

CONSTITUTION

OF THE

BARGAINING COUNCIL

FOR THE

CONTRACT CLEANING

SERVICES INDUSTRY

(KWA-ZULU NATAL)

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1. NAME

The name is the Bargaining Council for Contract Cleaning Services Industry (Kwa-Zulu Natal).

2. HEAD OFFICE

The head office is in Durban, Kwa-Zulu Natal.

3. DEFINITIONS

Expressions used herein referring to the masculine gender shall include females:

“**Act**” means the Labour Relations Act, 1995 as amended from time to time;

“**Agent**” means a designated agent referred to in section 33 of the Act;

“**Agreement**” means the Bargaining Council for the Contract Cleaning Industry (Kwa-Zulu Natal) Main Agreement as signed by the parties on 23rd April 1998 and promulgated in Gazette 19791, Notice No. R251, 26th February 1999 read together with all subsequent amendments and extensions

“**Alternate**” means a person duly appointed to act on behalf of a representative on the Council or a sub-committee in the absence of the representative;

“**Domestic Worker**” means an employee who is employed by an individual, a temporary employment service or any other employer to undertake the domestic work of up to six private residences per week. The work carried on by the Domestic Worker would be that of cleaning, washing, ironing, child minding and the preparation of food and the cleaning up thereafter at a private residence. For the purposes of this definition a private residence would

be defined as a residence where one family unit resides. This would exclude the common areas of any residential premises, hotels, commercial properties, flat buildings or residential developments;

“Chairperson” means any person duly appointed who is responsible for the performance of any of the duties ordinarily performed by a chairperson;

“Committee” shall mean a body duly appointed by the Council from amongst its members to perform any special duty or function delegated to it by the Council, and shall include Regional Committees, an Executive Committee and Sub-Committees;

“Contract Cleaning Services Industry” means the industry in which employers and their employees are associated on fixed-term or fixed-project contracts for carrying out one or more of the following activities for hire or reward:

- (a) The cleaning or washing, by hand or machine, of furniture, windows, carpets, doors, floors, ceilings, roofs, baths, showers, toilets, kitchens, tools, machinery, at the premises of a client, including but not limited to state, industrial, commercial, business premises, residential premises, hotels, markets, hospitals and flats buildings, and the maintenance of gardens and grounds that are contained within the same project and/or contract and is undertaken by the same employer, but excludes contracts that are exclusively garden and ground maintenance;
- (b) The cleaning of roads or highways or the interior or exterior of any air-planes, trucks, cars, buses, trains, ships or any other vehicle requiring to be so cleaned or valeted.
- (c) The hiring out by temporary employment services of employees for activities or operations which ordinarily or naturally fall within the definition of contract cleaning, irrespective of the class of undertaking, industry, trade or occupation

in which the client is engaged as an employer.

“Council” means the Bargaining Council for the Contract Cleaning Services Industry (Kwa-Zulu Natal).

“Employee” means a person who is required to spend more than 50% of his time to perform any of the following: to clean or wash, by hand or machine, furniture, windows, carpets, doors, floors, ceilings, roofs, baths, showers, toilets, kitchens, tools, machinery, at the premises of a client, including but not limited to state, industrial, commercial, business premises, residential premises, hotels, markets, hospitals and flats, buildings and includes the maintenance of the gardens and grounds or roads or highways and the interior or exterior part of any air-planes, trucks, cars, buses, trains, ships, boats or any other vehicle requiring to be so cleaned or valet and/or to perform any work incidental thereto, which includes learnerships, but specifically excludes Domestic Workers.

“Employer” means any person whatsoever employs or provides work for any person in the Contract Cleaning Services Industry and remunerates him/her or expressly or tacitly undertakes to remunerate him/her, or who subject to Section 3 of the Act permits any person whatsoever in any manner to assist him in the carrying on of his business or undertaking; and “employ” and “employment” have corresponding meanings.

