present, a meeting, if convened upon a requisition of members, shall be dissolved. In any other case, the meeting shall stand adjourned to a day not earlier than seven days and not later than 21 (twenty-one) days after the date of the meeting at the same time and place. If no quorum is then present within half an hour after the time appointed for the meeting, the members then present shall constitute a quorum and may transact the business for which the meeting was called.

20.5.4. The chairperson, or such person as such shall be acting in the place of the chairperson, shall preside at the meeting.

20.5.5. The chairperson presiding at any meeting shall ensure that minutes of such meetings are formally documented and adequately kept for record purposes and scrutiny.



20.6 Voting

At all meetings:

20.6.1 Each member shall have one vote in respect of any issue put to the vote.

20.6.2 Proxy votes will be allowed, provided that the member appointing the person to act as proxy submits written and signed confirmation of such appointment to the Chairperson of the meeting prior to the commencement of the meeting.

20.6.3 All issues, if not resolved through reaching consensus, shall be put to the vote. An issue voted on shall be considered resolved if carried by a majority vote. Any issue, which is not passed by a majority vote shall not be carried and shall forthwith be removed from the table.

20.6.4 The Chairperson shall not have a second or "casting" vote.

20.6.5 Unless a ballot is demanded of the Chairperson by at least one employer member and one employee member personally present, then the Chairperson shall declare that a motion has, on a show of hands, been carried or lost and an entry to that effect shall be made in the minutes of the proceedings of the meeting. Such declaration shall be conclusive evidence of the fact that a motion was duly carried or defeated.



20.6.6 If a ballot is demanded, as contemplated in sub-paragraph 20.6.5 above, it shall be taken either immediately or after an adjournment as the Chairperson directs. Two scrutinisers shall be elected from amongst the members present, (one employer representative and one employee representative) to determine the result of the ballot. The result of such ballot shall be deemed to be the resolution of the meeting and an entry to that effect shall be made in the Minutes of the proceedings of the meeting.

20.7 Notice of Meetings

20.7.1 The Annual General Meeting of the TETA Board shall be called by giving not less than 28 (twenty-eight) days notice in writing. Subject to 20.7.2, any other meeting of the TETA Board shall be called by giving, not less than 14 (fourteen days) clear notice in writing.

20.7.2 Notice of an ordinary meeting, other than the Annual General Meeting, may be dispensed with if each of the members of the TETA Board so agrees. Such a meeting of the TETA Board shall, notwithstanding the fact that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called.

20.7.3 When notice is required to be given it shall specify the place, the date, the hour and the business of the meeting and shall be electronically submitted, posted or hand delivered to each recipient, depending on the custom prevailing. Proof of transmission by the sender shall be conclusive evidence of notice duly given.



21. CONDUCT OF BOARD MEMBERS AND EMPLOYEES

21.1 Code of Conduct

21.1.1 Members or representatives of the Board or any committee or Chamber of TETA are required to act in good faith in all dealings, which may involve TETA. Accordingly they must exercise their fiduciary duties and fulfil their obligations in a manner, which gives effect to the requirements of the PFMA, common law, this Constitution and the Board Charters. Members or representatives, office bearers and employees shall, in addition:

21.1.1.1 Act honestly and in a transparent manner.

21.1.1.2 Give effect to the spirit and intent of The Act, the SAQA Act, and the Levies Act.

21.1.1.3 Exercise reasonable care and diligence in all their decision-making.

21.1.1.4 Not make improper use of any information acquired as a member or representative of TETA or of any committee or Chamber of TETA.

21.1.1.5 Avoid any conflict between personal interests and those of TETA.

21.1.1.6 Declare any such conflict or interest as required in sub-clause 21.2 below.



21.2 Disclosure of Interest

TETA shall develop the required conflict of interest policy in terms of the PFMA and good governance practices, which shall be approved by the Board.

21.3 Confidentiality

21.3.1 A member of TETA or of any of its committees or Chambers shall not, while a member disclose to any unauthorised person any information which is acquired whilst performing any function in terms of this Constitution or in the course of employment and which is confidential to TETA. Such information may however be disclosed if it must be disclosed in terms of the Act, the Levies Act, or by virtue of a dispute with TETA duly declared, or by any other law or by an order of court.

21.4 Code of Conduct

The Board must cause a Code of Conduct to be drawn up for TETA as part of its corporate governance system, as well as procedures for a disciplinary hearing to address breaches of the Code of Conduct, and an appeal mechanism.

22. RESOLVING A CONSTITUTIONAL DISPUTE

22.1 Procedure

Should a matter concerning the interpretation and/or implementation of a term or condition of this Constitution (which is not required to be adjudicated upon by the Labour Court) remain



unresolved after having been tabled and discussed at a TETA Board meeting, the party who tabled the matter may

- 22.1.1 Refer the dispute in writing to the Chief Executive Officer adequately describing the dispute. The referral must be delivered to every other party to the dispute by the party referring the dispute.
- 22.1.2 The Chief Executive Officer shall then endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute, then any party to the dispute may refer it for arbitration by an arbitrator. The arbitrator must be agreed to by both parties to the dispute with the approval of the Chairperson of TETA or, failing such agreement or approval, by an arbitrator appointed by the Chairperson of TETA.
- 22.1.3 The arbitrator shall determine the date and venue of the arbitration and the procedure to be followed by the parties to the dispute, with a view to settle the dispute as informally and as expeditiously as possible. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 22.1.4 The arbitrator must conduct the arbitration in a manner that he or she 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 formality.



22.1.5 Within 14 days of conclusion of the arbitration proceedings:

- (a) The arbitrator must issue a signed arbitration award with reasons.
- (b) The Chief Executive Officer must provide a copy of the award to every party to the dispute.

22.1.6 The arbitration award is final and binding on the parties to the dispute.

22.1.7 The costs of the arbitration must be borne equally by the parties to the dispute or as otherwise determined by the Board. The arbitrator may however make a different and appropriate award of costs if:

- (a) A party to the dispute, without reasonable cause, refuses or fails to attend the arbitration or unduly delays arbitration proceedings, or
- (b) The arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.

22.1.8 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary or rescind an award:

- (a) Erroneously sought or made in the absence of any party affected by the award.



- (b) In which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission or
- (c) Granted as a result of a mistake common to the parties to the proceedings.

22.1.9 The provisions of the Arbitration Act 1995 (Act No. 42 of 1965) shall not apply.

23. FINANCES OF THE TETA

23.1 TETA shall be financed from:

23.1.1. The levy transfers from its sector.

23.1.2 Monies paid to it from the National Skills Fund.

23.1.3 Grants, donations and bequests made to it, subject to TETA honouring the direction made by any donor, grantor etc. in respect of the specific use or purpose for which the money (or property) was intended.

23.1.4 Monies received from any other legal source.

23.1.5 Income earned from money invested.

23.1.6 Income earned from services rendered in those instances where the Minister has ruled that a fee or other charge may be recovered for the rendering of those services.



23.2 The funds received by TETA shall be managed as contemplated in Sections 14(2) and 14(3) of The Act. Monies managed by a Chamber shall be done so in accordance with the relevant legislation and procedures laid down by the TETA Board.

23.3 The books of account shall be audited annually by the office of the Auditor General as provided for by the Levies Act, and the PFMA.

24. PROCESS FOR AMENDING THE CONSTITUTION

24.1 The Chief Executive Officer shall provide copies of any proposed amendment motivated together with the agenda for the next meeting of the TETA Board.

24.2 At least 30 days notice must be given to members of a meeting at which an amendment of the Constitution is to be considered.

24.3 The provisions of this Constitution may be amended only:

24.3.1 By the decision of at least 50% plus 1 of the employer members and 50% plus 1 of the employee members present at a properly constituted meeting of the Board, and

24.3.2 If approved by the Minister in the prescribed manner.

25. TAKING OVER ADMINISTRATION OF TETA

25.1 In terms of section 15 of the Act, the Minister may, after consultation with the National Skills Authority, by notice in the Gazette, direct the Director-General to appoint an administrator to take over the administration of a TETA if the Minister is of the opinion that:



- a. the TETA fails to perform its functions;
- b. there is mismanagement of its finances; or
- c. its membership no longer substantially represents the composition contemplated in section 11 of the Act.

25.2 In that notice the Minister--

- a. must determine the powers and duties of the administrator appointed in terms of sub-clause 25.1
- b. may suspend or replace one or more members of the TETA for a reason contemplated in sub-clause 25.1 (a), (b) or (c);
- c. may suspend the operation of the constitution of the TETA; and
- d. may, in the prescribed manner, transfer funds in the TETA's bank account to the National Skills Fund.

25.3 If a notice is published in terms of sub-clause 25.1, the Minister may, to ensure that TETA resumes the performance of its functions--

- a. amend its constitution;
- b. reinstate any of its members; and
- c. withdraw or amend any provision of the notice contemplated in sub-clause 25.2 on such conditions as the Minister considers appropriate.

Serla
APPROVE BY TETA BOARD

31/10/2005⁵³

No. R. 106

3 February 2006

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)

**APPROVAL OF THE CONSTITUTION OF THE MINING QUALIFICATIONS
AUTHORITY (MQA)**

The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the MINING QUALIFICATIONS AUTHORITY as set out in the Schedule.

SCHEDULE

MINING QUALIFICATIONS AUTHORITY

PRIVATE BAG X118
MARSHALLTOWN, 2107
TEL: (011) 832-1022
FAX: (011) 832 1041/1027/3574



74-78 MARSHALL ST
UNION CORPORATION BLD
5th FLOOR
MARSHALLTOWN,
JOHANNESBURG

28 September 2005

The Director-General
Department of Labour
Attention: Mr Benedict Mogadime
Sector Liaison Manager: Seta Performance
Private Bag x 117
PRETORIA
0001

Dear Sir

CONSTITUTION: MINING QUALIFICATIONS AUTHORITY [MQA]

Our telephonic discussions in the abovementioned regard has reference.

Please find attached MQA Constitution approved by the MQA Board at its meeting held on 28 April 2005. Please note that the Constitution have been signed by all Stakeholders, namely State, Employers and Labour.

Yours faithfully

Original signed by CEO

LIVHU NENGOVHELA
CHIEF EXECUTIVE OFFICER



CONSTITUTION

OF THE

MINING QUALIFICATIONS AUTHORITY

(MQA)

23 SEPTEMBER 2005

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PREAMBLE

The Mining Qualifications Authority (the "Authority") was originally established by the Mine Health and Safety Act, (Act no 29 of 1996) (the "MHSA") on 15 January 1997. It's constitution was subsequently published in the Government Gazette by the Minister of Minerals and Energy on 24 April 1998 in terms of section 97(4) of the MHSA as Schedule 7 of that Act.

The Skills Development Act, (Act no 97 of 1998) (the "SDA") was passed by Parliament on 20th of October 1998. In order to avoid any unnecessary duplication of institutions responsible for education and training in the mining and minerals industry the Minister of Labour designated the Authority as the SETA for the mining and minerals industry on 20 March 2000 in terms of section 9 of the SDA. The Authority was therefore required to exercise its powers and functions under two distinct pieces of legislation (the MHSA and the SDA).

The SDA and MHSA were amended in 2003 to promote the effective performance of the Authority's functions under both laws This amendment introduced item 4A(b) into Schedule 2 to the SDA, empowering the Minister of Labour, in consultation with the Minister of Minerals and Energy and after consulting the Authority, to amend Schedule 7 to the Mine Health and Safety Act, 1996 in order to bring the constitution of the Authority into line with the constitutions of other SETAs.

