



ENGINEERING COUNCIL OF SOUTH AFRICA



Engineering excellence, transforming the nation.

MEMORANDUM OF UNDERSTANDING

MADE AND ENTERED INTO BY AND BETWEEN

THE ENGINEERING COUNCIL OF SOUTH AFRICA (ECSA)



Hereinafter referred to as "ECSA"

Herein represented by

Dr Bridget Ssamula

In her capacity as Chief Executive Officer

AND

THE ENGINEERING INSTITUTION OF ZAMBIA (EIZ)



Hereinafter referred to as "EIZ"

Herein represented by

.....Eng. David Kamungu.....

In his capacity as ...Chief Executive Officer....



1. PREAMBLE

1.1 **WHEREAS** Engineering Council of South Africa (ECSA) is a statutory Council, established in terms of the Engineering Profession Act, 46 of 2000 (the "Act"), with a mandate to, *inter alia*, accredit engineering programmes at Higher Education Institutions, register persons in the prescribed categories of registration, and regulate the professional conduct of registered persons;

1.2 **AND WHEREAS** ECSA may, in addition to other powers in the Act:

- 1.2.1 take any steps which it considers necessary, where, as a result of engineering related undertakings, public health and safety is prejudiced; and
- 1.2.2 take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers to achieve the objectives of the Act.

1.3 **AND WHEREAS** the Engineering Institution of Zambia (EIZ) shall mean a juristic person established in terms of Registration of Association Act of 1978 of Zambia.

1.4 **AND WHEREAS** the objects of EIZ shall be:

- 1.4.1. To foster engineering science and its application in all engineering discipline;
- 1.4.2. To ensure the highest standard of service in engineering;
- 1.4.3. To improve the status and safeguard the interest of the engineering profession;
- 1.4.4. Hold meetings of the Institution and sponsor meetings aimed at the general advancement of its members and the public at large;
- 1.4.5. Hold or promote exhibitions of engineering goods, machinery, systems and applications of engineering knowledge;
- 1.4.6. Print, publish, sell, lend or distribute proceedings or reports of the institution or any papers, documents or communications in engineering science and its application;
- 1.4.7. Make grants of money, books, apparatus, or otherwise, for the purpose of promoting innovation, invention or research in engineering or promoting engineering education;



- 1.4.8. Establish a Benevolent Fund to be constituted and applied in accordance with these rules;
- 1.4.9. Establish a Council of the Institution which shall govern and control the Institution, its property and affairs, subject to the provision of these Rules.
- 1.4.10. Establish the Engineering Accreditation Board for the accreditation of Engineering degrees within the jurisdiction of Zambia.

1.5 **NOW THEREFORE**, the Parties agree that they will establish a strategic collaboration to encourage cooperation and partnership for their mutual benefit in line with their respective mandate.

2. BACKGROUND

- 2.1 The Parties have held discussions, with a view for ECSA to assist EIZ with their endeavor to become a provisional or full signatory at the International Engineering Alliance (IEA), under the Washington Accord and collaborate in terms of the complementary roles of the two Parties. This assistance was/is underpinned by the MoU signed between the two parties which is set to expire on the 30 November 2024.
- 2.2 Furthermore, a dedicated mentor who is an expert on the accreditation matters was appointed to guide EIZ in their endeavour.
- 2.3 The parties agreed on a process of renewing an MoU between the parties which will identify the different levels or roles of operation in order to harmonize the relationship between both Parties.
- 2.4 The MoU will develop and strengthen working relationships between both Parties to ensure collaboration and cooperation aimed at capacitating the EIZ to become a full/provisional signatory to the Washington Accord of the IEA.

3. DEFINITIONS



3.1 In this Memorandum of Understanding, unless the context indicates otherwise the words and expressions set out below shall bear the meanings assigned to them and cognate words and expressions shall have a corresponding meaning: –

3.1.1 **“Accreditation”** means a tertiary engineering education program accredited by ECSA or EIZ to the standards of the Washington, Sydney or Dublin Accords, qualifications offered by an accredited institution for the purposes of satisfying the educational requirements for registering in the appropriate category of persons awarded such qualifications.