“Employers’ Organisation” means any number of employers in an organisation for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions within the Contract Cleaning Services Industry and duly registered in terms of the Act

“Establishment” means any premises where one or more employees within the Contract Cleaning Services Industry are employed to work

“Industry” means the Contract Cleaning Services Industry as defined;

“Learnerships” is as defined in the Skills Development Act 97 of 1998 as amended from time to time;

“Member” means the employers organization or trade unions that qualify for, are admitted and granted a seat on the Council in terms of clause 6;

“Official” means an employee of the Council employed as secretary, assistant-secretary or agent or in any other prescribed capacity whether or not such employee is employed in a full time capacity;

“Party” means the employers’ organisation or trade union as per sub-clause 5.1;

“Representative” means a person who is appointed by any member to represent such a party on the Council;

“Secretary” means any person who is responsible for the performance of any of the duties specified as per clause 8;

“Small Business” means any business within the Contact Cleaning Industry employing between 1 – 50 employees

“Substantive issues of employment” means those issues which:

- (a) are normally binding on the parties concerned for a specific period of time;
- (b) normally relate to employee’s remuneration and fringe benefits and/or cost to the company of providing such remuneration and benefits;

“Temporary Employment Service” means any person or organization within the Contract Cleaning Services Industry who, for reward, procures for or provides to a client other persons:

- (a) who render services to or perform work for a client; and
- (b) who are remunerated by the client;

“Trade Union” means a trade union duly registered in terms of the Act;

4. OBJECTIVES

The objectives of the Council shall be:

- 4.1 to consider and regulate, in accordance with the provisions of the Act, matters of mutual interest to the parties and to prevent and settle disputes.
- 4.2 to negotiate wages and working conditions of employees in the industry, including fringe benefits. Procedural issues may be negotiated from time to time by mutual consent.
- 4.3 to promote a positive relationship between the employers and their employees for the industry.
- 4.4 to use its best endeavours to maintain and enhance industrial peace.
- 4.5 to work towards and maintain the complete involvement of employees and employers for the Contract Cleaning Services Industry.
- 4.6 to conclude, and administer agreements entered into by the parties.
- 4.7 to consider, advise and make representations to NEDLAC or any other appropriate forum on any policy and legislation or proposed legislation affecting the relationship between the parties;

- 4.8 to enforce collective agreements;
- 4.9 to perform the dispute resolution functions referred to in section 51 of the Act;
- 4.10 to establish and administer a fund to be used for the resolution of disputes;
- 4.11 to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds for the benefit of one or more parties to the Council or their members;
- 4.12 to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or lock-out at the workplace.
- 4.13 to consider and deal with such other matters as may affect the interests of the parties in the industry.

5. PARTIES

- 5.1 The parties to the council shall be registered employers organisations and registered trade unions whose members are engaged or employed in the Contract Cleaning Services Industry in the province of Kwa-Zulu Natal.
- 5.2 A condition of becoming a party to Council is that all parties will accept proportional representation and:
 - 5.2.1 registered employers organizations and trade unions applying to become a party to the Council shall have a minimum of 500 (five hundred) members employed in the industry in order to make such application and shall retain such minimum member level to remain a party to the Council;

- 5.2.2 verification and auditing of the union's membership in the Industry shall be by way of original or certified copies of letters from companies deducting such stop orders as per section 13.5(a) or (b) of the Act supported by schedules specifying the employee details;
 - 5.2.3 that they sign the Constitution.
- 5.3 Application to become a party to the Council may be made in terms of section 56 of the Act and shall be considered and decided upon, with the unanimous consent of all the existing members at a meeting of the Council according to the criteria as specified in the Constitution.
- 5.4 An application to become a party must be accompanied by:
- 5.4.1 a certified copy of the applicant's registered constitution;
 - 5.4.2 a certified copy of the applicant's certificate of registration;
 - 5.4.3 an audited certificate of the applicant's membership within the registered scope of the Council, including, in the case of an employers' organisation, the number of employees that its members employ within the Council's registered scope;
 - 5.4.4 any other information on which the applicant relies in support of its application.
- 5.5 The Council, within 90 days of receiving an application for admission, must decide whether to grant or refuse the applicant admission, and must advise the applicant of its decision within 30 days of that consideration, failing which the Council is deemed to have refused the applicant admission.