The Minister of Labour has, in accordance with Schedule 2 to the SDA, amended the constitution of the Authority as follows-

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1 Definitions

In this Constitution unless the context indicates otherwise any word or expression to which a meaning has been assigned in the Skills Development Act, 1998, Act no 97 of 1998 has the meaning so assigned:

- 1.1 "alternate" means any person appointed as an alternate to a member;
- 1.2 "Authority" means the Mining Qualifications Authority;
- 1.3 "chairperson" means the chairperson of the Authority or a committee;
- 1.4 "Chief Executive Officer" means the Chief Executive Officer appointed in terms of clause 15.1 of this Constitution;
- 1.5 "committee" means any standing committee, *ad hoc* committee or subcommittee of the Authority;
- 1.6 "consensus" means unanimous agreement;
- 1.7 "constituencies" means organised labour, organised employers and the relevant government department;
- 1.8 "employee" means any person who is employed or working at a working place;
- 1.9 "employer" means any person who employs an employee;
- 1.10 "establishing authority" means:
 - 1.10.1 in the case of a committee, the Authority; and
 - 1.10.2 in the case of *ad-hoc* committees or subcommittees, the Authority or any committee that establishes the *ad-hoc* committee or subcommittee as the case may be;

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- 1.11 "ETQA" means Education, Training and Quality Assurance;
- 1.12 "learning" means a process by which a person gains skills, knowledge and values;
- 1.13 "Levies Act" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- 1.14 "member" means any member of the Authority, or any committee and includes any alternate designated by such member to attend a meeting of the Authority or any committee on behalf of such member;
- 1.15 "Mine Health and Safety Act" means the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);
- 1.16 "Mine Health and Safety Regulations" means the regulations contemplated in section 98 of the Mine Health and Safety Act;
- 1.17 "Minister" means the Minister of Labour;
- 1.18 "National Qualifications Framework" means the National Qualifications Framework as defined in section 1 of the SAQA Act;
- 1.19 "prescribed" means prescribed by regulation as contemplated in section 36 of the Act;
- 1.20 "Public Finance Management Act" means the Public Finance Management Act, 1999, (Act No. 1 of 1999);
- 1.21 "qualification" means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the National Qualifications Framework as may be proposed by the Mining Qualifications Authority and determined by the South African Qualifications Authority;
- 1.22 "relevant government department" means the Department of Minerals and Energy;

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1.23 "SAQA Act" means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

1.24 "sector" means the sector for the Authority determined by the Minister as contemplated in section 9(2) of the Act;

1.25 "SMME's" means Small, Medium and Micro Enterprises;

1.26 "South African Qualifications Authority" means the South African Qualifications Authority established by section 3 of the SAQA Act; and

1.27 "the Act" means the Skills Development Act (Act No. 97 of 1998).

2 Purpose of Constitution

To provide for the Constitution of the Authority; to provide an institutional framework to implement national, sector and workplace strategies; to develop and improve the skills of the South African workforce in the Mining and Minerals sector as contemplated in section 9(2) of the Act; to promote the objectives of the National Qualifications Framework in the sector; to advise the Minister of Minerals and Energy and the Minister on matters relating to education and training in the sector; and for matters connected therewith.

3 Name

The name of this sector education and training authority is the Mining Qualifications Authority, hereafter referred to as the "Authority".

4 Place of Business

The place of business of the Authority shall be:

74-78 Marshall Street
Union Corporation Building
5th Floor
Marshalltown
Johannesburg

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5 Legal status

The Authority is established in terms of section 41(3) of the Mine Health and Safety Act, (Act no 29 of 1996) and section 9(1) of the Act.

1.1 The Authority is a juristic person.

1.2 All actions, suits or other proceedings at law, by or against any committee must be brought by or against the Authority.

1.3 The Authority may authorise any person or persons to act on behalf of the Authority and to sign all such documents and to take all such steps as may be necessary in connection with any proceedings at law brought by or against the Authority.

6. Scope of coverage

The scope of coverage of the Authority is determined by the Minister in terms of section 9(2) of the Act. The Minister's determination is reproduced as Schedule "A" to this Constitution.

7. Organisations in sector

The trade unions, employer organisations and relevant government departments in the sector are set out in Schedule "B" to this Constitution.

8. Objects of Authority

The Authority must ensure the implementation of applicable legislation and policies pertaining to sector education and training authorities, as may be amended from time to time, including but not limited to:

8.1 the Act;

8.2 the Mine Health and Safety Act;

8.3 the Levies Act;

8.4 the SAQA Act; and

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8.5 the Public Finance Management Act.

9 Powers of Authority

Subject to the provisions of the Act, the Authority has all such powers as may be necessary to enable it to carry out its functions and fulfil its objectives in terms of the Act, the Mine Health and Safety Act and the Levies Act and without limiting the generality thereof has the following powers:

- 9.1 to propose members and alternates of the Authority for appointment as contemplated in clause 13.2;
- 9.2 to establish committees as is more specifically provided for in section 13(3)(vii) of the Act;
- 9.3 to appoint a Chief Executive Officer and such other employees necessary for the effective running of the Authority¹;
- 9.4 to formulate the general policy and strategy of the Authority;
- 9.5 to approve the business plan of the Authority;
- 9.6 to approve the annual budget of the Authority;
- 9.6 to approve the annual targets of the sector skills plan;
- 9.7 subject to any requirements that may be prescribed to determine the terms and conditions of employment of the Chief Executive Officer and other employees of the Authority;
- 9.8 to make rules relating to Authority meetings, financial matters, general procurement and administrative matters which are in accordance with the provisions of this Constitution, the Act, the Public Finance Management Act or any other law; and

¹ The power to appoint other employees may be delegated to the Chief Executive Officer as contemplated in clause 17.

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9.9 to report on skills development within the sector.

10 Functions

10.1 The Authority in terms of the Act must in accordance with any requirements that may be prescribed:

10.1.1 develop a sector skills plan within the framework of the national skills development strategy;

10.1.2 implement the sector skills plan by:

10.1.2.1 approving workplace skills plans;

10.1.2.2 establishing learnerships;

10.1.2.3 allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and

10.1.2.4 monitoring education and training in the sector;

10.1.3 promote learnerships by:

10.1.3.1 identifying the relevant workplace where individuals can gain practical work experience;

10.1.3.2 improving and supporting learning and the development of learning materials;

10.1.3.3 assisting in the conclusion and registration of learnership agreements;

10.1.4 liaise with the National Skills Authority and other SETAs on issues amongst others like:

10.1.4.1 the national skills development strategy;

10.1.4.2 skills development policy;

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10.1.4.3 its own sector skills plan.

10.1.5 submit to the Director-General:

10.1.5.1 any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and

10.1.5.2 plans and reports on the implementation of its sector skills plan and service level agreement;

10.1.6 liaise with the employment services of the Department of Labour and educational councils established in terms of educational laws of South Africa in order to improve the quality of information:

10.1.6.1 about employment opportunities;

10.1.6.2 between education providers and the labour market;

10.1.7 facilitate the involvement of the relevant government department in the activities of the Authority, inter alia by concluding a memorandum of understanding with the Director-General of the Department of Minerals and Energy, to:

10.1.7.1 address the competency requirements for social delivery;

10.1.7.2 address the learning needs of the most vulnerable segments of the sector;

10.1.7.3 conclude a service level agreement with the Director-General of the Department of Labour for each financial year;

10.1.7.4 promote the training of SMMEs to enable them to qualify for procurement contracts;

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- 10.1.7.5 promote the national standard established in terms of section 30B of the Act; and
- 10.1.7.6 perform any other duties imposed by the Act or any other function not specifically mentioned, in order to fulfil the objectives of the Authority.
- 10.2 The Authority must in terms of the Mine Health and Safety Act advise the Minister of Minerals and Energy on-
- 10.2.1 qualifications and learning achievements in the mining industry to improve health and safety standards through proper training and education;
- 10.2.2 standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and
- 10.2.3 proposals for the registration of education and training standards and qualifications in the mining industry on the National Qualifications Framework referred to in the South African Qualifications Authority Act.
- 10.3 The Authority must in terms of the Mine Health and Safety Act-
- 10.3.1 propose education and training standards and qualifications to bodies registered with the South African Qualifications Authority and responsible for developing education and training standards;
- 10.3.2 generate education and training standards and qualifications in the mining industry;
- 10.3.3 monitor and audit achievements in terms of those standards and qualifications;

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- 10.3.4 promote health and safety standards in the sector through proper education and training;
 - 10.3.5 accredit providers, assessors and moderators of education and training in the mining industry;
 - 10.3.6 analyse and prioritise education and training needs in the mining industry and recommend on the provision of such education and training;
 - 10.3.7 promote a culture of learning in the mining industry;
 - 10.3.8 assure the quality of education and training in the mining industry, without itself being a provider of education and training;
 - 10.3.9 facilitate strategic human resources development planning in the mining industry;
 - 10.3.10 liaise with the South African Qualifications Authority, or other bodies, persons or institutions concerned with or directly affected by education and training in the mining industry;
 - 10.3.11 keep a record of learning for people in the mining industry;
 - 10.3.12 perform any other function required by the South African Qualifications Authority in terms of the Authority's registration or accreditation.
- 10.4 The Authority may perform any other function that may be performed by the Authority in terms of the Act, that is consistent with the purposes of the Act, the Mine Health and Safety Act, the Levies Act or any other applicable law.

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11 Members of Authority

- 11.1 Members nominated to the Authority must be knowledgeable about the sector in order to advance skills development in the sector.
- 11.2 Each constituency represented on the Authority must be represented by members who are sufficiently representative of designated groups.²
- 11.3 The Authority consists of:
- 11.3.1 five members representing organised employers in the sector, including small business in accordance with Schedule "C" read with Chapter 18 of the Mine Health and Safety Regulations;
 - 11.3.2 five members representing organised labour in the sector in accordance with Schedule "C" read with Chapter 18 of the Mine Health and Safety Regulations;
 - 11.3.3 five members (including the Chief Inspector of Mines) representing the relevant government department; and
 - 11.3.4 if the Minister, after consulting the Authority, considers it appropriate for the sector, persons representing interested professional bodies and any bargaining council with jurisdiction in the sector.
- 11.4 The Authority must consist of an equal number of members representing organised employers and organised labour.
- 11.5 The Minister of Minerals and Energy must appoint the members of the Authority as contemplated in clause 13.2.

² Section 13(4)(a) of the SDA requires that a clause to this effect be incorporated in SETA constitutions.

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11.6 The Chief Inspector of Mines is the Chairperson of the Authority.

11.7 Subject to clause 13.7 every member of the Authority is appointed for a period of five years coinciding with the period of establishment of the Authority and may be re-appointed on expiry of his or her term of office.

12 Committees

12.1 The Authority may establish committees, *ad-hoc* committees and subcommittees for such periods as the Authority may consider necessary to achieve the objects or perform the functions of the Authority.

12.2 Every committee may, subject to such conditions as the Authority may determine, establish *ad-hoc* or subcommittees for such periods as the committee may consider necessary to achieve the objects or perform the functions of that committee.

12.3 The establishing authority must provide terms of reference which should include, in respect of any committee:

12.3.1 its name;

12.3.2 membership;

12.3.3 quorum;

12.3.4 powers and functions;

12.3.5 period of establishment;

12.3.6 accountability;

12.3.7 funding; and

12.3.8 the chairperson.

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- 12.4 The Authority may establish the following standing committees to advise the Authority and perform its functions as set out in its terms of reference contemplated in clause 11.3-
- 12.4.1 Executive committee, to make urgent decisions between the meetings of the Authority;
 - 12.4.2 Skills Planning committee, to oversee the development and implementation of the sector skills plan;
 - 12.4.3 Learnerships committee, to oversee the promotion and registration of learnerships and skills programmes;
 - 12.4.4 ETQA committee, to ensure the quality of learning provision in the sector;
 - 12.4.5 Standards Generating Body, to lead the development of unit standards and qualifications in the Sector;
 - 12.4.6 Finance and levies committee, to oversee the management of the funds of the Authority and the disbursement of the skills development levies;
 - 12.4.7 Audit committee, to ensure that the Authority complies with the requirements of the Public Finance Management Act.
- 12.5 The committees of the Authority contemplated in clause 11.4 (apart from the Audit Committee) must be composed of an equal number of members representing organised employers and organised labour.
- 12.6 The Authority must appoint a member of the Authority to chair a particular standing committee (apart from the Audit Committee, in

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respect of which the Authority may appoint an independent person as chairperson).