3.1.2 **“Confidential Information”** means any data or information that is proprietary to either Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to:

- (i) any marketing performance results relating to the past, present or future business activities of such Party, its affiliates, subsidiaries and affiliated companies;
- (ii) any scientific or technical Information, invention, design, process, procedure, formula, improvement, technology or method;
- (iii) any concepts, reports, data, know-how, works-in-progress, designs, development, tools, specifications, computer software, source code, object code, flow charts, databases, inventions, Information and trade secrets; and
- (iv) any other Information that should reasonably be recognized as Confidential Information of either Party. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information.

3.1.3 **“ECSA”** Engineering Council of South Africa

3.1.4 **“Effective Date”** means the date of the last Party signing this MOU.

3.1.5 **“EIZ”** means Engineering Institution of Zambia

3.1.6 **“JWC”** means Join Working Committee



3.1.7 **“IEA”** means International Engineering Alliance

3.1.8 **“Intellectual Property”** means creations of the mind inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. It includes all statutory and proprietary rights which include the right to require the Information to be kept confidential in respect of copyright, invention, subject ideas, website content, multimedia, registered and unregistered trademarks and other original insignia; as well as Confidential Information, including trade secrets. It also includes plant designs, registered designs, patented and patentable inventions, analytical data and domain names; and any other intellectual property developed or in the process of being developed by either Party;

3.1.9 **“MOU”** means this Memorandum of Understanding, together with any annexures and addenda, which annexures and addenda shall form an integral part of this MOU;

3.1.10 **“Parties”** means ECSA and EIZ;

3.1.11 **“Party”** means either one of the Parties as context may indicate;

3.1.12 **“Signature Date”** means the date of signature of this MoU by the Party last signing.

3.1.13 **“Washington Accord”** means an international quality assurance process based on world best practice in terms of which the equivalence of Accredited Engineering Education Programs leading to the Engineering Degree and is applicable only to Engineers, it is essentially a quality assurance process and is based in world best practice.

3.2 Clause headings in this MoU are for convenience only and shall not be used in its interpretation.

3.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.



- 3.4 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 3.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the MoU.
- 3.6 When any number of days is prescribed in this MoU, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.7 Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s or with reference to a month, a period commencing from a specific date of a certain month to the day immediately preceding the said date of the following month and, with reference to a year, a period from a specific date and month of a certain year to the day immediately preceding the said date of the following year.
- 3.8 The expiration or termination of this MoU shall not affect such of the provisions of this hereof as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.9 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

4. OBJECTIVES AND PRINCIPLES

4.1 The Parties:

- 4.1.1. Agrees to collaborate on matters of mutual interest which shall be indicated through addenda when indispensable;
- 4.1.2. Undertake to act in good faith and reasonably;
- 4.1.3. Warrant that they shall not embark on anything that will prejudice the other; and



4.1.4. Agree that this MoU does not in any way limit any statutory powers and functions of either Party;

4.1.5. Agree to develop mechanisms to collaborate on issues around accreditation, mobility of registered persons, mentorship, Continuing Professional Development and knowledge exchange.

5. RESPONSIBILITIES OF THE PARTIES

5.1 ECSA undertakes to:

- 5.1.1 Develop mechanisms that are aligned for the recognition of registration between two Parties.
- 5.1.2 appoint a mentor who is expert in accreditation matter to provide guidance.
- 5.1.3 Mentor EIZ with their applications to the IEA for the Washington Accord;
- 5.1.4 Conducting training initiatives for the capacitation of EIZ assessors;
- 5.1.5 Facilitation for EIZ assessors and Officials to attend ECSA accreditation visits as observers as per ECSA policy;
- 5.1.6 Assist EIZ to build capacity to become their own accreditation agency
- 5.1.7 Assistance for the nomination and application of EIZ for application to the Washington Accord;
- 5.1.8 Develop mechanisms to recognize CPD activities in each other's Jurisdictions;
- 5.1.9 Assist the identified Higher Education Institutions (HEIs) separately or jointly as may be deemed appropriate by ECSA, towards satisfying the Accreditation criteria and graduate attributes of their engineering programmes
- 5.1.10 Develop mechanisms to assist in the mentoring of graduates using cross border resources if necessary;
- 5.1.11 Facilitate knowledge exchange and information sharing platforms between the Parties.



