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DEPARTMENT OF HEALTH

# GOVERNMENT NOTICE

## DEPARTMENT OF LABOUR

No. R. 68

26 January 2000

SKILLS DEVELOPMENT ACT, 1998 (ACT No. 97 of 1998)

# PROPOSED REGULATIONS REGARDING LEARNERSHIPS AND SKILLS PROGRAMMES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, after consultation with the National Skills Authority (NSA), hereby publish for public comment the draft regulations intended to be made in terms of section 36, read with sections 16, 17, 18, 19 and 20 of the Act a set out in the Schedule.

Interested parties are invited to submit written comments on the proposed regulations before 28 February 2000 by

- (a) posting comments to -
  - The Project Manager of Project 3
     Dr. CA Pereira
     C/o Department of Labour: INDLELA
     Private Bag X5
     Olifantsfontein
     1665
- (b) fax to (011) 316-4763
- (c) delivering comments to -

Room 10 Old Kempton Rd OLIFANTSFONTEIN

(d) e-mail to thabo.matjabe@labour.gov.za or joe.lishman@labour.gov.za

MMS MDLADLANA

MINISTER OF LABOUR

No. R. 69

26 January 2000

# DRAFT REGULATIONS FOR LEARNERSHIPS AND SKILL PROGRAMMES DEPARTMENT OF LABOUR SKILLS DEVELOPMENT ACT 1998 (NO. 97 OF 1998)

The Minister of Labour in terms of section 36 of the Skills Development Act 1998 (No. 97 of 1998) makes the following regulations to give effect to sections 16, 17, 18, 19, 20 and 21 of the Act.

## **SCHEDULE**

## 1 DEFINITIONS:

"Accreditation"

The periodical certification, of a person, a body or an institution as having the capacity to fulfil a particular function in the quality assurance system set up by the South African Qualifications Authority (SAQA), Act No. 58 of 1995 and in terms of the Education and Training Quality Assurance body (ETQA) Regulations, No. R.1127 of 1998.

"Assessment"

The process of measuring the achievement of the learner against specified National Qualification Framework (NQF) standards or qualifications.

"Designated Groups"

Black people, women, and people with disabilities as defined by the Employment Equity Act, No. 55 of 1998.

"Employer"

Any person who pays or is liable to pay a person an amount by way of remuneration and a person responsible for paying an amount by way of remuneration to a person under the provision of a law or out of public funds or out of funds voted by Parliament or a Provincial Council, in exchange for work done.

"Employment context"

The nature of the working environment within which the structured workplace learning will occur, eg. Formal or small business environment.

"Employment contract"

The contract between the employer and the employee, which describes the employment conditions and rate of remuneration.

"ETOA"

A body accredited in terms of sections 5 (1) (a) (ii) of the SAQA Act (No 58 of 1995) responsible for monitoring and auditing achievements in terms of national standards or qualifications and to which specific functions relating to the registration of national standards or qualifications have been assigned in terms of section 5(1) (b) (i) of the Act.

"Learner" The person who is party to a Learnership Agreement with an employer or group of employers, and a training provider or a group of training providers. "Learnership" Consists of a structured learning component and practical work experience of a specified nature and duration, and culminates in a qualification registered with SAQA. An agreement entered into for a specified period between a learner, "Learnership an employer or group of employers, and a training provider or a Agreement" group of training providers. Someone who provides guidance and/or counselling to learners. "Mentor" A National Qualifications Framework to provide for the registration "NQF" of unit standards or qualifications. The process of ensuring that the required degree of excellence is "Quality assurance" achieved. "Outcome" Contextually demonstrated end products of the learning process. Training providers registered with the Department of Education "Registered Training and/or accredited by ETQAs and SAQA. "Training Provider" shall Provider (RTP)" also mean registered training provider in each case. The South African Qualifications Authority established by section 3 "SAQA" of the SAQA Act. "SETA" A Sector Education and Training Authority established in terms of section (a)(i) of the Skills Development Act. A skills programme that is occupationally based; that utilises "Skills Programme" training providers and when completed, will constitute a credit towards a qualification registered in terms of the NQF. A programme which is followed in the course of training a learner. "Training Programme" "Unit Standard" Registered statements of desired education and training outcomes and their associated assessment criteria together with administrative and other information. The place where a learner will receive structured working "Workplace" experience.