- 12.7 The members of a particular standing committee must appoint one among its members to act as a chairperson of the committee for the meeting when the chairperson is absent.
- 12.8 Every other committee consists of the number of members determined by the relevant establishing authority.

13 Executive Committee

- 13.1 The Executive Committee is composed of-
- 13.1.1 three members representing each constituency;
 - 13.1.2 the Chief Executive Officer, the chief financial officer and the chief operating officer in their official capacities and as non-voting members.
- 13.2 The chair of the Authority is the chair of the Executive Committee.
- 13.3 The Executive Committee must:
- 13.3.1 oversee the execution of the operational affairs of the Authority based on policy decisions of the Authority;
 - 13.3.2 monitor the implementation of the Authority's financial and human resources policies;
 - 13.3.3 take urgent decisions on operational matters between the meetings of the Authority following approved procedures;
 - 13.3.4 direct and oversee the performance of the Chief Executive Officer;

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- 13.3.5 present the annual budget, business plan, and annual report including the audited financial statements for approval by the Authority;
 - 13.3.6 recommend to the Authority the establishment or disbandment of committees;
 - 13.3.7 consider recommendations by the Chief Executive Officer on the appointment or termination of employment;
 - 13.3.8 refer matters to the committees of the Authority for investigation; and
 - 13.3.9 investigate and report to the Authority on any matter delegated to it by the Authority.
- 13.4 The Executive Committee may not decide on questions of general policy.
- 13.5 The Executive Committee may act on behalf of the Authority in an emergency. In such event the Executive Committee must report its actions and the reasons for its actions in writing to the Authority as soon as reasonably practicable and raise the issue at the next meeting of the Authority.
- 14 Nomination and appointment of members of Authority and committees**
- 14.1 Members of the Authority are nominated in accordance with clause 10.2 and Schedule "C" read with Chapter 18 of the Mine Health and Safety Regulations. Members of any committee are nominated and appointed in accordance with clauses 13.3 and 13.4.
 - 14.2 Members of the Authority are appointed by the Minister of Minerals and Energy in terms of Chapter 18 of the Mine Health and Safety Regulations, after consulting the Minister of Labour.

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- 14.3 The organisations contemplated in Schedule "C" may nominate persons as members to represent their interests on any committee.
- 14.4 The relevant establishing authority:
- 14.4.1 must appoint the members of the committee; and
 - 14.4.2 must appoint one of the members as chairperson.
- 14.5 If the relevant establishing authority does not appoint a chairperson, the members of the committee may appoint the chairperson from amongst their number.
- 14.6 Members representing the relevant government department, employees, or employers on any committee may hold office for such period as the relevant establishing authority may determine, which period may not exceed five years. A member whose period of office expires, may be reappointed.
- 14.7 If the office of a member of the Authority or any committee is vacated before the end of the period of office of such member, a person to replace such member must, subject to the provisions of this Constitution:
- 14.7.1 be nominated by the organisation that was represented by the member; and
 - 14.7.2 be appointed for the balance of the period of office of the member in whose place the person is appointed.
- 14.8 The appointment of any member of any committee is subject to any condition that the relevant establishing authority may determine.
- 14.9 The Chief Executive Officer must in writing notify the members of their appointment.

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14.10 If a member appointed in terms of clause 13.9 does not accept such appointment, a person to replace such person must be appointed in accordance with clause 13.3 and 13.4.

14.11 Every organisation must appoint alternates for its members on the Authority, or any committee and must notify the chairperson of the Authority or the relevant committee, as the case may be, of such appointment.

14.12 The relevant establishing authority:

14.12.1 may appoint alternates for subcommittees; and

14.12.2 must notify the alternates of their appointment and the members of their alternates.

15 Vacation of office of Authority and committee members

15.1 A member vacates office:

15.1.1 on expiry of the member's period of office; or

15.1.2 if such member :

15.1.2.1 is absent from two consecutive meetings of the Authority or committee for which such member is appointed without notifying the chairperson before the meeting that the member will be absent;

15.1.2.2 resigns as a member;

15.1.2.3 is required to vacate office by the organisation which that member represents; or

15.1.2.4 is required to vacate office by the Authority as contemplated in clause 14.2;

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- 15.1.3 if such member was nominated by an organisation and that organisation no longer meets the criteria allowing it to nominate members as contemplated in Chapter 18 of the Mine Health and Safety Regulations, or if the Authority or committee on which the member serves, is abolished.
- 15.2 The Authority may replace a member:
- 15.2.1 for permanent incapacity;
 - 15.2.2 for serious misconduct; or
 - 15.2.3 for failure to comply with any provision in the Code of Conduct contained in Schedule "E" to this Constitution.
- 15.3 Before removing a member as indicated under clause 14.2 the Authority must give the member-
- 15.3.1 notice of its intention to remove the member;
 - 15.3.2 reasons for its intention to remove him or her; and
 - 15.3.3 a reasonable opportunity in the circumstances to make written or verbal representations to the Authority.
 - 15.3.4 If a member of the Authority vacates office before the expiry of his or her period of office for any reason contemplated in clauses 14.1 or 14.2 the organisation, which was represented by that member must nominate a new member for the unexpired period. The Minister of Minerals and Energy must appoint any person so nominated as a member of the Authority.
 - 15.3.5 If the organisation contemplated in clause 14.3 no longer satisfies the criteria permitting it to nominate members as contemplated in clause 15.1.3, then a person must be

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nominated and appointed to fill the vacancy in accordance with Regulation 18.6(2) of the Mine Health and Safety Regulations.

15.3.6 If an organisation has not nominated a new member within a reasonable period of a written request by the Authority to do so, the Authority may appoint a member to represent the interests of organised employees, organised labour or a government department, as the case may be.

16 Appointment and functions of Chief Executive Officer

- 16.1 The Authority must appoint a person with experience and expertise in matters relating to functions of the Authority as Chief Executive Officer of the Authority.
- 16.2 The Chief Executive Officer must perform such functions as may be assigned to the Chief Executive Officer by the Act, this Constitution or by the Authority.
- 16.3 The Chief Executive Officer must attend all Authority meetings³ and Executive Committee meetings and may attend any committee meetings.
- 16.4 If the Chief Executive Officer is absent or for any reason is unable to perform the functions of the Chief Executive Officer or if there is a vacancy in the office of the Chief Executive Officer, the chairperson of the Authority may designate an employee of the Authority to act as Chief Executive Officer until the Chief Executive Officer is able to resume the functions of Chief Executive Officer or until a new Chief Executive Officer is appointed in terms of clause 16.1.

³ ie meetings composed of members as contemplated in clause 1.1.

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- 16.5 The Chief Executive Officer may recruit and appoint persons as employees of the Authority, in accordance with the Authority's recruitment policy and selection criteria, to assist in the performance of the functions of the Chief Executive Officer.
- 16.6 The terms and conditions of service of the Chief Executive Officer and employees are determined by the Authority subject to any prescribed requirements regarding salary bands and matters related to remuneration.

17 Delegation and assignment of functions

- 17.1 The Authority may delegate any of its powers or assign any of its functions by or under this Act, the Mine Health and Safety Act or any other law to any committee, the Chief Executive Officer or any employee of the Authority.
- 17.2 The Authority may delegate any of its powers under the Public Finance Management Act only to the Chief Executive Officer or any employee of the Authority, as contemplated in section 56 of the Public Finance Management Act.
- 17.3 Any committee may delegate or assign any of its functions to any of its subcommittees.
- 17.4 The Chief Executive Officer may delegate any power or assign the performance of any function or duty imposed upon the Chief Executive Officer to any employee of the Authority.
- 17.5 A delegation or assignment under clauses 17.1, 17.2, 17.3 or 17.4:
- 17.5.1 must be in writing;

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17.5.2 may be subject to such conditions and restrictions as determined by the Authority, a committee or the Chief Executive Officer, as the case may be; and

17.5.3 does not prevent the exercise of that power or performance of that function by the Authority, committee or the Chief Executive Officer, as the case may be.

17.5.4 The Authority, committee or Chief Executive Officer may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under the delegation.

18 Appointment and functions of chairperson

18.1 The Chief Inspector of Mines is the chairperson of the Authority.

18.2 The members of the Authority must appoint one among their members to act as chairperson of the Authority at any meeting when the chairperson is absent.

18.3 Every chairperson must, with regard to the Authority or committee which the person chairs –

18.3.1 allow each constituency to appoint from among its members a person to act as convenor of such constituency for communication purposes. If a constituency does not appoint such convenor, the chairperson may appoint any member of that constituency as convenor of the constituency;

18.3.2 cause meetings to be convened; and

18.3.3 ensure the orderly conduct of meetings and that all resolutions are recorded.

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18.4 A chairperson may order any member to leave a meeting if in the opinion of the chairperson the behaviour of such member is disruptive to the orderly conduct of the meeting.

19 Appointment and functions of secretary

19.1 The Chief Executive Officer must appoint a secretary for:

19.1.1 the Authority; and

19.1.2 any committee, if the establishing authority so requires.

19.2 If a secretary is not appointed for a committee, the members of that committee must keep a record of and report to the relevant establishing authority on their activities.

19.3 A secretary must, with regard to the Authority or committee for which the secretary is appointed:

19.3.1 prepare the agenda for every meeting;

19.3.2 prepare the minutes of every meeting;

19.3.3 record every resolution of such meeting and if so requested by a member, the view of that member, and keep general records, records of members, minutes, documents and files of the Authority, or such committee.

20 Rights and obligations of members

20.1 Any member who is unable to attend a meeting of the Authority or any committee:

20.1.1 may designate any alternate of that member's constituency on the Authority or that committee, as the case may be, to represent the member at the meeting; and

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- 20.1.2 must at least two working days before the meeting give notice that they are unable to attend, to the chairperson.
- 20.2 An alternate designated under clause 19.1.1 has the rights and obligations of the member whom that alternate represents.
- 20.3 Every member has the right to:
- 20.3.1 be heard on any matter considered at the meeting;
- 20.3.2 take part in the resolution of any matter before the meeting; and
- 20.3.3 have their views on any matter considered at the meeting, recorded in the minutes of the meeting and in any report or recommendation of the meeting.
- 20.4 Members of the Authority and committees, may claim compensation for expenses reasonably incurred as determined by the Authority within any limits which have been prescribed, but may not ordinarily claim compensation for time spent attending meetings.
- 21 Meetings**
- 21.1 The Authority must meet at least once every three months.
- 21.2 The Authority must convene an annual conference to consult with sector stakeholders on the performance of the Authority's functions.
- 21.3 Committees must meet at such intervals and frequency as determined by their activities and the dates for the completion of their tasks as specified in their terms of reference.

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- 21.4 An urgent meeting of the Authority or any committee may be called by the chairperson at the written request of at least two members or when the chairperson deems it necessary.
- 21.5 The Authority may direct any committee to call an urgent meeting to resolve any matter determined by the Authority.
- 21.6 An establishing authority may direct any of its committees to call an urgent meeting to resolve any matter determined by such committee.
- 21.7 A secretary must, with regard to the Authority or committee for which the secretary is appointed serve every member with:
- 21.7.1 a convening notice and the agenda of a meeting at least five working days before the meeting or two working days before an urgent meeting;
 - 21.7.2 any reports of documentation to be considered at a meeting, within a reasonable period before the meeting; and
 - 21.7.3 the minutes of every meeting.

22 Quorum

- 22.1 A quorum for any meeting of the Authority, except for Executive Committee meetings must include a minimum of two members from each constituency.
- 22.2 A quorum for any other committee must be determined by the relevant establishing authority;
- 22.3 Despite clauses 22.1 and 22.2, if the convenors of all the constituencies in the Authority or any committee so agree, a

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smaller number may constitute a quorum for an urgent meeting of the Authority or that committee, as the case may be.