- 5.6 If the Council refuses to admit an applicant it must, within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.
- 5.7 Any party may withdraw from the Council on giving six calendar months notice in writing to the secretary, stating its reason for such withdrawal.
- 5.8 A party will become a member of the Council when they obtain at least one representative on the council as per clause 6.

6. MEMBERS' REPRESENTATIVES AND ALTERNATES

- 6.1 The members will be represented by a maximum of six representatives from each side. At least one half of those representing the employers shall be employed in the industry. For all registered trade unions that have more than two representatives on the Council at least half of those representatives shall be employed in the industry.

Representation for each trade union and/or employers organization shall be on a proportional basis calculated as follows:

6.1.1 Calculation of trade union/s representation:

Number of paid-up members of union X 6

Total number of members in the industry

= number of trade union representatives (rounded to the nearest interger)

Calculation of employers organisation/s representation:

Number of employees employed by the members of employers organisation x 6

Total number of employees employed by the parties

= number of representatives of the employers organization (rounded to the nearest interger)

6.1.2 After the formula has been applied if any seats on the Council have still not been allocated, those remaining seats will be allocated to the registered trade unions and/or employers organisations with the next highest representivity.

- 6.2 The number of employer representatives shall not exceed the total number of Union representatives and vice versa.
- 6.3 Office as representatives of the Council is held for 12 months and representatives shall be eligible for re-appointment.
- 6.4 For each representative there shall be an alternate appointed in the same manner as such representative. Alternates shall be entitled to attend meetings and may take part in any debate and vote at meetings in the absence of the representatives in respect of whom they are an alternate.
- 6.5 Fourteen days written notice is required for the withdrawal of any representative by any party.
- 6.6 Vacancies are filled by appointment from the affected party and shall run to the expiry of that term of office.
- 6.7 Meetings and proceedings relating to the negotiations of substantive issues are open for attendance of a maximum of two observers from each party subject to written arrangements being made 30 days in advance.
- 6.8 Observers may participate in caucus, but not in negotiation or discussion during

proceedings or meetings.

- 6.9 Once per annum, at the same meeting as elections are held in terms of clause 7, all parties to the Council shall submit their membership figures together with letters and schedules from the companies for scrutiny by the Council 30 days prior to the meeting. The trade union figures shall be based on stop order deductions as per the Council Agreement. The Council shall thereafter apply the formula set out in sub-clause 6.1 to determine the number of seats each party is eligible for.
- 6.10 Not less than 20% of the representative employers organisation/s must comprise of small businesses

7 ELECTION OF PRESIDING OFFICERS AND DUTIES

- 7.1 Presiding officers shall be elected from amongst the member representatives.
- 7.2 The Council shall at the annual general meeting appoint a neutral person as Acting Chairperson by secret ballot. The Acting Chairperson shall call for nominations for the position of Chairperson and if more than one representative is duly proposed and seconded, a vote by secret ballot shall be taken, the representative receiving the highest number of votes being declared elected as Chairperson. In the event of an equal number of votes being cast for two or more candidates, the Acting Chairperson shall write the name of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is thus drawn shall be declared as the elected Chairperson.
- 7.3 A like procedure shall be followed in the election of a Vice-Chairperson provided that if the elected Chairperson is a representative of the employers, the choice of Vice-Chairperson shall be restricted to a representative of the employees, or vice-versa. Subsequent elections shall be conducted *mutatis mutandis* in the same manner, except

that if the Chairperson for the first year was a representative of the employers, then in the second year he/she shall be representative of the employees, and so on. The Chairperson and the Vice-Chairperson shall hold office for twelve months or until the expiration of the period for which they are appointed as representatives, whichever is the shorter, and shall be eligible for re-election.

