

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF MINERALS AND ENERGY

AND

THE SOUTH AFRICAN PETROLEUM INDUSTRY ASSOCIATION

*Represented by its MEMBER COMPANIES*

## 1. PARTIES

The Government of the Republic of South Africa ("GRSA"), represented by the Department of Minerals and Energy ("DME").

The South African Petroleum Industry Association and its members, each represented by its representative on the Board of Governors of the South African Petroleum Industry Association (SAPIA).

## 2. PREAMBLE

Whereas, the Petroleum and Liquid Fuels Charter signed in 2000 between key role players in the South African liquid fuels industry and the government states that in order to ensure the meaningful participation of historically disadvantaged South Africans (HDSAs) in the petroleum and liquid fuels sector, a number of key strategic focus areas need to be given attention, namely: Employment Equity, Capacity Building, Ownership/Control, Procurement and Financing;

Whereas, the Declaration of Intent signed on 2 April 2004, by the DME, SAPIA and AMEF notes the challenges faced by the petroleum and liquid fuels industry in meeting the Petroleum and Liquid Fuels Charter's requirements due to limited access to HDSA suppliers, and proposes the setting up of a Supplier Development Agency ("SDA") as a potential remedial intervention;

Whereas, a draft business plan has been developed to serve as a guide to the establishment of the SDA;

Now, therefore, the Parties resolve as follows:

## 3. ESTABLISHMENT OF THE SDA

To establish the SDA, taking into account the following:

### 3.1 Legal form and governance arrangements

That the SDA be established as a Section 21 company in terms of the Companies Act as a way of ensuring accountability and good governance.

The membership of the SDA will be made up of the DME and the individual SAPIA Members, while the Board will be constituted as per the requirements of the Companies Act with a minimum of three (3) non-executive directors representing SAPIA, one (1) non-executive member representing DME and one (1) executive director, the latter being the CEO. The CEO will in turn be appointed by the Board and the Chairperson, who will be one of the non-executive directors, will be appointed by the Minister of Minerals and Energy.

The CEO will be assisted by a Company Secretary as a way of ensuring good corporate governance, and will manage the SDA's Programme Manager and Financial Controller. The Programme Manager will be responsible for managing the SDA's interventions and will be assisted by professionals or consultants focusing on accreditation, training, monitoring and reporting, research, database administration, as well as public relations. The Financial Controller's responsibility will primarily be to ensure that proper financial management processes and controls are in place, as well as the provision of management and financial reports as required.

### 3.2 SDA mandate

The SDA's mandate, which is to accelerate progress in the empowerment of Historically Disadvantaged South Africans (HDSAs) in the petroleum industry, through increased access to industry procurement opportunities.

Specifically, this will be achieved by, for example, HDSA supplier accreditation, the consolidation of existing HDSA supplier development efforts, matching supplier capacity to industry needs, providing information to HDSA suppliers and to the industry with due consideration to confidentiality of information and retention of the right of retaining competitive advantage, as well as reporting successes and compliance.

### 3.3 Supplier development strategy

The SDA's interventions will be implemented in a phased manner. Attention will be given to initiatives that can realistically be expected to produce results in the short-, medium- and long-term, thus ensuring that the SDA remains effective without taking on more responsibilities than it can handle. In addition, the Agency's initiatives will be structured in the form of projects to ensure that proper time, cost and quality controls are maintained.

### 3.4 The SDA's business model

The SDA will have suppliers and the industry as its client-base. The suppliers will benefit through being accredited, having access to procurement opportunities via a demand driven strategy agreed between the industry and the SDA and accessing development assistance where necessary, while industry will benefit by having access to accredited suppliers and through the rationalisation of their supplier development efforts as a result of pooling industry resources.

In return, both suppliers and the parties will be levied membership fees, with the provision that the fee levels and payment schedules will be such that they are not an impediment to suppliers' ability to take part in SDA-led initiatives. An important resource will be the SDA database, which will be useful in facilitating interactions between suppliers, service providers (e.g. for finance and training) and the industry.

### 3.5 The SDA's infrastructure and facilities

The SDA will initially operate from a small head office in Johannesburg or Tshwane, and will as part of its expansion consider opening satellite offices in appropriate locations. The SDA database will form an important resource, regardless of whether or not it is outsourced.

### 3.6 The SDA's implementation plan

After the formal launch of the SDA through signing of a Memorandum of Agreement between the Parties on 30 November 2004, it is estimated that it will take approximately six (6) months to create the necessary legal and institutional structures and appoint the SDA Board and key personnel. Following this, the SDA's operations and interventions will commence, with the focus being on those development efforts that can yield results quickly (e.g. targeting potential suppliers that have technical skills and experience but cannot access finance or do not have business management skills).

The SDA's lifespan will be driven mainly by its ability to facilitate the meeting of targets and will be decided and reviewed by the Board from time to time. Additionally, and considering related initiatives in other sectors of the economy, the SDA's mandate could evolve over time, and thus be part of economy-wide supplier development initiatives in partnership with other

organisations that share similar objectives. There will be a formal review of the viability of the SDA at the end of each year during the three-year period.