- 22.4 If after thirty minutes of the scheduled time for the meeting, a quorum is not present the meeting must be postponed to a later date, time and place determined by the chairperson. The members present at the subsequent meeting form a quorum for that meeting.

23 Procedures at meetings

- 23.1 Items may be added to the agenda of any meeting if the meeting so decides.
- 23.2 Any member who has a direct or personal financial interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting and must leave the meeting when that matter is considered or discussed.
- 23.3 If the chairperson is not present at a meeting the members may elect from among their number a chairperson for that meeting.

24 Decision-making at meetings

- 24.1 The Authority or any committee must endeavour to reach consensus on any matter that requires resolution.
- 24.2 If consensus cannot be reached on any matter after sincere endeavours to do so, a decision of the majority of members present and voting at a meeting constitutes the resolution on that matter by the Authority or any committee, as the case may be.
- 24.3 In the event of voting, each member has a single vote on any matter for decision.
- 24.4 Voting is by show of hands unless a proposal for a ballot is supported by 50% percent of members present.

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24.5 Any report or advice of the Authority or any committee which reflects a resolution that was not reached by consensus, must reflect:

24.5.1 the different views of the members on the matter so resolved; and

24.5.2 which members supported each view.

24.6 No resolution nor any act authorised by the Authority or any committee is invalid merely because of a vacancy on the Authority, or that committee, or because any person not entitled to sit as a member sat at such meeting at the time the resolution was taken - if a quorum was constituted by the rest of the members present at the meeting and entitled to sit as members at the meeting.

24.7 The chairperson of a committee has no voting rights if that chairperson is an employee of the Authority.

25 Funds of Authority

25.1 The Authority must administer and control its financial affairs in accordance with the Act and the Public Finance Management Act.

25.2 The Authority is the accounting authority as contemplated in Part 2 of chapter 6 of the Public Finance Management Act and must accordingly exercise the powers and perform the functions required of an accounting authority by the Public Finance Management Act.

25.3 The funds of the Authority consist of:

25.3.1 moneys appropriated by Parliament to perform its functions;

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- 25.3.2 moneys which accrue to the Authority in terms of regulations made under this Act or in terms of any other applicable law;
 - 25.3.3 the skills development levies collected in the sector;
 - 25.3.4 moneys paid to the Authority from the National Skills Fund;
 - 25.3.5 revenue obtained from investments;
 - 25.3.6 fees obtained from services provided by the Authority.
 - 25.3.7 grants, donations and bequests made to it by any person, body, government or administration; and
 - 25.3.8 money received from any other legal source.
- 25.4 The money received by the Authority must be paid into a banking account at any registered bank or financial institution registered in South Africa and approved in writing by the National Treasury. May be invested only in-
- 25.4.1 savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - 25.4.2 internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act No. 66 of 1975); or
 - 25.4.3 any other manner approved by the Minister.
- 25.5 The moneys received by the Authority must be used only in the prescribed manner and in accordance with any prescribed standards and criteria to-
- 25.5.1 fund the performance of its functions; and
 - 25.5.2 pay for its administration within the prescribed limit.

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25.6 In each financial year, ending on the prescribed date, the Authority must, at a time determined by the Minister, submit to the Minister a statement of the Authority's estimated income and expenditure for the following financial year.

25.7 The Authority must-

25.7.1 prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and

25.7.2 furnish the Director-General with copies of all budgets, reports and statements contemplated in clause 25.7.1 and any other information that it is required to submit in terms of the Public Finance Management Act.

26 Accounting officer of Authority

26.1 The Chief Executive Officer is the accounting officer of the Authority.

26.2 The accounting officer is responsible for all monies received and payments made by the Authority.

26.3 The financial year of the Authority ends on 31 March of each year.

26.4 The accounting officer must cause records to be kept in accordance with the Generally Accepted Accounting Principles that are necessary to represent fairly the state of affairs and business of the Authority and to explain the transactions and financial position of the Authority.

26.5 Annual financial statements must be prepared in respect of every financial year that consist of:

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- 26.5.1 a balance sheet dealing with the state of affairs of the Authority;
- 26.5.2 a return of income received and expenses incurred by the Authority; and
- 26.5.3 a statement of cash flow information.
- 26.6 The books of account, statements of account and annual financial statements of the Authority must be audited annually by the Auditor-General. The Auditor-General must compile a report on the audit and submit a copy of it to the Minister and the chairperson of the Authority.
- 26.7 The Chief Executive Officer of the Authority must supply each member of the Authority with a copy of the report of the Auditor-General.
- 26.8 As soon as practicable after the report of the Auditor-General has been submitted to the Minister in terms of clause 25.6, the Minister must table it in Parliament.
- 26.9 The responsibilities of the accounting officer do not in any way derogate from the responsibilities of the Authority as the accounting authority in terms of the Public Finance Management Act.
- 27 Dissolution of Authority and Committees**
- 27.1 The Authority may be dissolved by the Minister after consulting the National Skills Authority and the Authority if the Authority is unable to continue to perform its functions.
- 27.2 The Authority may at any time dissolve any committee.

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27.3 A committee may at any time dissolve any *ad hoc* committee or subcommittee established by that committee.

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28 Limitation of liability

28.1 A member does not incur any civil liability only because of doing or failing to do something, which such member may do or is required to do in terms of this Constitution.

28.2 The Authority does not incur any civil liability only because a member or employee of the Authority took an action or failed to take an action under or in terms of this Act, the Mine Health and Safety Act, the Public Finance Management Act and this constitution and in taking or failing to take that action such person acted without negligence and in good faith.

29 Arbitration

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Schedule "D".

30 Code of conduct

The members of the Authority, and committees of the Authority are bound by the Code of Conduct contained in Schedule "E".

31 Amendments to Constitution

This Constitution may be amended by a resolution of not less than two-thirds of the members of the Authority present at a meeting of which not less than 21 days notice setting out the proposed amendment has been given to all members of the Authority. No amendment has any force or effect until it has been approved by the Minister, in consultation with the Minister of Minerals and Energy.

32 Taking over administration of Authority

The Minister, in consultation with the Minister of Minerals and Energy, may, after consultation with the National Skills Authority, by notice in the

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Government Gazette, direct the Director-General of Labour to appoint an administrator to take over the administration of the Authority as contemplated in section 15 of the Act.

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**SIGNED FOR AND ON BEHALF OF THE MINING QUALIFICATIONS
AUTHORITY BY:****1. ORGANISED LABOUR:**

Mr A. Teteme, Skills Development Officer
National Union of Mineworkers

2. ORGANISED BUSINESS:

Mr V. Mabena, Skills Development Advisor
Chamber of Mines

3. RELEVANT GOVERNMENT DEPARTMENT

Ms M. Hermanus, Chief Inspector of Mines
Department of Minerals and Energy

AT _____ ON THIS ____ DAY OF
_____ 2005

CERTIFICATION

SIGNED AT _____ ON THIS ____ DAY OF
_____ 2005

M M S MDLADLANA
Minister of Labour

L HENDRICKS
Minister of Minerals and Energy

MQA CONSTITUTION

Schedule "A" : Scope of coverage

SIC Code	Scope of Coverage
21000	Mining of coal and lignite
22100	Extraction of crude petroleum and natural gas; service activities incidental to oil and gas extraction except surveying
23000	Mining of gold and uranium ore
23001	Thin tabular operations
23002	Thick tabular operations
23003	Massive mining operations
24000	Mining of metal ores, except gold and uranium
24100	Mining of iron ore
24200	Mining of non-ferrous metal ores, except gold and uranium
25000	Other mining and quarrying
25101	Quarrying/dimension stone operations
25102	Open cast/strip mining operations
25103	Open pit operations
25201	Marine mining operations
25202	Coastal mining operations
25320	Extraction and evaporation of salt
25391	Mining of precious and semi-precious stones, except diamonds
29000	Service activities incidental to mining of minerals
34240	Manufacture of cement, lime and plaster

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37601	Manufacture of watches, clocks and related articles
39210	Manufacture of jewellery and related articles
39211	Jewellery and related articles composed of precious metals, precious and semi-precious stones and pearls
39219	<i>Other precious and semi-precious stone cutting and polishing</i>
85291	Supply of mining equipment

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Schedule "B" : Organisations in sector

Organisations representing organised employers

Chamber of Mines

Jewellery Council of South Africa

South African Mining Development Association

Aggregate and Sand Producers Association of South Africa

Organisations representing organised labour

National Union of Mineworkers ("NUM")

United Association of South Africa ("UASA")

Solidarity

Government departments

Department of Labour

Department of Minerals and Energy

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Schedule "C" : Organisations which may nominate members to Authority

Organised employer

Chamber of Mines

South African Mining Development Association

Organised labour

National Union of Mineworkers

United Association of South Africa ("UASA")

Relevant Government Department

Department of Minerals and Energy.

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Schedule "D" : Arbitration process

The determination through Arbitration of any dispute concerning the interpretation or Application of the Constitution.

- 1 Any party to a dispute concerning the interpretation or application of this Constitution may refer the dispute to the Chief Executive Officer of the Authority.
- 2 *The referral must:*
 - 2.1 be in writing;
 - 2.2 adequately describe the dispute; and
 - 2.3 be delivered to every other party to the dispute by the party referring the dispute.
- 3 The Chief Executive Officer must, as soon as reasonably practicable, refer the dispute to the Executive Committee, which must endeavour to resolve the dispute by conciliation within 30 days of referral of the dispute.
- 4 If the Executive Committee fails to resolve the dispute within 30 days of its referral, then any party to the dispute may refer it for arbitration by an arbitrator.
- 5 The arbitrator must be agreed to by the parties to the dispute with the approval of the Chairperson of the Authority or, failing such agreement or approval, by an arbitrator appointed by the Chairperson of the Authority.
- 6 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible, then the arbitrator must arbitrate the dispute.
- 7 The arbitrator must conduct the arbitration in a manner that he or she 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 formality.

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- 8 Within 14 days of conclusion of the arbitration proceedings:
 - 8.1 the arbitrator must issue a signed arbitration award with reasons; and
 - 8.2 the Chief Executive Officer must provide a copy of the award to every party to the dispute.
- 9 The arbitration award is final and binding on the parties to the dispute.
- 10 The costs of the arbitration must be borne equally by the parties to the dispute. The arbitrator may however make a different and appropriate award of costs if:
 - 10.1 a party to the dispute, without reasonable cause, refused or fails to attend the arbitration or unduly delays arbitration proceedings; or
 - 10.2 the arbitrator is of the view that a party pursuing or resisting the dispute did so vexatiously or frivolously or had no reasonable prospect of succeeding.
- 11 An arbitrator may, at his or her own initiative or as a result of an application by an affected party, vary to rescind an award:
 - 11.1 erroneously sought or made in the absence of any party affected by the award;
 - 11.2 in which there is ambiguity, or any obvious error or omission, but only to the extent of the ambiguity, error or omission; or
 - 11.3 granted as a result of a mistake common to the parties to the proceedings.

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Schedule "E" : Code of Conduct

- 1 The members of the Authority, the Executive Committee, and any committees of the Authority –
 - 1.1 stand in a fiduciary relationship to the Authority;
 - 1.2 must perform their functions in good faith;
 - 1.3 must avoid any material conflict between their own interests and those of the Authority, and in particular-
 - 1.3.1 must not derive any personal economic benefit to which they are not entitled because that benefit is obtained in conflict with the interests of the Authority;
 - 1.3.2 must notify the Authority, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which they may have in any dealing of the Authority;
 - 1.4 must protect and promote the reputation and goodwill of the Authority;
 - 1.5 must exercise their powers for the benefit and in the interests of the Authority;
 - 1.6 must not abuse the resources of the Authority; and
 - 1.7 must not disclose to any unauthorised person any privileged or confidential information of the Authority.