# 2 RIGHTS AND OBLIGATIONS UNDER LEARNERSHIP AGREEMENTS

# 2(1) Rights of the Learner

- (a) The learner has the right to be educated and trained adequately in terms of the Learnership Agreement or employment contract as the case may be;
- (b) The learner may negotiate, in conjunction with the employer, and with the provider on:
  - timing, location and mode of delivery, and
  - who conducts the assessment;
- (c) The learner has the right to have access to the required resources to receive quality training;
- (d) Provided sufficient motivation is given, the learner may express his/her dissatisfaction about the training presented to him/her where it falls short of the quality or set standards. The learner must follow the procedures and mechanisms stipulated by the SETA in the relevant sector;
- (e) The learner may cede his/her Learnership Agreement to an alternate registered training provider where the current training provider is dissolved, insolvent or de-registered;
- (f) The learner is entitled to proper assessment of his/ her performance in training and access to his/her assessment results;
- (g) Notwithstanding the provisions of Section 17(4)(a c), the learner is entitled to continue training until the period specified lapses, or until s/he meets the outcomes for the required unit standards, whichever comes first;
- (h) The learner is entitled to certification upon successful completion of his/her training programme; and
- (i) The learner is entitled to a fair hearing in disciplinary matters.

# 2(2) Rights of the Registered Training Provider

- (a) The training provider may negotiate the release of the learner from the employer when the time is due for the learner to attend training as reflected in the Learnership Agreement. In the event where this is not possible for whatever reason, the employer must obtain permission to withhold the learner from such training from the relevant SETA. Such permission must be obtained at least thirty days before the learner is due for such training; and
- (b) The training provider may apply to the SETA, by way of a letter, to terminate the Learnership Agreement if there is evidence of non-compliance of the provisions thereof, poor performance or bad behaviour by the learner.

## 2(3) Rights of the Employer

- (a) The employer has the right to use the services of the learner as shall be determined in the Learnership Agreement and employment contract;
- (b) The employer has the right to negotiate, in conjunction with the learner, with the registered training provider who is a party to the Learnership Agreement on:
- timing, location and mode of delivery, and
- who conducts the assessment:
- (c) The employer has a right to the release of the learner from the training provider to enable the learner to gain structured work experience, in terms of the Learnership Agreement and employment contract;
- (d) The employer has the right to ensure that the learner adheres to the rules and regulations governing the employer's business concern; and
- (e) The employer has the right to apply to the SETA, by way of a letter, to terminate the Learnership Agreement, as well as the employment contract if there is evidence of non-compliance of the provisions thereof, poor performance or bad behaviour by the learner.

# 2(4) Rights of the SETA

- (a) A SETA may withhold registration of the Learnership Agreement if it deems the agreement not to be in the best interests of all parties to the agreement or if it is not in the prescribed format;
- (b) A SETA may de-register an existing Learnership Agreement and determine the conditions for such a deregistration;
- (c) A SETA may terminate or withhold approval to terminate a Learnership Agreement as recommended to it by either the Provider or the Employer;
- (d) A SETA may grant or refuse requests for withholding a learner from attending training at a registered training provider as stipulated in the Learnership Agreement or employment contract;
- (e) A SETA may lay down conditions for granting permission to the employer to withhold a learner from attending training at a registered training provider as stipulated in the Learnership Agreement or employment contract;
- (f) A SETA may grant or refuse requests for financial assistance; and
- (g) A SETA may enforce the rights and obligations of any party to the Learnership Agreement in accordance with the Skills Development Act, 1998 (Act No. 97 of 1998).