- 7.4 The Chairperson shall preside and enforce order at all meetings at which he/she is present, sign minutes of meetings after confirmation, endorse accounts for payment after approval by the Council, and sign all cheques on the Council's banking account in terms of sub-clause 12.4. He/she shall, in addition, perform such other duties as by usage and custom pertain to the office.
- 7.5 The Vice Chairperson shall exercise the powers and perform the duties of the Chairperson in the absence of the latter.
- 7.6 In the event of both the Chairperson and the Vice-Chairperson being unable to perform their duties, the Council shall by a show of hands on motion duly seconded, elect an Acting Chairperson amongst those present who shall exercise the powers and perform the duties of the Chairperson while so acting.

8 OFFICIALS

- 8.1 The Council shall appoint a Secretary, who shall keep such books of account as the Council shall direct and conduct all correspondence of the Council, keeping originals of letters received and copies of those dispatched and at each meeting of the Council give account of correspondence which has taken place since the last meeting, attend all meetings, record minutes of the proceedings, bank all monies received on behalf of the Council within three days of receipt, submit statements of the financial position of the Council to that Council Committee whenever required to do so, but not less than once every quarter, countersign cheques on the Council's banking account and perform such duties as the Council may direct. The Secretary shall retain in safe

custody in the office of the Council a copy of the confirmed minutes of every meeting of the Council duly signed by the person who presided at the meeting for a period of five years from the date of confirmation of the minutes and also the statements referred to sub-clause 12.8 of the constitution and all records relating thereto for a period of not less than five years from the latest date to which such statements and records relate.

The Secretary shall sign the certificates of appointment to, be issued to the persons appointed by the Minister as designated agents of the Council.

- 8.2 The Secretary shall keep all records and provide all information to the Registrar of Labour Relations and the Commission for Conciliation, Mediation and Arbitration as is required by section 54 of the Act. The Council may request the Minister to appoint one or more specified persons as designated agent or agents to assist in giving effect to the terms of any agreement which may be arrived at by the parties. A designated agent has all the powers provided for in section 33(3) and 33A of the Act, including, but not limited to the inspection of the records of wages paid, time worked and payment made for overtime, and any other time worked and payment made for overtime, and any other records as may be specified in any agreement arrived at by the parties, for the purpose of ascertaining whether the terms of such agreement are being observed.

- 8.3 The Council shall request the Minister of Labour to appoint one or more specific persons as designated agents to assist in giving effect to the terms of any agreement which may be arrived at by the parties. The powers of such designated agents are those set out in Section 33(3) and 33A read with schedule 10 of the Act

The appointment of the Secretary and agents shall be by ballot, of the representatives present at the meeting at which the appointments are made, the candidates receiving the highest number of votes to be appointed. In the event of an equal number of votes, the procedure covered in sub-clause 7.2 will be adopted.

- 8.4 The Council may appoint such other officers as may be necessary.
- 8.5 The employment of all officials, including the secretary and agents, shall be subject to one calendar months notice on either side, provided that any officer may be dismissed without notice for any reason as recognised by law as sufficient.

9 MEETINGS OF THE COUNCIL

- 9.1 The Council shall hold an annual general meeting no later than the 31st March each year and shall meet at least once per quarter at such place, date and time as may be determined by the Chairperson. Special meetings shall be called by not less than two representatives and may also be called at the discretion of the Chairperson. On the written request of the employers or the employees, adopted by resolution at a properly convened meeting of the members, the Chairperson of the Council shall summon a meeting within fourteen (14) days after receipt of such request.
- 9.2 At the annual general meeting, the Council must-
- 9.2.1 effect proportion representation and elect the members representatives and alternates;
 - 9.2.2 elect the additional members of the executive committee;
 - 9.2.3 elect the chairperson and the deputy chairperson of the Council;
 - 9.2.4 appoint the members of the panel of conciliators referred to in clause 15;
 - 9.2.5 appoint the members of the panel of arbitrators referred to in clause 15;