No. R. 107

3 February 2006

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)**APPROVAL OF THE CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR
EDUCATION AND TRAINING AUTHORITY (LGSETA)**

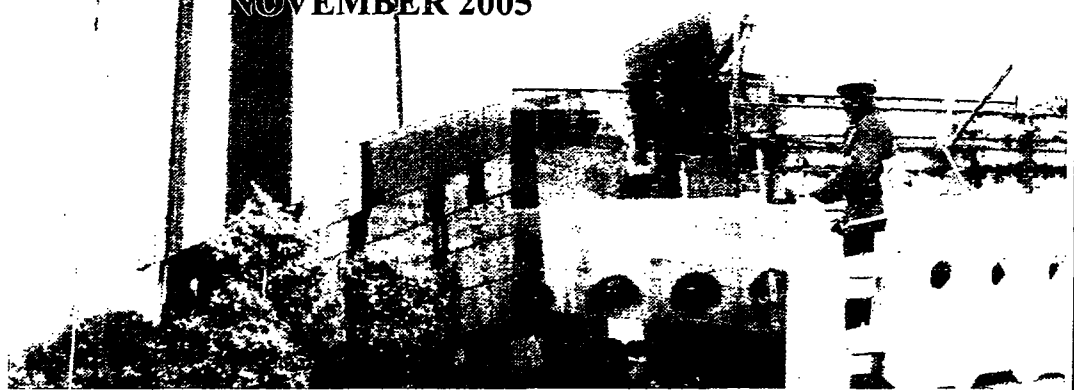
The Minister of Labour has on 1 July 2005 in terms of section 13 (1) of the Skills Development Act, approved the constitution of the LOCAL GOVERNMENT SECTOR EDUCATION TRAINING AUTHORITY as set out in the Schedule.

SCHEDULE



*CONSTITUTION
OF THE
LOCAL GOVERNMENT
SECTOR EDUCATION
AND TRAINING
AUTHORITY*

NOVEMBER 2005



CONSTITUTION OF THE LOCAL GOVERNMENT SECTOR EDUCATION AND TRAINING AUTHORITY

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1 DEFINITIONS

1.1 In this Constitution, any word or phrase that is defined in the Skills Development Act, 1998 has the same meaning as in that Act, unless the context indicates otherwise.

1.1.1 "Act" means the Skills Development Act, 1998 (Act No. 97 of 1998)

1.1.2 "Alternate" means an alternate to a member, as contemplated in clause 7.4 of this Constitution.

1.1.3 "Authority" means the Local Government Sector Education and Training Authority.

1.1.4 "Director-General" means the Director-General of Labour.

1.1.5 "Local government" means local government as generally contemplated in section 40(1) and chapter 7 of the Constitution of the Republic of South Africa 1996, (Act No. 108 of 1996)

1.1.6 "Member" means a person who is a member of the Authority as contemplated in clause 7.1 of this Constitution.

1.1.7 "Minister" means the Minister of Labour.

1.1.8 "Office-bearer" means the chairperson or vice-chairperson of a structure of the Authority.

1.1.9 "Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999)

1.1.10 "Skills Development Levies Act" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999)

1.1.11 "South African Qualifications Authority Act" means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)

2 CHARACTER

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2.1 Name

The name of this sector education and training authority ("SETA") is the Local Government Sector Education and Training Authority referred to in this Constitution as the "Authority".

416 Skeen Boulevard

Bedfordview

2007

2.2 Legal status

2.2.1 The Authority is a juristic person.

2.2.2 The Authority may authorise any person or persons to act on its behalf and to sign all documents and to take all steps as may be necessary in connection with any legal proceedings brought by or against the Authority.

2.2.3 The Authority is governed by the Act, the Skills Development Levies Act, the Public Finance Management Act and this Constitution.

2.3 Scope

The scope of the Authority is local government as determined by the Minister in terms of section 9 of the Act, and Government Notice No.R.316 published in Government Gazette No. 27445 of 31 March 2005. The scope of the Authority is set out in Annexure "A".

3 OBJECTIVES OF AUTHORITY

In performing the functions contemplated in the Act and in this Constitution, the Authority must seek to promote the objectives contemplated in the Act and this Constitution, and must comply with the Skills Development Levies Act, and to the extent that it is necessary with the Public Finance Management Act.

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3.1 General objectives

The general objectives of the Authority are to –

- 3.1.1 Develop the skills of employees and employers in local government;
- 3.1.2 Facilitate the development of the skills of employees;
- 3.1.3 Improve the quality of life, prospects and labour mobility of employees in local government through skills development initiatives;
- 3.1.4 Facilitate and strengthen the institutional capacity of local government in order to improve productivity and the quality of services thereby enhancing the quality of life of the community and the country at large;
- 3.1.5 Increase the levels of investment in skills development and to improve returns on such investment; and
- 3.1.6 Promote the inclusion of contextual knowledge in respect of issues of local government and governance within learnerships and skills development programmes.

3.2 Objectives in relation to employers

The objectives of the Authority in relation to employers are to encourage them to:

- 3.2.1 Develop their capacity to manage and provide education and training.
- 3.2.2 Use their workplaces and facilities to create active learning environments.
- 3.2.3 Develop workplace skills plans in the context of integrated development planning.

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- 3.2.4 Provide new entrants to the labour market with opportunities to learn through exposure to work experience in learnership programmes.
- 3.2.5 Provide appropriate education and training interventions in relation to job creation or local economic development initiatives.
- 3.2.6 Provide employment opportunities for persons who might otherwise find it difficult to obtain employment.
- 3.2.7 Support education and training interventions linked to the objectives and mechanisms of the Employment Equity Act, 1998 and;
- 3.2.8 Develop appropriate partnerships between themselves and other public, private and non-governmental organisations.

3.3 Objectives in relation to employees

The objectives of the Authority in relation to employees are to encourage them to:

- 3.3.1 Participate in learnerships and other education and training programmes.
- 3.3.2 Participate in the governance and evaluation of the programmes they undertake and;
- 3.3.3 Develop an ethos of responsibility in respect of their work.

3.4 Objectives in relation to local communities

The objectives of the Authority in relation to the communities served by local government are to:

- 3.4.1 Assist work-seekers to gain access to work experience;
- 3.4.2 Assist retrenched workers to re-enter the labour market; and

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3.4.3 Promote skills for self-employment.

4 FUNCTIONS OF AUTHORITY

4.1 Authority must perform certain functions

The Authority must, in accordance with any requirements that may be prescribed:

- 4.1.1 Develop a sector skills plan within the framework of the national skills development strategy.
- 4.1.2 Implement its sector skills plan by establishing learnerships, approving workplace skills plans, and allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers.
- 4.1.3 Promote learnerships by identifying workplaces for practical work experience, supporting the development of learning materials, improving the facilitation of learning, and assisting in the conclusion of learnership agreements.
- 4.1.4 Register learnership agreements.
- 4.1.5 Perform the functions of a body contemplated in section 5 (1) (a) (ii) (bb) of the South African Qualifications Authority Act.
- 4.1.6 Perform such functions as may be assigned to it by the South African Qualifications Authority.
- 4.1.7 Subject to sections 7, 9 and 10 of the Skills Development Levies Act, disburse the skills development levies in its sector.
- 4.1.8 Liaise with the National Skills Authority on the national skills development policy, the national skills development strategy, and its sector skills plan.

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- 4.1.9 Submit to the Director-General any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act and plans and reports on the implementation of its sector skills plan and service level agreement.
- 4.1.10 Liaise with the employment services of the Department and relevant education bodies established under any law regulating education in the Republic to improve information about employment opportunities, and between education and training providers and the labour market.
- 4.1.11 Subject to section 14 of the Act, appoint the Chief Executive Officer and staff necessary for the performance of its functions.
- 4.1.12 Promote the national standard established in terms of section 30(B) of the Act.
- 4.1.13 Conclude with the Director-General a service level agreement concerning the Authority's performance of its functions in terms of the Act and the national skills development strategy, the Authority's annual strategic plan and any assistance that the Director-General will provide to the Authority to enable it to perform its functions and.
- 4.1.14 Perform any other duties imposed by the Act or the Skills Development Levies Act or consistent with the purposes of this Act.

4.2 The Authority may perform certain functions

The Authority may:

- 4.2.1 Adopt general and specific policies to promote the achievement of such objectives and functions as contemplated in clauses 3 and 4;
- 4.2.2 Exercise any other powers conferred on the Authority by the Act, the Skills Development Levies Act or this Constitution; and

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4.2.3 Make decisions on any matter related to the performance of its functions on which this Constitution is silent.

4.3 Delegation of powers and functions

4.3.1 The Authority, subject to any conditions that it may impose, may delegate any of its powers or functions to:

4.3.1.1. The Executive Committee.

4.3.1.2. Any Provincial Committee.

4.3.1.3. Any other committee of the Authority or;

4.3.1.4. Its members and employees.

4.3.2 Every delegation by the Authority must be in writing, setting out the terms and conditions of such delegation, and must be recorded in a book of record.

4.3.3 The Authority is not divested of any power, duty or function by virtue of the delegation and may vary or set aside any decision made under any delegation.

4.3.4 The Authority may delegate particular powers, duties or functions to certain Provincial Committees and not to others.

5 LEARNERSHIPS

5.1 Establishment of learnerships

The Authority may establish a learnership if:

5.1.1 The learnership consists of a structured learning component.

5.1.2 The learnership includes practical work experience of a specified nature and duration.

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5.1.3 The learnership would lead to a qualification registered by the South African Qualifications Authority and related to an occupation and;

5.1.4 The intended learnership is registered with the Director-General in the prescribed manner.

5.2 Agreements of learnership

5.2.1 A learnership agreement must be in the prescribed form and registered with the Authority in the prescribed manner.

5.2.2 A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless-

5.2.2.1. The learner meets the requirements for the successful completion of the learnership or;

5.2.2.2. The Authority approves of this termination.

5.2.3 The employer or training provider that is a party to a learnership agreement may be substituted with-

5.2.3.1. The consent of the learner and;

5.2.3.2. The approval of the Authority.

5.2.4 The Authority must, in the prescribed manner, provide the Director-General with a record of learnership agreements registered by the Authority.

6 SKILLS PROGRAMMES**6.1 Grants for skills programmes**

6.1.1 The Authority may fund a skills programme if:

6.1.1.1. It is occupationally based.

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- 6.1.1.2. When completed it will constitute a credit towards a qualification registered in terms of the National Qualifications Framework.
- 6.1.1.3. It uses an accredited training provider.
- 6.1.1.4. It complies with any prescribed requirements and;
- 6.1.1.5. It is in accordance with the skills development plans of the Authority and there are funds available.
- 6.1.2 The Authority may fund a short course if:
 - 6.1.2.1. The course is part of structured learning;
 - 6.1.2.2. The course satisfies any criteria set by the Authority; and
 - 6.1.2.3. The course supports the skills development plans of the Authority.
- 6.1.3 The Authority may set any terms and conditions for funding it considers necessary.

6.2 Monitoring of skills programmes

- 6.2.1 The Authority must monitor any skills programme it funds.
- 6.2.2 The Authority may withhold funds or recover any funds paid if it is of the opinion that:
 - 6.2.2.1. The funds are not being used for the purpose for which they were made available.
 - 6.2.2.2. Any term or condition of funding is not complied with or;
 - 6.2.2.3. The standard of the training is unsatisfactory.

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7 MEMBERS OF AUTHORITY

7.1 Composition of the Authority

- 7.1.1 The Authority is constituted on the basis of parity of representation between voting members representing (on the one hand) organised employers and (on the other hand) registered trade unions.
- 7.1.2 The Authority is composed of :
- 7.1.2.1. Ten members representing registered trade unions within the scope of the Authority in accordance with Annexure "B" (if necessary) and Annexure "F".
- 7.1.2.2. Ten members representing registered employer organisations within the scope of the Authority in accordance with Annexure "B" (if necessary) and Annexure "F".
- 7.1.3 As far as reasonably practicable:
- 7.1.3.1. At least sixty percent (60%) of members representing registered trade unions should be employees employed within the scope of the Authority and;
- 7.1.3.2. At least sixty percent (60%) of members representing organised employers must be local government councillors.
- 7.1.4 A member representing the Department of Provincial and Local Government must preferably be drawn from senior management.
- 7.1.5 The Authority must be sufficiently representative of designated groups.