# 3 OBLIGATIONS OF PARTIES TO A LEARNERSHIP AGREEMENT

# 3(1) Learner obligations

- (a) The learner must work for the employer as part of the learning process, failing which the employer may recommend to the SETA that the Learnership Agreement and the employment contract be terminated;
- (b) The learner must comply with workplace policies and procedures such as arriving at work timeously; wearing the correct apparel, grievance and disciplinary procedures, etc.;
- (c) The learner must complete any timesheets or any written assessment tools supplied by the employer in the employer's endeavour to provide relevant work experience;
- (d) The learner must attend all study periods and theoretical learning sessions with the specific training provider and apply himself/herself conscientiously to all learning material, failing which the training provider may recommend that the employer institute disciplinary procedures, which could lead to the termination of the Learnership Agreement and employment contract; and
- (e) The learner must be available for all learning and work experience as outlined in the Learnership Agreement or employment contract as the case may be.

# 3(2) Training provider obligations

- (a) The training provider must engage in negotiations with the learner and the employer with regard to:
  - timing, location and modes of delivery, and
  - who conducts the assessment;
- (b) The training provider must provide and use relevant outcomes-based course material focusing on the development of applied competence in conjunction with practical training provided by the employer. The provider must also ensure course material and presentation of such course material is without bias and prejudice;
- (c) The training provider must record, monitor and retain details of training provided to the learner;
- (d) The training provider must evaluate or assess the performance of the learner in terms of the relevant criteria. This means, for this purpose, the provider is entitled to access to the learner's books, learning material and the workplace, if required; and
- (e) The training provider must report the learner to the employer in cases of misconduct, poor performance or incapacity.

# 3(3) Employer obligations where the learner is not in employment when the agreement is concluded

The following obligations need to be read in conjunction with the Basic Conditions of Employment Act No. 75 of 1997 and the Labour Relations Act, Act No 66 of 1995, the Skills Development Act No. 97 of 1998 and the Employment Equity Act, Act No 55 of 1998.

- (a) The employer must clearly indicate to the learner, before commencement of the Learnership, the policies and procedures of the workplace;
- (b) The employer must provide appropriate facilities to train the learner in accordance with the training programme's requirements;
- (c) The employer must ensure the learner receives appropriate training, in a supportive work environment, to achieve all the learning outcomes specified in the unit standards:
- (d) The employer must conform to any terms and conditions that may be determined by the Minister on the recommendation of the Employment Conditions Commission established by section 59 (1) of the Basic Conditions of Employment Act, 1997;
- (e) The employer must ensure that the learner has adequate supervision and mentoring in the workplace;
- (f) The employer must provide the learner with every opportunity to complete the training during the training period;
- (g) The employer must conduct on-the-job assessment, or cause it to be conducted;
- (h) The employer must release the learner, during normal working hours, to attend off-the-job training when required and as specified in the Learnership Agreement or employment contract as the case may be;
- (i) The employer must timeously pay to the learner the remuneration as agreed to in the employment contract, and in accordance with the guidelines specified by the Employment Conditions Commission;
- (j) The employer must ensure the learner is paid the agreed remuneration when attending approved off-the-job training;
- (k) The employer must apply the same conflict resolution, disciplinary and dismissal procedures to the learner as would be the case with a full-time employee;
- The employer must ensure records of learning are kept up to date and progress is discussed periodically with the learner; and
- (m) The employer must provide any timesheets or any written assessment tools.