5.2 The EIZ undertakes to:

- 5.2.1 Share information regarding its progress and new development in the accreditation of qualifications process with ECSA;
- 5.2.2 Develop mechanisms that are aligned for the recognition of registration between the two parties;
- 5.2.3 To be mentored by ECSA around its application to the IEA for the Washington Accord;
- 5.2.4 Provide support and facilitate for ECSA to build accreditation capacity in Zambia for the success of the EIZ pursuit of becoming an accreditation agency.
- 5.2.5 Develop mechanisms to assist in the mentoring of graduates using cross border resources if necessary;
- 5.2.6 Develop mechanisms to recognize CPD activities in each other's Jurisdictions;
- 5.2.7 Facilitate knowledge exchange and information sharing platforms between the Parties.
- 5.2.8 The EIZ should consider:
 - i) Committing the necessary resources, including financial to enable the mentorship;
 - ii) To collaborate and possibly support ECSA on engineering matters on the continent and outside.

5.3. Both Parties undertake to:

- 5.3.1. Establish a Joint Working Group with committed representatives from EIZ and ECSA
- 5.3.2. Determine areas of support, collaboration and common interest between the Parties;



- 5.3.3. Formalise the establishment of a strategic partnership between EIZ and ECSA in order to intensify its reach and impact within the engineering industry and achieve a favourable balance between the growing skills supply and demand;
- 5.3.4. Strengthen integration and collaboration around mobility of registered persons, accreditation of engineering programmes, alignment of CPD systems, developing mentors and knowledge exchange in the engineering profession.

6. COMMENCEMENT AND DURATION

- 6.1 This MoU shall become enforceable upon signature by all Parties (“**Effective Date**”)
- 6.2 The duration of this MOU shall be Five (5) years from the Signature Date and may be renewed by mutual consent of all Parties.
- 6.3 The Parties agree to initiate discussions on the renewal of this MOU within sixty (60) days before the end of the duration of the agreement.
- 6.4 The Parties agree to have a meeting at least twice (2) a year.
- 6.5 Either Party may terminate the MOU, by written notice of three (3) calendar months to the other Party.

7. MONITORING AND EVALUATION

7.1 The Parties agree to:

- Appoint senior official(s) to act as the contact person for each party for the duration of this MoU.
- 7.2 To establish a Joint Working Committee (JWC) as fully described in clause 7 hereunder.

8. THE JOINT WORKING COMMITTEE

- 8.1. The Parties will establish JWC which will be comprised of ECSA and EIZ representatives.
- 8.2. Chairing of the JWC meetings will alternate between ECSA and EIZ, including alternating of the meeting venues.



8.3 The JWC shall be responsible for:

- 8.3.1. Establishing priorities for cooperation under this MoU;
- 8.3.2. Monitoring of cooperation activities agreed to under this MoU;
- 8.3.3. Provide guidance and update to the respective Principals on ways to improve future cooperation;
- 8.3.4. Development and implementation of approved Project plans with clear timelines, deliverables and responsibilities of each Party;
- 8.3.5. Establish suitable mechanisms for the mobility of registered persons, accreditation of engineering programmes, alignment of CPD systems, developing mentors and knowledge exchange programmes in the engineering profession;
- 8.3.5. Undertaking any other activities as may be agreed upon between the Parties.

8.4. The JWC shall meet quarterly and report on progress towards the implementation of the agreed action plan.

9. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES

- 9.1. The interpretation and implementation of this MoU shall be governed by and construed in accordance with the laws of the Republic of South Africa and Zambia;
- 9.2. The Parties shall, in discharging their respective roles and responsibilities in terms of this MoU, comply with applicable laws (for both South Africa and Zambia (and their respective policies and procedures);
- 9.3. Each Party shall be liable for any legal consequences which may arise as a result of contravention of applicable laws, policies and procedures by the Party.

10. FINANCIAL ARRANGEMENTS

- 10.1. All mentorship costs will be borne by the mentees.



10.2. ECSA will henceforth raise invoices around mentorship activities to be paid by the mentees.

10.3. Where specialist services are required pursuant to this MoU, Parties shall agree in writing which of the Parties shall be responsible for procuring the said services.

11. CONFIDENTIALITY

11.1 The Parties hereto recognise that information, agreed or noted by the Parties to be confidential, may be passed from one Party to another for the purpose of the collaboration, and that Confidential Information may arise from the collaboration.