### 3.7 The SDA's financial plan

The financial plan is based on the separation of core SDA administration-related activities and those that are project-related. This is to ensure that control and transparency are enhanced. In addition, the strategy is based on the premise that the Parties will capitalise the SDA initially, with the further provision that the Parties will finance the major part of the Agency's recurrent operating expenses, with a smaller contribution assumed to be derived from membership fees from suppliers. In terms of the industry, this largely implies a re-allocation of finance from internal supplier development initiatives to those consolidated through the SDA. It is believed that secondment of industry personnel to the SDA could contribute to further savings on operational costs therefore, depending on current individual expenditure levels, such re-allocation must also mean savings for the Parties.

The membership contribution from the Parties based on the initial draft financing plan scenario on which consensus is still to be reached, the individual contributions for the first year from the Parties are expected to be in the order of R250 000 for the Capitalisation of the SDA and R500 000 for the Operational Expenditure, equally funded by all the Parties, provided that DME contributes R250 000 to capitalise the SDA and R150 000 in the first year, R100 000 in the second year and R50 000 in the third year for the operational expenditure.

It is important to note that the financial contributions detailed in this Business Plan exclude any funding that will be required for the SDA to undertake specific development interventions. Each such intervention will be treated as a project based on a defined business case, with the Parties (as well as other third party financiers or training and development agency) being invited to contribute to the implementation of the said interventions.

## 4. Commitment of resources

To commit to providing the necessary resources, which will be accomplished in the following manner:

### 4.1 Participation in the legal formation and governance of the SDA

The Parties commit to participate in the legal formation of the SDA, as well as the appointment of the non-executive members of the SDA's Board, with the provision that the Chairperson shall be appointed by the Minister of Minerals and Energy. The Parties commit to completing this process within six months of the signature hereof.

Further, the Parties avail themselves to participate in any governance aspects of the SDA as may be defined in the SDA's founding documents.

#### 4.2 Participation in the funding of the SDA's administrative functions

The Parties commit to funding the initial capital requirements of the SDA, which will amount to R250 000 per Party. Further, the Parties commit to funding the operational costs of the SDA, through the proposed annual membership fees, which will be in the range of R500 000 each for the first year.

The Board will consider and approve the business plan for the ensuing years.

#### 4.3 Participation in funding the SDA's interventions

The Parties will consider funding duly approved SDA interventions, which will be implemented in the form of projects managed to achieve defined cost, time and performance criteria.

#### 4.4 Providing access to the common database

The Parties commit to making available the common database, which will be used by the SDA to facilitate contact between suppliers and the Parties, as well as between suppliers and service providers. Further the database will be used to provide information about procurement opportunities.

The mechanisms that will be used to make the common database available to the SDA shall be defined by the Board once it is constituted.

#### 4.5 Sharing information

The Parties commit to providing information that may be required in support of the process of implementing the SDA in terms of this MOU, provided that any confidential information shared pursuant to this MOU shall be clearly indicated as such and used only for the purpose for which it is furnished. DME specifically commit to facilitating access to development

agencies and service providers under government control for supplier's capacity building and funding purposes.

## 5 ADMINISTRATION OF THE MOU

To set up a Working Committee, consisting of members of the SAPIA BoG and chaired by the DME, whose responsibilities will be to:

- 5.1 Implement the processes necessary for the legal formation of the SDA to be effected.
- 5.2 Delegating responsibility to the SAPIA Procurement Committee to support the SDA implementation process. Such support may be in form of providing information, reviewing documentation and participating in drawing up recommendations for implementation purposes.
- 5.3 Ensure that each Party contributes equally to the legal and administrative costs of establishing the SDA.
- 5.4 Review SDP progress in terms of its efficacy in general and achievement of envisaged cost savings and synergies in particular.

## 6 PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This MOU shall remain valid until such time as the SDA is deemed to have been legally established.

Thus signed on this \_\_\_\_\_ day of \_\_\_\_\_

At \_\_\_\_\_

<b>Department of Minerals and Energy</b>	<b>Signatory</b>	<b>Designation</b>
<b>BP</b>	<b>Signatory</b>	<b>Designation</b>
<b>Caltex</b>	<b>Signatory</b>	<b>Designation</b>
<b>Engen</b>	<b>Signatory</b>	<b>Designation</b>
<b>PetroSA</b>	<b>Signatory</b>	<b>Designation</b>
<b>Sasol Oil (LFB)</b>	<b>Signatory</b>	<b>Designation</b>
<b>Shell</b>	<b>Signatory</b>	<b>Designation</b>
<b>Total</b>	<b>Signatory</b>	<b>Designation</b>

**Shell South Africa Energy (Pty) Limited**  
(Registration Number 2000/018439/07)

and

**Engen Petroleum Limited**  
(Registration number 1989/003754/06)

and

**Total South Africa (Pty) Limited**  
(Registration number 1954/003325/07)

and

**PetroSA (Pty) Limited**  
(Registration number: 1970/008130/07)

and

**Sasol Oil (Pty) Limited**  
(registration number 81/07622/07)

and

**BP Southern Africa (Pty) Limited**  
(Registration number 1924/002602/07)

and

**Caltex Oil (SA) Pty Limited**  
(Registration Number: 1911/001154/07)

ANNEXURE A

SDA Business Plan