#### 9

# 3(4) Employer obligations where the learner is in full-time employment when the agreement is concluded

- (a) The employer must ensure the learner receives appropriate training, in a supportive work environment, to achieve all the learning outcomes specified in the unit standards:
- (b) The employer must provide appropriate facilities to train the learner in accordance with the training programme's requirements;
- (c) The employer must ensure that the learner has adequate supervision and mentoring in the workplace;
- (d) The employer must conduct on-the-job assessment, or cause it to be conducted;
- (e) The employer must release the learner, during normal working hours, to attend off-the-job training when required;
- (f) The employer must ensure the learner is paid the agreed remuneration when attending approved off-the-job training:
- (g) The employer must ensure records of learning are kept up to date and progress is discussed periodically with the learner; and
- (h) The employer must provide any timesheets or any written assessment tools.

## 4 SETA OBLIGATIONS

## The SETA must

- (a) in the performance of its ETQA functions, monitor performance quality of the training provider:
- (b) prescribe the format for the Learnership Agreement and the procedures for the registration of these with the SETA;
- (c) keep records of registered Learnership Agreements:
- (d) keep records of qualification or credit attainment:
- (e) create a link between the learner and the Department of Labour's Employment and Skills Development Services section for counselling and career advice:
- (f) assist with the uninterrupted running of the Learnership in the event of either the employer or the training provider being unable to fulfil their obligations in terms of the Learnership Agreement;
- (g) oversee the implementation of Learnerships:
- (h) issue certificates to successful learners through its Education and Training Quality Assurance body;

- (i) establish procedures and mechanisms to terminate a Learnership Agreement;
- (j) ensure relevance of qualifications;
- (k) provide relevant authorities with records of learnerships entered into in the economic sector and particular industry;
- (l) attempt to reconcile any disputes arising out of the Learnership Agreement; and
- (m) monitor and enforce applicable Labour legislation.

# 5 OBLIGATIONS OF THE DEPARTMENT OF LABOUR (EMPLOYMENT SERVICES)

The Department of Labour may

- (a) provide career guidance counselling in conjunction with the SETA for learners;
- (b) assist in the placement of learners; and
- (c) provide support to the SETA in skills profile requirements.

# 6 OBLIGATIONS OF THE PARENT OR GUARDIAN OF LEARNERS YOUNGER THAN EIGHTEEN YEARS OF AGE

- (a) The parent or guardian must understand and agree to the terms and conditions of the Learnership Agreement.
- (b) The parent or guardian will cease to be a party to the Learnership Agreement when the learner reaches 18 (eighteen) years of age.

# 7 WHERE THE PROVIDER AND THE EMPLOYER IS THE SAME ENTITY

- (a) Where there is a single entity as the training provider and the employer, such entity shall sign the Learnership Agreement.
- (b) All rights and obligations referred to under 2(2), 2(3), 3(1), 3(2) and 3(4) are applicable.

## 8 GENERAL PROVISIONS AND SCOPE OF AGREEMENT

# 8(1) ENTRY REQUIREMENTS

- (a) Age
- (i) The learner at the date of entering into the Learnership Agreement must be at least sixteen (16) years of age subject to section 8(1)(a)(ii).

The learner must apply in writing, with the assistance of the guardian or parent, (ii) for approval to the SETA to enter into a Learnership Agreement, where the learner is below the age of sixteen (16) years.

#### Educational, physical and emotional requirements (b)

- The SETA shall stipulate educational, physical and emotional requirements (i) according to the nature of the occupational area and in accordance with the provisions of the Employment Equity Act No. 55 of 1998.
- These requirements shall not serve to exclude learners, in particular those from (ii) designated groups, unreasonably from learnerships.