11.2 Both Parties undertake to treat the Confidential Information as strictly confidential, not to divulge to any third Party or sell, trade, publish, reproduce or reverse any of the Confidential Information and not to put in use for any purpose unrelated to the collaboration, in any manner, any Confidential Information without the other Party's prior written consent.

11.3 The Parties hereto shall take due precautions to ensure that their employees, who have a need to know Confidential Information, undertake the above obligations of Confidentiality.

11.4 Each Party may not divulge, and will ensure that any of its employees or agents do not divulge, to any person, other than the duly authorised representatives of the other Party and its own employees, and only if this is necessary for the collaboration, any Confidential Information arising out of the performance of, related to or discovered in the course of the collaboration required under this MoU, without the prior written authority of the other Party.

11.5 The Parties undertake to ensure that all of its employees, who are given access to information, in terms of this MoU are bound by this undertaking.

11.6 The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.

12. DATA PRIVACY



- 12.1 Each Party agrees to comply with all applicable data protection laws and regulations which are applicable to each parties jurisdiction.
- 12.2 Each Party agrees to indemnify the other for any losses, damages or liabilities arising from a breach of this data privacy clause, including any failure to comply with applicable data protection laws.

13. COPYRIGHT INFRINGEMENT AND TRADEMARKS

- 13.1 It is recorded that all intellectual property rights, including copyright and trade mark rights pertaining to the ECSA/EIZ trademarks and ECSA/EIZ materials, are reserved to ECSA/EIZ.
- 13.2 Use of trademarks, copyrights, patents, logos and all other intellectual property rights of any Party by the other, requires a specific written agreement between the Parties.
- 13.3 The Parties hereby agree that ownership of all title, copyright, industrial, and intellectual property rights in any content of any kind, will remain vested in the owner thereof, unless specifically otherwise agreed in writing between the Parties.
- 13.4 This MoU does not extend to either Party the right to use any of the trademarks or Intellectual Property of the other Party in any manner whatsoever or a licence to either Party to use any of the trademarks or Intellectual Property of the other Party in any manner whatsoever, without the prior written approval of the Party concerned.

14. ENFORCEMENT AND WAIVER

- 14.1 A failure to enforce or to require the performance of any of the provisions of this MoU at any time, shall not be construed to be a waiver of such provision and shall not affect either the validity of this MoU, or any part hereof, or the right of any Party to enforce the provisions of this MoU.
- 14.2 No waiver of any of the terms and conditions of this MoU will be binding for any purpose, unless reduced to writing and signed by the Party giving same, and any such waiver will be effective only in the specific instance and for the purpose given.



15. RELATIONSHIP BETWEEN THE PARTIES

15.1. The Parties shall at all times remain independent and separate legally, organizationally and financially and may not act, nor bind the other in any way, nor may either Party represent that it is in any way responsible for the acts of the other.

16. DISPUTE RESOLUTION

16.1 Any dispute between the Parties arising from this MoU shall be settled amicably through consultation between the Parties. The Parties shall endeavour to reach an amicable settlement of any dispute arising from or in connection with this Agreement.

16.2 Senior Executives

Save where expressly stated to the contrary in this Agreement, any dispute shall first be submitted to the appropriate senior executives of the Parties for resolution. Either Party shall give to the other written notice (a **Dispute Notice**) setting out the material particulars of the Dispute and requesting the senior executives to meet within ten (10) business days of the date of receipt of the Dispute Notice by the relevant Party. The senior executives will attempt in good faith and always using their reasonable endeavours to resolve the dispute amicably.

16.3 If the dispute is not resolved within thirty (30) days of receipt of a Dispute Notice, or such longer period as may be mutually agreed by such senior executives in writing, then the provisions of clauses 16.4 and 16.5 shall apply.

16.4 If the Parties fail to reach an amicable settlement as reflected above in clause 16.2, any dispute arising from or in connection with this Agreement shall be finally resolved in accordance with the rules of Arbitration Foundation of Southern Africa (AFSA), by one arbitrator agreed to in writing by the Parties or, failing such agreement within 5 (five) Business Days after it is requested by any Party, appointed by AFSA.