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7.2 Terms of office of members of Authority

Subject to sub-clause 7.9 a member of the Authority holds office for a period of three years and on expiry of his or her term of office is eligible for re-appointment.

7.3 Nomination and appointment of Authority members

7.3.1 At least three months before the expiry of the term of office of members of the Authority, the Chief Executive Officer must invite nominations from registered trade unions and organised employers within the scope of the Authority for members for the forthcoming term of office.

7.3.2 The outgoing members of the Authority are eligible for nomination and re-appointment as members of the Authority for further terms of office.

7.4 Alternates to members of Authority

7.4.1 The organisations contemplated in Annexure "F" must appoint alternates to act in the place of each member that represents their organisation, in the event that such member is unable to attend a meeting of the Authority.

7.4.2 The Authority must circulate agendas, documents and minutes to keep alternates and Provincial Committees abreast with developments in the Authority.

7.5 First meeting of each new term of office of Authority

7.5.1 The Chief Executive Officer must notify the members of the date, time and venue of the first meeting of their term of office.

7.5.2 At the first meeting of each new term of office the members must:

7.5.2.1. Elect a Chairperson and Vice-chairperson as contemplated in clause 8.

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7.5.2.2. Set the dates for the forthcoming meetings of that year and;

7.5.2.3. Take such other decisions as are necessary to ensure the prompt and effective functioning of the Authority.

7.6 Meetings of Authority

The Authority must meet at least twice a year.

7.7 Meeting procedures

Meetings of the Authority must comply with the requirements contemplated in clause 12.

7.8 Suspension of members of Authority

7.8.1 The Authority may suspend a member pending an inquiry:

7.8.1.1. If he or she is alleged to have committed a serious offence, or;

7.8.1.2. If his or her presence at the Authority's offices may jeopardise an investigation or endanger employees or places at risk the safety of property belonging to the Authority, or;

7.8.1.3. On any other reasonable ground.

7.8.2 Before suspending a member, the Authority must –

7.8.2.1. Give notice to that member of its intention to suspend him or her;

7.8.2.2. Give reasons for the intention to suspend; and

7.8.2.3. Give the member a reasonable opportunity in the circumstances to make representations to the Executive Committee.

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7.9 Vacation of office by members of Authority

- 7.9.1 A member of the Authority, vacates office if that member-
- 7.9.1.1. Is removed from office as contemplated in sub-clause 7.9.2; or 7.9.3, or;
 - 7.9.1.2. Resigns by written notice addressed to the Authority and the Chief Executive Officer.
- 7.9.2 The Authority must remove a member of the Authority on the written request of the organisation represented by that member.
- 7.9.3 The Authority may, remove a member –
- 7.9.3.1. For absence from three consecutive meetings of the Authority without prior approval unless the member shows good cause or unless the member has ensured the attendance of an alternate at each meeting;
 - 7.9.3.2. For permanent incapacity;
 - 7.9.3.3. For serious misconduct; or
 - 7.9.3.4. For failure to comply with any provision in the Code of Conduct contained in Annexure "C".
- 7.9.4 Before removing a member as indicated under 7.9.3 the Authority must:
- 7.9.4.1. Give notice to that member and nominating organization as contemplated in Annexure "F" of its intention to remove him or her;
 - 7.9.4.2. Give reasons for the intention to remove him or her; and

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- 7.9.4.3. give the member a reasonable opportunity in the circumstances to make representations to the Executive Committee or an appointed body.
- 7.9.5 If the Executive Committee contemplates removing a member in terms of sub-clauses 7.9.3.3 or 7.9.3.4, the Executive Committee must hold an inquiry to determine whether or not the member should be removed from office.
- 7.9.6 The Executive Committee must appoint two of its members, who will normally be the Chairperson and the Vice-chairperson, to preside over the inquiry.
- 7.9.7 The Chief Executive Officer must inform the nominating organization as contemplated in annexure "F" and the member concerned in sufficient detail in writing of the allegations against him or her; and of the date, time and venue of the inquiry.
- 7.9.8 The member must be given adequate time to prepare for the inquiry and may be represented at the inquiry.

7.10 Filling of vacancies on Authority

- 7.10.1 If a member of the Authority vacates office before the expiry of his or her period of office for any reason contemplated in sub-clause 7.9.1 the organisation, which was represented by that member, must nominate a new member for the unexpired portion of that period.
- 7.10.2 Subject to sub-clause 7.1, the Authority must appoint any person so nominated as a member of the Authority.
- 7.10.3 If the organisation contemplated in sub-clause 7.10.1 has not nominated a new member within a reasonable period of a written request by the Authority to do so, the Authority may appoint a member to represent the interests of registered trade unions, organised employers or a government department, as the case may be.

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8 CHAIRPERSON AND VICE-CHAIRPERSON**8.1 Elections of Chairperson and Vice-chairperson**

8.1.1 As contemplated in clause 7.5.2, the Authority must elect from among its members-

8.1.1.1. A Chairperson; and

8.1.1.2. A Vice-chairperson

8.1.2 The chairperson of the meeting must call for nominations for Chairperson of the Authority. If there is only one nomination, then the chairperson must declare the member concerned elected as Chairperson. If there is more than one nomination, then the chairperson must conduct a closed ballot.

8.1.3 The nominee who receives the highest number of votes must be declared elected as Chairperson of the Authority.

8.1.4 If two nominees receive the same number of votes, then the chairperson of the meeting must draw one of the names from a hat or box and that person must be declared elected as the Chairperson of the Authority.

8.1.5 The Vice-chairperson must be elected in the same manner as the Chairperson, provided that if the Chairperson is a member who represents organised employers, then the Vice-chairperson must be a member who represents registered trade unions and vice versa.

8.2 Terms of office

8.2.1 The Chairperson and Vice-chairperson hold office for a period of one (1) year.

8.2.2 Each year, each office contemplated in sub-clause 8.1.1 must alternate between a member of the Authority representing

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registered trade unions and a member of the Authority representing organised employers.

- 8.2.3 The Chairperson and Vice-chairperson of the Authority may not serve as chairperson or vice-chairperson of any Chamber or provincial committee of the Authority.

8.3 Chairperson

The Chairperson of the Authority must:

- 8.3.1 Preside at meetings of the Authority;
- 8.3.2 Conduct such meetings in accordance with clause 12; and
- 8.3.3 Perform any further duties or functions determined by the Executive Committee.

8.4 Vice-chairperson

The Vice-chairperson must-

- 8.4.1 Assist the Chairperson to perform his or her duties;
- 8.4.2 Exercise the powers and duties of the Chairperson in his or her absence; and
- 8.4.3 Perform any further functions determined by the Executive Committee.

8.5 Temporary absence or incapacity of Chairperson or Vice-chairperson

- 8.5.1 If the Chairperson is temporarily absent or incapacitated then the Vice-chairperson must perform the functions of the office of Chairperson for the period of such absence or incapacity.
- 8.5.2 If the Chairperson and Vice-chairperson is temporarily absent or incapacitated then the Executive Committee must appoint a

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member to perform the functions of that office for the period of such absence or incapacity.

8.6 Vacation of office

8.6.1 The Chairperson or Vice-chairperson vacates office if:

8.6.1.1. He or she resigns or is removed as a member as contemplated in clause 7.9.2 or 7.9.3; or

8.6.1.2. 75% of the members of the Authority pass a resolution to remove him or her from office.

8.6.2 If the Chairperson or Vice-chairperson vacates office as contemplated in sub-clause 8.6.1, the Authority must replace him or her in the manner contemplated in sub-clause 8.1.1 and the new office bearer must fill the vacancy for the unexpired duration of the previous office bearer's term of office.

9 EXECUTIVE COMMITTEE

9.1 Establishment of Executive Committee

The Authority must establish an Executive Committee comprising equal representation from registered trade unions and organised employers.

9.2 Composition of Executive Committee

The Executive Committee of the Authority consists of:

9.2.1 The Chairperson and Vice-chairperson contemplated in clause 8.1.1;

9.2.2 Five members representing registered trade unions as contemplated in Annexure "F"; and

9.2.3 Five members representing registered employer organisations as contemplated in Annexure "F".

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9.3 Alternates to members of Executive Committee

9.3.1 The organisations contemplated in Annexure "F" must appoint alternates to act in the place of each member that represents their organisation, in the event that such member is unable to attend a meeting of the Executive Committee.

9.3.2 The Executive Committee must circulate agendas, documents and minutes to keep alternates abreast with developments in the Executive Committee.

9.4 Terms of office of Executive Committee

A member of the Executive Committee holds office for a period of one (1) year and is eligible for re-appointment on the expiry of his or her term of office.

9.5 Functions of Executive Committee

9.5.1 Subject to the directions of the Authority, the Executive Committee must exercise the powers and perform the functions and duties of the Authority relating to the supervision and control of the everyday management and administration of the Authority.

9.5.2 Without limiting the powers, functions and duties, the Executive Committee must-

9.5.2.1. Supervise the proper management of all financial matters;

9.5.2.2. Co-ordinate and supervise the implementation of the policies of the Authority;

9.5.2.3. Monitor national policy issues and developments and make recommendations for the adoption of policy;

9.5.2.4. Attend to the suspension and removal of members of the Authority

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9.5.2.5. Co-ordinate the functioning of any Provincial Committees and other committees of the Authority and monitor their activities and ensure that they are acting within the terms of any powers delegated to them by the Authority or by this Constitution;

9.5.2.6. Manage staff employment issues;

9.5.2.7. Consider and advise on Skills Programmes which have been recommended by committees within approved policy guidelines;

9.5.2.8. Consider and advise on Quarterly Management Reports;

9.5.2.9. Monitor the relations and interactions of the Authority with the National Skills Authority and other SETAs; and

9.5.2.10 Perform any other function or duty, delegated to it by the Authority.

9.5.3 The Executive Committee may establish committees to assist it in the performance of its functions.

9.6 Meetings of Executive Committee

The Executive Committee must meet at least four (4) times each year.

9.7 Meeting procedures

Meetings of the Executive Committee must comply with the procedures contemplated in clause 12.

9.8 Suspension of members, vacation of office and filling of vacancies

The provisions concerning the suspension of members, vacation of office and the filling of vacancies as contemplated in clauses 7.8, 7.9 and 7.10 read with the changes required by the context apply to the Executive Committee.

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10 PROVINCIAL COMMITTEES**10.1 Establishment and composition of Provincial Committees**

- 10.1.1 The Authority may establish a Provincial Committee for each province.
- 10.1.2 A Provincial Committee must comprise equal representation from registered trade unions and organised employers nominated in accordance with Annexure "B" (if necessary) and any other members determined by the Authority, which may include representatives of relevant provincial government departments.
- 10.1.3 The Authority must ratify the number of members of a Provincial Committee, which must not exceed ten members.
- 10.1.4 The Authority must designate the Chief Executive Officer or a member of its staff nominated by the Chief Executive Officer to act as the Provincial Officer of a Provincial Committee in circumstances in which the Provincial Manager has yet to be appointed.

10.2 Functions and duties of Provincial Committees

- 10.2.1 A Provincial Committee must perform such functions as are determined or delegated to it by the Authority as contemplated in clause 4.3.4
- 10.2.2 In respect of strategic planning and development, a Provincial Committee may-
- 10.2.2.1. Conduct participatory research in support of needs analysis and skills planning;
- 10.2.2.2. Promote the adoption by local government of skills development plans and ensure that these plans are consistent with their human resource development plans;

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- 10.2.2.3. Liaise with any relevant provincial structures of other SETAs;
 - 10.2.2.4. Make proposals on skills development for incorporation into the sector skills plan.
 - 10.2.2.5. Ensure proper consultation at municipal level with regard to the development of skills plans.
- 10.2.3 In respect of implementing the sector skills plan a Provincial Committee may-
- 10.2.3.1. Promote co-operation between municipalities to develop local capacity for the management and provision of education and training; and
 - 10.2.3.2. Encourage major urban municipalities to provide assistance to weaker municipalities.
- 10.2.4 In respect of education and training quality assurance functions, a Provincial Committee may-
- 10.2.4.1. Identify potential providers for possible accreditation and promote quality amongst such providers; and
 - 10.2.4.2. Monitor the activities and performance of any of the persons performing accreditation and quality assurance functions in the province and report thereon to the Authority.
- 10.2.5 The Provincial Manager must perform functions as may be determined by the Chief Executive Officer.