- 9.2.6 appoint the members of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the Council.
 - 9.2.7 consider the annual financial statements of the Council and the auditor's report on those statements; and
 - 9.2.8 consider and approve, with or without any amendments, the budget of the Council for the next financial year as prepared in terms of sub-clause 12.10;
 - 9.2.9 Confirm the number of employees employed in the Industry
- 9.3 Agenda items from the members must be submitted in writing, to the secretary of the Council, fourteen days (14) prior to the holding of the Council meeting.
- 9.4 Notice of any meetings of the Council showing the business to be transacted, shall be given to representatives by the Secretary in writing at least seven (7) days before the date of such meeting, provided that, in the case of special meetings, the Chairperson may authorise the giving of shorter notice.
- 9.5 The quorum for meeting of the Council shall be 50% (fifty percent) of the representatives of each of the employers and employees. For the purpose of determining whether a quorum is present, alternates of representatives who are absent shall be regarded as representatives. If within 15 minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in two weeks following, or in the event of such a day being a public holiday, to the next working day at the same time and place and at such adjourned meeting the representatives present shall form a quorum as long as both employers and employees are represented.
- 9.6 If any representative is absent from any meeting and an alternate is not in attendance,

the voting power of the employer or the employee party as the case may be, shall be reduced as may be necessary to preserve equality of voting power.

- 9.7 No decisions taken at a meeting of the Council shall be invalidated by the absence of any representatives having been properly notified in terms of sub-clause 9.4.
- 9.8 At any meeting of the Council the minutes of the last preceding meeting shall, unless they have previously been circulated be read by the Secretary and, after confirmation, signed by the Chairperson.
- 9.9 Alternates shall be entitled to attend meetings of the Council, but shall not take part in debate, or vote, unless their principals are absent.
- 9.10 If the Chairperson so decides any motion shall be submitted in writing and shall be read by him/her. No motion shall be considered unless seconded. Except where otherwise provided in this Constitution or decided by the Council, all matters forming the subject of motions shall be decided by the votes of the majority of those present who are entitled to vote and voting shall be by show of hands.
- 9.11 Points of procedure on which this Constitution is silent shall be decided by a majority of the votes of those present who are entitled to vote. In the event of an equal division of option on a point of procedure the Chairperson shall have a casting vote in addition to his/her deliberative vote.
- 9.12 A representative of the Department of Labour shall be entitled to attend any meeting of the Council as an observer.
- 9.13 If between meetings of the Council any questions arise which in the opinion of the Executive Committee is of extreme urgency and can be answered by a plain “yes” or “no” a vote of the representatives on the Council may be taken by post or fax. A proposal submitted to a postal vote or fax vote shall not be regarded as carried unless

at least two thirds of the representatives vote.

- 9.14 Any party to the Council may have a maximum of two observers at any meeting of the Full Council.

10 NEGOTIATION PROCEDURE

- 10.1 All parties to this Council accept the principle of industry wide bargaining and accordingly all parties agree to negotiate substantive issues of employment in respect of employees in the industry. Such substantive issues shall include all actual basic wages, benefits and working conditions. These negotiations shall be carried out annually except when there is an amendment to the Council's Collective Agreement that expires beyond February of the following year.
- 10.2 It is agreed that demands to be negotiated shall be submitted to the Secretary in writing by 15 July and negotiations must commence in August. The parties will attempt to conclude an agreement within 3 months of the commencement of the negotiations, providing that at least three meetings take place during this period, failing which either party may give notice of the dispute in terms of clause 10.8.
- 10.3 The parties agree that any issues or matters which have been negotiated between them or of a substantive nature shall not be negotiable at company level.
- 10.4 The parties agree that any agreement reached between them shall not be legally binding on any of the parties concerned unless such agreement has been reduced to writing, has been signed by all the parties, promulgated and extended to non-parties by way of the Government gazette.
- 10.5 The Secretary must provide to the Department of Labour certified copies of every agreement concluded by the parties to the Council, within 30 days of the signing of the agreement.