#### 9 REGISTRATION

#### Learnerships (a)

# Requirements for the registration of a learnership with the Department of Labour

- A learnership must be registered with the Department of Labour at an (i) appropriate office as shall be determined by the Director-General of Labour;
- A learnership registration application form, as shall be prescribed, must be (ii) accompanied by a proposal that addresses the following elements considered in the design of the learnership:
- what the labour market needs in the sector are and how the learnership intends (aa) to address those needs,
- a description of the nature of the partnerships that were established, with whom (bb) these partnerships were established from the inception to the pre-delivery phase,
- a description and an analysis of the employment context within which the (cc) learnership will be delivered,
- a description of how the learnership qualification is constructed and a map of (dd) the qualifications pathway,
- a description of how the structured workplace learning (on-the-job) will occur, (ee)
- a description of how the structured institutional (off-the-job) learning will (ff) occur,
- a description of the quality assurance mechanisms that will be employed to (gg) ensure quality delivery of the learnership,
- a description of the management and administration capacity to implement (hh) learnerships; and

(ii) any other criteria that the Department of Labour may from time to time announce.

## (b) Skills Programmes

# Requirements for the registration of a skills programme with the Department of Labour

- A skills programme must be registered with the Department of Labour at an appropriate office as shall be determined by the Director-General of Labour;
- (ii) A skills programme registration application form, as shall be prescribed, must be accompanied by a proposal that addresses the following elements considered in the design of the skills programme:
- (aa) what the labour market needs in the sector are and how the skills programme intends to address those needs,
- (bb) a description and an analysis of the employment context within which the skills programme will be delivered,
- (cc) a description of the quality assurance mechanisms that will be employed to ensure quality delivery of the skills programme, and
- (dd) any other criteria that the Department of Labour may from time to time announce; and
- (iii) In the event where a combination of skills programmes are forwarded to a Sector Education and Training Authority (SETA) for recognition as a learnership qualification, then the usual criteria for recognition of a learnership shall apply.

## (c) Learnership Agreement

- (i) All Learnership Agreements shall be registered with the SETA under which the learning is to take place;
- (ii) The employer(s), the registered training provider(s) and the learner (and if applicable, the parent/guardian), should sign the Learnership Agreement prior to the commencement of the learnership; and
- (iii) The employer(s) must immediately forward the completed Learnership Agreement to the SETA.

# (d) Contract of Employment

- The employer(s) and the learner (and if applicable, the parent/guardian), must sign the contract of employment before the commencement of the learnership; and.
- (ii) The Employment Conditions Commissioner shall determine the terms and conditions of the employment contract in consultation with the SETA.

# 10 PARTIES TO AN AGREEMENT

# (a) Single employer, a single training provider and a Learnership Agreement

- A learner may have a Learnership Agreement with a single training provider and a single employer to provide off- and on-the-job education and training opportunities;
- (ii) This relationship assumes that the learner will receive education and training from a single employer and a single training provider; and
- (iii) The employer may also be the training provider.

# (b) Single employer and multiple training providers and a Learnership Agreement

- (i) A learner may have an employment relationship with a single employer; and
- (ii) Training may be provided by more than one training provider. If this is the case, then the employer must manage the relationships between the various training providers.

# (c) Multiple employers and multiple training providers and a Learnership Agreement

- (i) A learner may have an employment relationship with multiple employers and multiple education and training providers to provide off- and on-the-job education and training opportunities;
- (ii) This relationship assumes that the learner will receive education and training from a number of employers and a number of training providers; and
- (iii) The SETA must then determine the most appropriate arrangement for the management of the Learnership Agreement.

# (d) Multiple employers and single training provider and Learnership Agreement

 A learner may have a Learnership Agreement with multiple employers and a single education and training provider to provide off- and on-the-job education and training opportunities;

- (ii) This relationship assumes that the learner will receive education and training from a number of employers and a single training provider; and
- (iii) The SETA must then determine the most appropriate arrangement for the management of the Learnership Agreement.

# 11 PERIOD OF AGREEMENT

- (a) The learning period is determined at the time the particular learnership is established;
- (b) The actual length of the learning period is ultimately determined according to the rate at which the unit standards are achieved. The learning period may be extended by agreement between the relevant parties;
- (c) Previous learning achievements gained during the learner's educational or working life may be recognised and therefore reduce the learning period. The learner should discuss this with both the employer(s) and the registered training provider(s) and come to an agreement before the learnership is started;
- (d) If the learner does not achieve the required learning outcomes within the period agreed, the Learnership Agreement will cease, unless varied by agreement between the parties; and
- (e) Termination before the expiry of the Learnership Agreement, must conform to the provisions laid down in Section 17(4) of the Skills Development Act, 1998 (Act No. 97 of 1998).