10.3 Chairperson and Vice-chairperson of Provincial Committee

- 10.3.1 A Provincial Committee must elect a Chairperson and Vice-chairperson of the Provincial Committee.

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10.3.2 The provisions concerning the election, term of office, the functions and the circumstances concerning the absence, incapacity and vacation of office of the chairperson and Vice-chairperson of the Authority as contemplated in clauses 8.2, 8.3, 8.4, 8.5 and 8.6 read with the changes required by the context apply to the chairperson or Vice-chairperson of a Provincial Committee.

10.4 Meeting procedures

Meetings of a Provincial Committee must comply with the procedures contemplated in clause 12.

10.5 Suspension of members, vacation of office and filling of vacancies

The provisions concerning the suspension of members, vacation of office and the filling of vacancies as contemplated in clauses 7.8, 7.9 and 7.10 read with the changes required by the context apply to the Provincial Committees.

11 AUDIT COMMITTEE, CHAMBERS AND OTHER COMMITTEES**11.1 Audit Committee****11.1.1 Composition**

The Authority must appoint an audit committee in accordance with the provisions of the Public Finance Management Act and any relevant treasury regulations.

11.1.2 Duties and functions

The audit committee must, amongst others, review the following:

11.1.2.1. The effectiveness of the Authority's internal control systems;

11.1.2.2. The effectiveness of the Authority's internal audit;

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- 11.1.2.3. The risk areas of the Authority's operations to be covered in the scope of internal and external audits;
 - 11.1.2.4. the adequacy, reliability and accuracy of financial information provided to management and other users of such information;
 - 11.1.2.5. Any accounting and auditing concerns identified as a result of internal and external audits;
 - 11.1.2.6. The Authority's compliance with legal and regulatory provisions; and
 - 11.1.2.7. The activities of the internal audit function, including its annual work programme, co-ordination with the external audits or the reports of significant investigations and the responses of management to specific recommendations; and
 - 11.1.2.8. *Where relevant, the independence and objectivity of the external auditors.*
- 11.1.3 The audit committee must:
- 11.1.3.1. Report and make recommendations to the Authority;
 - 11.1.3.2. Report on the effectiveness of internal controls in the annual report; and
- 11.1.4 Comment on its evaluation of the financial statements in the annual report.

11.2 Chambers

- 11.2.1 The Authority may, (in terms of section 12 of the Act) establish in its sector, chambers.

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11.2.2 A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the Authority determines.

11.3 Establishment of other committees

11.3.1 The Authority may approve the establishment of adhoc committees. The Executive Committee or a Provincial Committee may with the approval of the Authority establish any standing committee or ad hoc committees to assist it in the performance of its functions and must determine-

11.3.1.1. The membership of the committee;

11.3.1.2. Its functions; and

11.3.1.3. Its written terms of reference.

11.3.2 Unless otherwise determined in terms of sub-clause 11.3.1 membership of a committee –

11.3.2.1. Must consist of an equal number of members representing registered trade unions and representing organised employers; and

11.3.2.2. Is not restricted to members of the Authority, the Executive Committee, a Provincial Committee or a Chamber of the Authority.

11.4 Meeting procedures

Meetings of any committee must comply with the meeting procedures as contemplated in clause 12.

12 MEETING PROCEDURES**12.1 Annual General Meetings**

The purpose of the Annual General Meeting is to report to the employers, sector stakeholders and to various interest groups and strategic partners on:

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- 12.1.1 Financial position of the local government seta
- 12.1.2 Achievements and challenges of the seta
- 12.1.3 Annual report and audited financial statements
- 12.1.4 Progress made on strategic and business plan of the seta

12.2 Ordinary meetings

- 12.2.1 In respect of meetings of the Authority and Executive Committee, the Chief Executive Officer must –
 - 12.2.1.1. Give at least seven (7) working days written notice of the forthcoming meeting to members; and
 - 12.2.1.2. Include an agenda with the notice.
- 12.2.2 In respect of meetings of a Provincial Committee or any other committee of the Authority, the chairperson must:
 - 12.2.2.1. Give at least seven (7) working days notice to the members of the forthcoming meeting; and
 - 12.2.2.2. Include an agenda with the notice.

12.3 Special meetings

- 12.3.1 The Chief Executive Officer in consultation with the office-bearers, may, on grounds of urgency, call a special meeting of the Authority or Executive Committee on 48 hours notice.
- 12.3.2 If the Chief Executive Officer receives a request signed by at least half of the members of the Authority or the Executive Committee, as the case may be, he or she must as soon as practicable give notice of a special meeting of the Authority and that special meeting must be held within 15 working days of receiving the request.
- 12.3.3 The chairperson of a Provincial Committee may, on grounds of urgency, call a special meeting on 48 hours notice.

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12.3.4 If the chairperson receives a request signed by at least half of the members of a Provincial Committee as the case may be, he or she must give notice of a special meeting of the Provincial Committee as soon as practicable and that special meeting must be held within 15 working days of receiving the request.

12.4 Chairperson

The Chairperson must preside at meetings of the Authority and conduct the meetings in accordance with the provisions of clause 12.

12.5 Quorum at meetings

12.5.1 A quorum at a meeting consists of at least half of the total members plus one member provided that at least two of the members representing registered trade unions and at least two of the members representing organised employers are present.

12.5.2 If a meeting is not quorate within an hour of the time scheduled for the commencement of the meeting and the chairperson has made reasonable attempts to investigate the reasons for the absence of members then subject to sub-clauses 12.5.3 to 12.5.8 the members present may still proceed to conduct the meeting and attend to the items on the agenda.

12.5.3 The Chairperson must ensure that a minute taker records all the provisional decisions (and a motivation for the decisions) taken at the meeting.

12.5.4 The Chairperson must ensure that a list of the provisional decisions and motivations are faxed to each member who was absent at the meeting.

12.5.5 The Chairperson must ensure that fax confirmation slips are kept safely as proof of service.

12.5.6 Each absent member has one week to respond in writing to each provisional decision.

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12.5.7 If the absent member does not respond in time then, the Chairperson may presume that the absent member agrees with all the provisional decisions taken at the meeting.

12.5.8 The Chairperson must consider the responses received by absent members and prepare a final list of decisions which must be circulated to all members prior to the next meeting as contemplated in clause 12.7.1.2.

12.6 Voting rights and decisions at meetings

12.6.1 Every effort shall be made to reach decisions through consensus.

12.6.2 In the event of voting each member has a single vote on any matter for decision.

12.6.3 A matter to be voted on shall be reduced to writing prior to voting.

12.6.4 Voting shall be by show of hand unless a proposal for a ballot is supported by 50 % of members present.

12.6.5 Decisions are made by way of a simple majority.

12.7 Minutes of meetings

12.7.1 The Chief Executive Officer must appoint a person to –

12.7.1.1. Take minutes of the meeting;

12.7.1.2. Forward the minutes to the members within two weeks of the meeting;

12.7.1.3. Table the minutes at the next meeting, for approval by the members.

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12.7.2 The chairperson of the meeting must sign the minutes as confirmation of their correctness.

12.8 Advisors

12.8.1 Members representing registered trade unions or organised employers of any structure of the Authority may approach advisors to advise them on any relevant issue.

12.8.2 Advisors may speak to a particular item on an agenda for which the members have sought assistance from the advisor.

12.8.3 Advisors may only be present in the meeting when the issue for which they have been invited arises on the agenda. Thereafter the advisor must leave the meeting.

12.8.4 Advisors may not make decisions, only members may.

12.8.5 The members requesting assistance from an advisor are responsible for logistical arrangements for that advisor and for payment of any fees the advisor may charge.

12.8.6 The Chief Executive Officer must be informed before hand of any Advisors attending the meeting.

13 APPOINTMENT OF CHIEF EXECUTIVE OFFICER AND OTHER STAFF**13.1 Appointment**

The Authority must, subject to section 14 of the Act-

13.1.1 Appoint a Chief Executive Officer for the effective performance of the functions of the Authority; and

13.1.2 Develop and implement a policy determining staff employment procedures as well as the terms and conditions of their employment.

13.2 Duties of Chief Executive Officer

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The Chief Executive Officer shall be -

- 13.2.1 The Accounting Officer;
- 13.2.2 Responsible to the Authority for performing all functions and responsibilities of the Authority as set out in the Constitution;
- 13.2.3 Tender at all times, considered advice on the issues affecting the office of the Authority and shall ensure that the Authority is adequately informed about the activities of the office;
- 13.2.4 Responsible for the general administrative functions of the office. This includes the appointment and effective utilization of staff, promotion of sound labour practices and sound financial management in accordance with the policies and resolutions of the Authority.

14 FINANCES AND FIDUCIARY RESPONSIBILITIES

14.1 Fiduciary duties of Authority

- 14.1.1 The Authority must, as contemplated in section 50 of the Public Finance Management Act:
 - 14.1.1.1. exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Authority;
 - 14.1.1.2. act with fidelity, honesty, integrity and in the best interest of the Authority in managing the financial affairs of the Authority;
 - 14.1.1.3. on request, disclose to the Minister all material facts, including those reasonably discoverable, which in any way may influence the decisions of the Minister; and
 - 14.1.1.4. Seek, within the sphere of influence of the Authority to prevent any prejudice to the financial interests of the state.

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14.1.2 A member may not:

- 14.1.2.1. Act in a way that is inconsistent with the responsibilities assigned to the Authority in terms of the Public Finance Management Act; or
- 14.1.2.2. Use the position or privileges of, or confidential information obtained for personal gain or to improperly benefit another person.

14.1.3 A member must:

- 14.1.3.1. Disclose to the Authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the Authority; and
- 14.1.3.2. Withdraw from the proceedings of the Authority when that matter is considered, unless the Authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

14.2 Financial and general responsibilities of Authority**14.2.1 The Authority must ensure that the Authority has and maintains:**

- 14.2.1.1. Effective, efficient and transparent systems of financial and risk management and internal control;
- 14.2.1.2. A system of internal audit under the control and direction of an audit committee complying with the operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the Public Finance Management Act;
- 14.2.1.3. An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and

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14.2.1.4. A system for properly evaluating all major capital projects prior to a final decision on the project.

14.2.2 The Authority must take effective and appropriate steps to:

14.2.2.1 Disburse funds in terms of section 14 of the Act all revenue due to the Authority; and

14.2.2.2 Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the Authority; and

14.2.2.3 Manage available working capital efficiently and economically.

14.2.3 The Authority is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the Authority.

14.2.4 The Authority must comply with any tax, levy, duty, pension and audit commitments as required by legislation.

14.2.5 The Authority must take effective and appropriate disciplinary steps against any employee of the Authority who:

14.2.5.1 Contravenes or fails to comply with a provision of the Act:

14.2.5.2 Commits an act which undermines the financial management and internal control system of the Authority; or

14.2.5.3 Makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

14.2.6 The Authority is responsible for the submission of all reports, returns, notices and other information to Parliament or the Minister, as may be required by the Public Finance Management Act.

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14.2.7 The Authority must comply with the provisions of the Public Finance Management Act and any other applicable legislation.