- 10.6 If agreement is not reached through negotiations on an issue the status quo shall remain until such time as the matter is settled through the disputes procedure.
- 10.7 Provision shall be made for a caucus meeting prior to the commencement of annual negotiations meeting of the Council.
- 10.8 The parties agree that the following steps shall be followed in the event of an unresolved matter arising between the parties as contemplated in this clause;

10.8.1 **Step 1**

The aggrieved party shall declare a dispute provided that such notification shall take place within fourteen (14) days of the occurrence of the matter giving rise to the dispute. Notice of the dispute shall be by registered post, by fax, by minutes of any meeting or delivered by hand to the Secretary of the Council and the other party.

10.8.2 **Step 2**

Once the unresolved matter has been notified in terms of Step 1, at least one further meeting between representatives of the parties shall be held within a maximum time period of fourteen (14) days in order to resolve the unresolved matter.

10.8.3 **Step 3**

In the event of the matter remaining unresolved after the meeting (s) as envisaged under Step 2. The parties may agree to refer the matter to conciliation. The parties may forthwith appoint a conciliator by consent from the panel of conciliators and arbitrators.

Should the parties not be able to agree on an acceptable conciliator, the conciliator shall be appointed by the Secretary, from the panel of conciliators and arbitrators within fourteen (14) days.

The conciliator shall conduct the conciliation in such a way as he deems fit and may convene such meetings at a time and place agreeable to all parties.

Should the conciliator be unable to effect agreement within ten (10) working days of the commencement of his/her activities, he/she shall convene a meeting of all the parties, and shall inform the parties that he/she has not been able to effect agreement on the matters referred to him/her and must issue a certificate stating that the dispute remains unresolved.

10.8.4 **Step 4**

Should conciliation be unsuccessful, industrial action that conforms with the provisions of Chapter IV of the Act may be pursued by the parties. However no strikes or lock outs shall take place during the currency of an agreement arrived at by the parties.

11 EXEMPTION FROM COLLECTIVE AGREEMENTS

11.1 In terms of section 32 of the Labour Relations Act, No. 66 of 1995, as amended, the Council hereby establishes an independent body called an “Exemptions Board’ to hear and decide any appeal brought against—

11.1.1 the Councils refusal of any party’s application for exemption from the provisions of the Agreement;

- 11.1.2 the withdrawal of such an exemption by the Council.
- 11.2 Any party to this Council or any member of a party to this Council may apply to the Council for exemption from any of the terms of the Agreement.
- 11.3 The Council shall consider an application for exemption received from a party or a member of a Party to the Agreement, at the first Executive Committee meeting of the Council following the receipt of the application, with the proviso that applications received within less than five (5) normal working days prior to a Council meeting shall only be tabled at the next Executive Committee meeting of the Council
- 11.4 Applications for exemption referred to the Council in terms of subclause 11.2 or 11.3 shall be considered by the Council in accordance with the exemption criteria set out in subclause 11.13 hereof, and the applicant-/s shall be advised, in writing, of the Council's decision within five (5) normal working days following the meeting at which the applications were considered.
- 11.5 The Council shall, subject to the exemption criteria, only grant exemption on good cause and may determine such period and conditions of exemption as it deems fit, with the proviso that all exemptions shall lapse on 28 February of every year and may only be extended for a further' period by the Council on the application for such extension by the applicant.
- 11.6 Any non-party to which the Council's Collective Agreement has been extended in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of such Agreement.
- 11.7 The Council Agreement shall *mutatis mutandis* apply to any application for exemption received from a party or non-party.
- 11.8 Within 14 consecutive days after having been advised of the Council's decision

regarding an application for exemption, the party who feels aggrieved by the Council's decision, may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal must be fully reasoned.