16.5 Each Party to this Agreement:

16.5.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and



16.5.2 irrevocably authorises any other Party to apply, on behalf of all Parties to refer such dispute, in writing, to the secretariat of Arbitration Foundation of Southern Africa (AFSA), in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

16.5.3 The seat of the aforesaid arbitration shall be in Johannesburg. Each of the Parties shall keep evidence of the arbitration proceedings confidential.

16.5.4 If AFSA no longer exists, then the arbitrator will be selected, if required, and the arbitration shall be conducted by and in accordance with the rules of the Association of Arbitrators of South Africa, and failing that association, then arbitrator shall be appointed by the President for the time being of the Legal Practice Council and the arbitration shall be conducted in accordance with the Arbitration Act No. 42 of 1965.

16.5.5 Notwithstanding anything to the contrary in this clause 16, any Party shall be entitled to apply, on an urgent basis, for an interdict or for an order of specific performance or for any urgent interim relief pending determination of a dispute by the arbitrator, from any court of competent jurisdiction.

16.5.6 This clause 16 is severable from the rest of this Agreement and shall remain in full force and effect notwithstanding any termination or cancellation of this Agreement.

17. BREACH

If any Party (the **Defaulting Party**) breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 10 (ten) Business Days of receipt of written notice from any other Party (the **Non-Defaulting Party**) requiring it to do so, then the Non-Defaulting Party shall be entitled without notice, in addition to any other remedy available to it in law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the Non-Defaulting Party's right to claim damages.



18. DOMICILIUM CITANDI ET EXECUTANDI

18.1. The parties choose as their respective *domicilium citandi et executandi* for all purposes under this MOU including the services of notices and court process arising from this MOU or the cancellation thereof, the following:

i. **ECSA:**

1st Floor, Water view Corner

2 Ernest Oppenheimer Ave

Bruma Lake

2198

Email: bssamula@ecsa.co.za

Phone: +27 11 607 9500

ii. **ERB:**

Head Office: Engineering Institution of Zambia

CI/7 Brentwood Drive, Longacres

P.O. Box 51084

LUSAKA

Email: rex.kalangu@eiz.org.zm

18.2. All notices and any other communications by either Party in terms of this MoU or relating to it shall be given in writing and delivered by hand, or transmitted by email to the recipient Party at its relevant addresses as stipulated in clause 18.1.

18.3. Either Party may, by written notice to the other Party, change any of the addresses at which, (or the designated person for whose attention) those notices or other communications are to be given.

18.4. A written notice or communication actually received by a Party shall be deemed to be adequate notice notwithstanding that it was not delivered or sent to its chosen *domicilium* address.



19 GENERAL

- 19.1 The Parties do not intend that any agency or partnership relationship be created between them by this MoU and neither Party may bind the other in any way.
- 19.2 This document constitutes the whole agreement between the Parties in regard to the matters regulated by this MoU. No Party will be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 19.3 No addition to, variation of, or agreed cancellation of this MoU will be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 19.4 No relaxation or indulgence which any Party may grant to the other will constitute a waiver of the rights of that Party and will not preclude that Party from exercising any rights which may have arisen in the past or which might arise in the future.
- 19.5 Any provision of this MoU which contemplates performance or observance subsequent to any termination or expiration of this MoU, will survive any termination or expiration of this MoU and continue in full force and effect notwithstanding that the clauses themselves do not expressly provide for this.
- 19.6 Each provision of this MoU is severable, the one from the other and, if at any time any provision is, or becomes, or is found to be invalid, illegal or otherwise unenforceable for any reason, by a court of competent jurisdiction, the remaining provisions of this MoU will continue to be of full force and effect.
- 19.7 Neither this MoU nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by any Party without the prior written consent of the other Party.
- 19.8 The Parties specifically agree that this MoU may be signed in as many counterparts as may be needed, each of which together will constitute one and the same agreement.

SIGNED at on this day of

in the presence of the undersigned witnesses:



ENGINEERING COUNCIL OF SOUTH AFRICA

Engineering excellence, transforming the nation.



1 _____

DR BRIDGET SSAMULA acting for and
on behalf of the **ENGINEERING
COUNCIL OF SOUTH AFRICA**

2 _____

SIGNED at on this day of

in the presence of the undersigned witnesses:

1 _____

ENG. DAVID KAMUNGU acting for and
on behalf of **ENGINEERING
INSTITUTION OF ZAMBIA**

2 _____