14.3 Sources of finance

The Authority is financed from-

14.3.2 The skills development levies collected in its sector;

14.3.3 Moneys paid to it from the National Skills Fund;

14.3.4 Grants, donations and bequests made to it;

14.3.5 Income earned on surplus moneys deposited or invested;

14.3.6 Income earned on services rendered in the prescribed manner;
and

14.3.7 Money received from any other lawful source.

14.4 Investments

14.4.2 The money received by the Authority must be paid into a banking account at any registered bank and may be invested only in-

14.4.2.1 Savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;

14.4.2.2 Internal registered stock contemplated in section 21 (1) of the Exchequer Act, 1975 (Act 66 of 1975); and

14.4.2.3 Any other manner approved by the Minister.

14.4.3 All investments must comply with the approved investments policy of the Authority and be consistent with relevant legislation

14.5 Purpose for which funds may be used

The moneys received by the Authority may be used only in the prescribed manner and in accordance with any prescribed standards or criteria and to-

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14.5.2 Fund the performance of its functions; and

14.5.3 Pay for its administration within the prescribed limit.

14.6 Financial records of Authority

16.6.1 The Authority must, in accordance with the standards of generally accepted accounting practice-

14.6.2.1 Keep proper record of all its financial transactions, assets and liabilities; and

14.6.2.2 Within six months after the end of each financial year, prepare accounts reflecting income and expenditure and a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

14.6.3 The Authority must prepare-

14.6.3.1 Annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and

14.6.3.2 Furnish the Director-General with copies of all budgets, reports and statements contemplated above and any other information that it is required to submit in terms of the Public Finance Management Act.

14.7 Audit of Authority

14.7.2 The Auditor-General must –

14.7.2.1 audit the accounts, financial statements and financial management of the Authority; and

14.7.2.2 report on that audit to the Authority and to the Minister and in that report express an opinion as to whether the Authority has complied with the provisions of the Act, and this Constitution, relating to financial matter.

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14.7.3 Sub-clause 14.7.1 does not preclude the appointment of some other auditor to audit the accounts and financial statements of the Authority.

14.8 Signatories to accounts

14.8.2 The Authority must appoint three signatories to authorise any payment on their behalf.

14.8.3 At least two of the three signatories must be required to authorise any payment by the Authority.

14.8.4 All payments must be made in terms of the relevant legislation and policies of the Authority.

15 CODE OF CONDUCT

The members of the Authority, the Executive Committee, Provincial Committees and any other committee of the Authority are bound by the Code of Conduct contained in Annexure "C".

16 ARBITRATION

Any dispute concerning the interpretation or application of this Constitution must be determined in accordance with Annexure "D".

17 AMENDMENTS AND INTERPRETATION OF CONSTITUTION

17.1.1 The Minister after consultation with the Authority may amend this Constitution in the prescribed manner.

17.1.2 The Authority may, by resolution of 75% of its members, recommend to the Minister that this constitution be amended in accordance with the resolution.

17.1.3 The Authority may by resolution of 75% of its members make a ruling on the interpretation of this constitution.

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18 INDEMNIFICATION

Every member of the Authority, Executive Committee, Provincial Committee, Chamber or other committee and the staff of the Authority are indemnified by the Authority against any civil liability arising from the performance of his or her duties in good faith.

19 AMALGAMATION or DISSOLUTION OF THE SETA**19.1 The role of the Minister**

19.1.1 The Authority may on good cause recommend to the Minister the amalgamation or dissolution of the Authority in terms of section 9A of the Act.

19.1.2 A recommendation contemplated in sub-clause 19.1.1 requires a resolution of the Authority supported by not less than 75% of its members.

19.1.3 If the Minister approves the amalgamation or dissolution of the Authority then the Authority must be amalgamated or dissolve in accordance with law; and any residue must be transferred to the National Skills Fund.

20. TAKING OVER THE ADMINISTRATION OF THE AUTHORITY

The minister may after consultation with the National Skills Authority and the Authority appoint an Administrator to take over the administration of the Authority in terms of section 15 of the Act.

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ANNEXURE "A": SCOPE OF LGSETA

SIC CODE	DESCRIPTION
30101	Production, processing and preservation of meat products by Local Governments
41110	Production, collection and distribution of electricity
41117	Generation of electric energy by Local Governments
50223	Construction of pylons for electric transmission lines by Local Government
50493	Any utility or agency, wholly or partially owned by a municipality providing local government services under contractors or municipality
62520	Retail trade via stalls and markets
71213	Urban, suburban and inter-urban bus and coach passenger lines operated by Local Government
71220	Other non-scheduled passenger land transport
74132	Salvaging of distressed vessels and cargoes
74133	Maintenance and operation of harbour works, pilotage, lighthouses, etc., pilotage
74134	Operation of airports, flying fields and air navigation facilities
88217	Roads
88218	Municipal public works functions (specifically assigned)
88219	Municipal fencing and fences

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8821A	Municipal Roads
8821B	Street Lighting
88930	Building and industrial plant cleaning activities
91200	Regional services council activities
91201	All functions, services and facilities provided by a metropolitan council as determined by 84(1); (2) and (3) of Act 117 of 1998 – Local Government Municipal Structure Act of 1998
91202	Category B Municipalities: All functions, services and facilities provided by local council as determined by 84(1), (2) and (3) of Act 117 of 1998
91203	Category C Municipalities: All functions, services and facilities provided by a district council and district area management as per Act 117 as determined by 84(1), (2) and (3) of Act 117 of 1998 local government municipal structures Act 1998
91204	Organised local government – any statutory or regulatory body assigned the function as per constitution of RSA, to deal with the matters at the executive level within local government
91300	Local government activities
91301	Metro Police
91302	Traffic management/law enforcement
91303	Air pollution
91304	Municipal planning
91305	Trading regulations

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91306	Billboards and the display of advertisement in public places
91307	Control of public nuisances
91308	Control of undertakings that sell liquor to the public
91309	Licensing of dogs
9130A	Licensing and control of undertakings that sell food to the public
9130B	Noise pollution
9130C	Street trading
9130F	Land use planning
9200B	Pre-primary education and activities of after school centres by local authorities
93304	Social work in local governments
94001	Refuse and sanitation
94002	Health and community services
94005	Other community work in local governments
96001	Recreational, cultural and sporting activities by local governments
96191	Beaches and amusement facilities and fairs
96192	Pounds
96193	Public places
96313	Provision and operation of libraries of all kinds by local

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	government
96321	<i>Museum activities and preservation of historical sites and buildings by local governments</i>
96331	Parks and gardens
96332	Zoos
96414	Local sports facilities
96493	Municipal parks
99001	Building regulations
99031	Cemeteries
99032	<i>Facilities for the accommodation, care and burial of animals</i>

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ANNEXURE "B": FORMULA FOR PROPORTIONAL ALLOCATION OF MEMBERS:

If organisations within a particular constituency, e.g. organised employers or registered trade unions (respectively) cannot reach agreement on the allocation of seats per organisation, then the principle of proportionality must apply. The formula below may be followed.

1 The formula is
$$\frac{A}{B} \times \frac{C}{1} = \frac{D}{1}$$

2 A represents either-

- 2.1 the number of employees employed by the members of an employers' organisation listed in Annexure "E"; or
- 2.2 the number of members of a registered trade union listed in Annexure "E".

3 B represents either-

- 3.1 the total number of employees employed by all the employers who are members of all employers' organisations listed in Annexure "E"; or
- 3.2 the total membership of all the registered trade unions listed in Annexure "E".

4 C represents 10

5 D represents either-

- 5.1 The number of members which an employer's organisation may nominate to the Authority; or
- 5.2 The number of members which a registered trade union may nominate to the Authority.

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Example: If there are only two registered trade unions, one with 600 members and the other with 1000 members, they would be represented as follows on the Authority-

$$\frac{600}{1600} \times \frac{10}{1} = 3.75 \qquad \frac{1000}{1600} \times \frac{10}{1} = 6.25$$

The trade union with 600 members would nominate 4 members

The trade union with 1000 members would nominate 6 members.

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ANNEXURE "C": CODE OF CONDUCT

- 1 The members of the Authority, the Executive Committee, Chambers, Provincial Committees and any other committee of the Authority –
 - 1.1 stand in a fiduciary relationship to the Authority;
 - 1.2 must perform their functions in good faith;
 - 1.3 must avoid any material conflict between their own interests and those of the Authority, and in particular-
 - 1.3.1 must not derive any personal economic benefit to which they are not entitled because that benefit is obtained in conflict with the interests of the Authority;
 - 1.3.2 must notify the Authority, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which they may have in any dealing of the Authority;
 - 1.4 must protect and promote the reputation and goodwill of the Authority;
 - 1.5 must exercise their powers for the benefit and in the interests of the Authority;
 - 1.6 must not abuse the resources of the Authority; and
 - 1.7 must not disclose to any unauthorised person any privileged or confidential information of the Authority.

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ANNEXURE "D": ARBITRATION PROCEDURE

- 1 Any party to a dispute concerning the application or interpretation of this Constitution may refer the dispute to the Chief Executive Officer.
- 2 The dispute may be resolved by a decision of the Executive Committee or Authority supported by not less than 75% of members representing registered trade unions and by not less than 75% of members representing organised employers.
- 3 If the dispute remains unresolved, then the parties may agree on an arbitrator to arbitrate the dispute.
- 4 If the parties cannot agree on an arbitrator, then the Chief Executive Officer must select an arbitrator from the panel of arbitrators selected by the South African Local Government Bargaining Council.
- 5 The arbitrator must first attempt to conciliate the dispute. If conciliation is not possible then the arbitrator must arbitrate the dispute.
- 6 The arbitrator must conduct the arbitration 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.
- 7 Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses of any other party, and address concluding arguments to the arbitrator.
- 8 A party to the dispute may be represented.
- 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.

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- 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-
- 10.1 continue with the arbitration proceedings in the absence of that party;
 - or
 - 10.2 adjourn the arbitration proceedings to a later date.
- 11 Within 14 days of the conclusion of the arbitration proceedings-
- 11.1 the arbitrator must issue an arbitration award with reasons, signed by the arbitrator; and
 - 11.2 the Chief Executive Officer must serve a copy of that award on each party to the dispute.
- 12 The arbitration award is final and binding on the parties to the dispute.
- 13 The arbitrator may not include an order for costs in the arbitration award, provided however that in the case of a non-appearance by any party or delay caused by the fault of any party or if the arbitrator is of the view that the party pursuing or resisting the claim did so vexatiously or frivolously or that it had no reasonable prospect of succeeding, the arbitrator may make an appropriate award of costs.
- 14 An arbitrator may at his or her own initiative or as a result of an application by *an affected party, vary or rescind an award-*
- 14.1 erroneously sought or made in the absence of any party affected by the award;
 - 14.2 in which there is ambiguity, or any obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - 14.3 granted as a result of a mistake common to the parties to the proceedings.

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ANNEXURE "E": REGISTERED TRADE UNIONS, EMPLOYER ORGANISATIONS AND RELEVANT GOVERNMENT DEPARTMENTS WITHIN SCOPE OF AUTHORITY**1 Registered trade unions**

- 1.1 South African Municipal Workers Union (SAMWU)
- 1.2 Independent Municipal and Allied Trade Union (IMATU)

2 Registered employers organisation

- 2.1 South African Local Government Association (SALGA)

3 Relevant government departments

- 3.1 All provincial and local governments
- 3.2 National Department of provincial and local government
- 3.3 Any other relevant department in the national sphere of government.

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**ANNEXURE "F": ORGANISATIONS WHICH MAY NOMINATE MEMBERS TO
AUTHORITY**

1. The Authority

1.1 Trade Unions

1.1.1 SAMWU (6 members)

1.1.2 IMATU (4 members)

1.2 Organised Employers

1.2.1 SALGA (8 members)

1.2.2 DPLG (2 members)

2. Executive Committee

2.1 Trade Unions

2.1.1 SAMWU (3 members)

2.1.2 IMATU (2 members)

2.2 Organised Employers

2.2.1 SALGA (4 members)

2.2.2 DPLG (1 members)

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The amended Constitution was approved by the LGSETA at the Authority/ Board Meeting held in August and November, respectively.



MR M SEBEZO
CHAIRPERSON

01 December 2005

DATE



CLLR H G JENKINS
DEPUTY CHAIRPERSON

01 December 2005

DATE

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