11.9 The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board who shall as soon as possible, hear and decide the matter with reference to the exemption criteria set out in 11.13 and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting; provided that the Exemptions Board may defer a decision to a following meeting if additional motivation, information or verbal representations are considered necessary to decide on the application for exemption.

11.10 Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of the decision, clearly specifying—

11.10.1 the terms of the exemption; and

11.10.2 the reporting requirements by the applicant and considering re-evaluation processes.

11.11 When the Exemptions Board decides against granting an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.

11.12 All applications for exemptions shall be addressed to the Secretary of the Council and shall be—

11.12.1 in writing on an application form provided by the Council;

- 11.12.2 indicate the period of time for which the exemption is required;
 - 11.12.3 indicate clearly the clauses or subclauses of the Agreement from which exemption is applied;
 - 11.12.4 be fully reasonable and motivated and include proof that the exemption applied for has been discussed between the employer, his employees and their representatives and also include the responses resulting from such consultations whether in support or against the application;
 - 11.12.5 indicate possible substitutive provisions;
 - 11.12.6 indicate the specific workplaces and employees in respect of which the exemption is applied for;
 - 11.12.7 include details of the total work force of the employer concerned.
- 11.13 ***Exemption criteria:*** The Exemptions Board and the Council shall consider all applications of exemptions referred to in terms of this clause 11 with reference to the following criteria:
- 11.13.1 The extent of consultation with and the petition for or against granting the exemptions as provided by employers or employees who are to be affected by the exemption if granted;
 - 11.13.2 infringement of basic conditions of employment rights;
 - 11.13.3 that a competitive advantage is not created by the exemption;
 - 11.13.4 that exemption from any employee benefit fund or training provision be viewed in relation to the alternative comparable bone fide or provision

including the cost to the employee, transferability, administration management and cost, growth and stability;

11.13.5 the extent to which the proposed exemption undermines collective bargaining and labour peace in the Contract Cleaning Services Industry;

11.13.6 the reality that the majority of employers at any time engaged in the Contract Cleaning Services Industry within the Council's area of jurisdiction as well as the majority of members of the employer parties to the Council, represent the category micro to medium enterprises and employ between one and one hundred employees;

11.13.7 any special economic or other circumstances that exist warrant the granting of the exemption;

11.13.8 take cognizance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy”.

12. FINANCIAL MATTERS OF THE COUNCIL

12.1 A financial working committee shall investigate financial matters such as amount of levies charged and the administration of funds. The expenses of the Council shall be met from a fund which shall be raised by levies on the parties and non parties in the Contract Cleaning Services Industry.

12.2 All monies received shall be deposited to the credit of the Council within three (3) days after receipt, at a bank to be decided upon by it, provided that any surplus funds which are not for the time being required for the purpose referred to in sub-clause may be invested on such conditions as the Council may decide in:

12.2.1 Internal registered stock within the meaning of section 21 of the

exchequer and audit act, 1975.

- 12.2.2 Post Office savings accounts or certificates;
 - 12.2.3 a registered unit trust;
 - 12.2.4 Savings accounts, permanent shared or fixed deposits in any registered building societies, banks or financial institution or in;
 - 12.2.5 Any other manner approved by the Registrar of Labour Relations.
- 12.3 The funds shall be applied to the payment of expenses arising from the administration of the affairs of the Council.
- 12.4 All payments from the funds of the Council shall require its approval and shall be made by cheque signed by two of the following the Chairperson, the Vice-Chairperson and by the Secretary, provided that single payments of less than R500,00 (Five Hundred Rand) may be made from petty cash.
- 12.5 Funds required for a petty cash account which shall be kept in such form as the Council may determine from time to time shall be provided by the drawing of a cheque or suitable agreed electronic fund transfers signed in the manner specified in sub-clause 12.4. Unless the Council approves, cheques amounting in the aggregate to more than R5 000,00 (five thousand Rand) shall not be drawn during any month in respect of petty expenses.
- 12.6 The Council may establish funds for specific purposes such as Provident Fund, Sick Fund, Unemployment Fund, etc.
- 12.7 Quarterly statements showing the income and expenditure of the financial position of the Council shall be submitted to it by the Secretary.