### 12 VARIATIONS OF THE AGREEMENT

- (a) The terms and conditions of the Learnership Agreement may be varied by agreement between the employer, the registered training provider and the learner, subject to the variation meeting the registration requirements of the SETA;
- (b) Variations agreed to must be confirmed in writing, otherwise they shall be of no force and effect; and
- (c) Certified copies of the variations must be forwarded to the SETA.

## 13 COMPLETION OF LEARNERSHIP AGREEMENTS

The Learnership Agreement will cease on the achievement of the unit standards or when the agreed time expires.

## 14 RESOLUTION OF DISPUTES

(a) All disputes regarding the Learnership Agreement and the contract of employment shall be resolved in accordance with the provisions of this Act, the

Basic Conditions of Employment Act No. 75, 1997, and the Labour Relations Act No. 66 of 1995;

- (b) The SETA must draw up processes and mechanisms for dispute resolution in accordance with the provisions of the Basic Conditions of Employment Act No. 75, 1997, and the Labour Relations Act No. 66 of 1995; and
- (c) Where the dispute is not resolved, parties may in the same manner refer the dispute to the applicable Bargaining Council, or the Commission for Conciliation, Mediation and Arbitration as the case may be.

# 15 CONDITIONS OF EMPLOYMENT WITHIN LEARNERSHIP AGREEMENTS

- (a) The conditions of employment of every learnership shall be negotiated between the Employment Conditions Commissioner and the relevant SETA (or SETA) chamber.
- (b) The Basic Conditions of Employment Act No. 75, 1997 will apply to contracts of employment.
- (c) In the case of a learner having a Learnership Agreement with a number of employers and training provider(s), such conditions must be negotiated for every employer within that legal relationship according to the process outlined above.

## 16 LEARNERSHIP AGREEMENT

The Learnership Agreement may be in the form of Annexure 1.

## Annexure 1

# EXEMPLAR LEARNERSHIP AGREEMENT

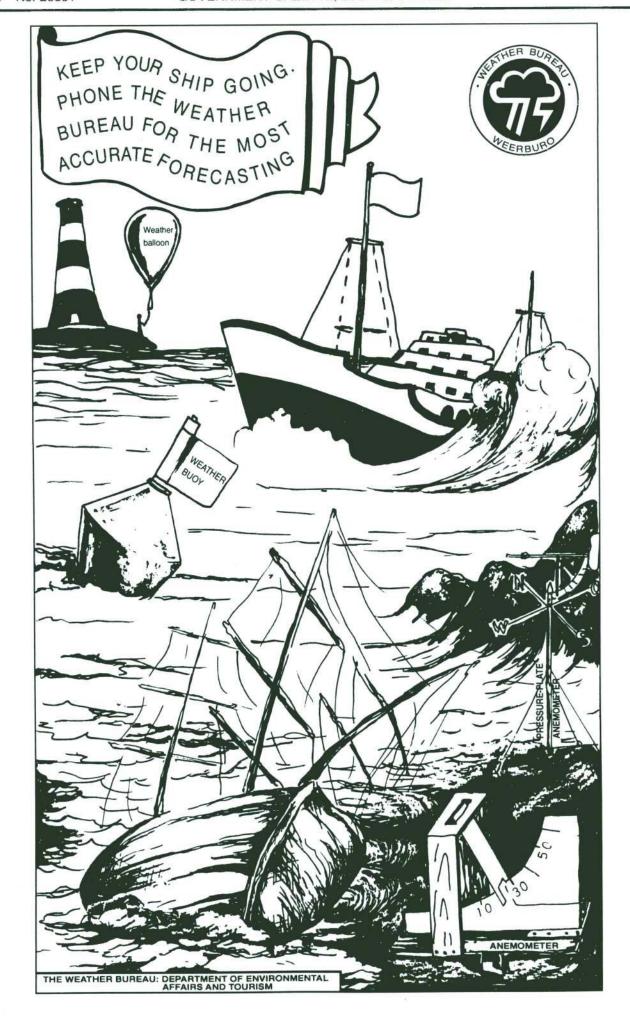
Lear	ner details	Name of Sector Education and Training Authority
1.1	Surname	,
	First names	Have you completed any of the following qualifications'
1.2	Identity Number	If yes, tick applicable box/es and specify qualifications:
1.3	Home address	Trade/ABET Certificate Diploma
		Tech. Certificate First Degree
1.4	Postal Code Postal address (if different from above)	Recognition of Prior Learning  Other Diploma
	Postal Code	Title of qualification/s
1.5	Home Telephone	
		1.9 Have you previously undertaken a learnership?  If yes, in which provin
	Work Telephone	Yes No No
1.6	Date of birth	1.10 Were you born in South Africa?  Yes No
	Year Mnth Day	If no, in which country were you born?
1.7	If you are under 18 years, please provide information about your parent/guardian	1.11 Are you a South African citizen?
1.8	Highest school qualification (example: Gr 10, 11, 12)	Yes No
		If no, of what country are you a citizen?
		1.12 What language do you speak at home?
		1.13 Do you have a serious and permanent disabil
	9	Yes No
		If yes, please specify:
		Sight Learning

	Hearing Chronic illness Physical Other disability	2.7	Have you previously employed a learnership employee?
	Employment status  Employed Not employed		Yes No No have circumstances altered your capacity to train in yay? Please provide details.
1.14	Date you first started work with the employer who is signing this agreement.	2.8	No. of people employed by the company
	Day Month Year	NOTE	E: An Employment Contract must be completed
	Yes No	learne forms	attached to this Learnership Agreement, where the er is not already in the employ of the employer. Both are to be sent to the SETA before the Learnership nences.
		3. R	egistered Training Provider (RTP) details
	imployer details	3.1	Name of Registered Training Provider
2.1	Legal name of employer/Partner		
Tradir	ng name (if different from above)	3.2	Title of qualification NQF Level
Host	employer (when additional training is required)	3.3	Name of Learnership
2.2	Business address	3.4	Date the Learnership commences
	Postal sads		
2.3	Postal code Postal address (if different from 2.2)		Is there a probationary period?
	Tostar address (If different from 2.2)		Yes No
2.4	Postal code Address of host employer	ļ	If "yes", for how long?
	Postal Code	3.5	Agreed period for Learnership Months
2.5	Name of contact person	3.6	The RTP will provide off-the-job training as per the Employment Contract, and has negotiated the issues referred to in the regulations with the
Telep	hone No Fax No		learner and employer(s).
2.6	What is the industry or principal activity of		
	your business?	I	

# AGREEMENT DECLARATION Date: ..... We understand this Learnership Agreement Employer Signature: is legally binding and agree to be bound by the conditions and obligations detailed within ...... the regulations. We understand it is an offence to provide false and misleading Date: ..... information. Witness Signature: Learner Signature: ..... Date: ..... ...... Date: ..... RTP Signature: Witness Signature: Date..... ...... Witness Signature: Date: ..... ...... Date: ..... Parent/Guardian Signature: Date..... Witness Signature:

# No. GOVERNMENT NOTICES Labour, Department of Government Notices R. 68 Skills Development Act (97/1998): Proposed regulations regarding learnerships and skills programmes 2 20831 R. 69 do.: Draft regulations for learnerships and skill programmes 3 20831

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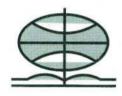




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