- 12.8 The Secretary shall, not later than 31st March in each year prepare a statement showing:
- 12.8.1 all monies received and from what sources,
- 12.8.2 expenditure (if any) incurred under the following headings:
- salaries of officials;
 - amounts paid to representatives and alternates in respect of attendance at meetings, travelling expenses and wages lost;
 - office accommodation
 - printing and stationery requirements;
 - miscellaneous expenditure
- during the twelve months ended 31 December each year preceding, together with a statement showing the Council's assets and liabilities at that date. These statements which shall be countersigned by the Chairperson shall be submitted for audit to a public accountant to be appointed by the Council. True copies of the audited statements and of the auditors' report thereon shall be available for inspection at the office of the Council to members or representatives of the parties who shall be entitled to make copies of both statements and of the auditor's reports thereon. These statements and a certified copy of the auditor's report shall be transmitted to the Registrar of Labour Relations within 30 days of receipt of the auditor's report.
- 12.9 The statements and the auditor's report must be submitted to a meeting of the Council within 60 days of the receipt of the auditor's report.
- 12.10 Every year the Secretary must prepare, for submission at the annual general meeting of the Council, a budget for the next financial year.

13. DISPUTES AND GRIEVANCES

- 13.1 All disputes, except disputes referred to in clause 10 , shall be dealt with in accordance with the following procedure:
- 13.2 “dispute” means a dispute between any of the parties and non parties to the Council that may be referred to the Council in terms of the Act excluding a dispute contemplated in clauses 10 . A party to the Council includes members of any party to the Council. A dispute shall include one that relates to the interpretation of any clause of this constitution
- 13.3 Disputes referred to the Council for Conciliation shall be by the relevant sections of the Act and in accordance with the CCMA rules.
- 13.4 Disputes referred to the Council for Arbitration for which the Council is accredited by the CCMA
- 13.4.1 Any party to a dispute may request that the dispute be resolved through arbitration.
- 13.4.2 The Secretary must appoint a member of the panel of arbitrators to arbitrate the dispute.
- 13.4.3 The arbitration proceedings must be conducted in accordance with the provisions of sections 138 and 142 and, if applicable, sections 139, 140 and 141, of the Act, read with the changes required by the context.
- 13.4.4 The arbitrator may 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.

14. ACCREDITATION.

- 14.1 The Council shall apply for accreditation for the purposes of dispute resolution as provided for in the Act.
- 14.2 In the event of the Council not being accredited for whatever reason, the Council shall employ the services of an accredited agency to perform the conciliation and arbitration services provided for herein.

15. PANEL OF CONCILIATORS AND ARBITRATORS

- 15.1 When the necessary funds are available the Council will at its annual general meeting, appoint:
 - 15.2 a panel of conciliators, duly accredited by the CCMA, consisting of an agreed number of members, for the purpose of conciliating disputes;
 - 15.3 a panel of arbitrators, duly accredited by the CCMA, consisting of an agreed number of members, for the purpose of determining disputes.
- 15.4 The Council may remove a member of the panel of conciliators or arbitrators from office:
 - 15.4.1 for serious misconduct;
 - 15.4.2 due to incapacity;
 - 15.4.3 if at least one half of the employer representatives in the Council and at least one half of the employee representatives in the Council have voted in favour of the removal of that member from office; or

- 15.4.4 if a member's accreditation, by the CCMA, has expired or been withdrawn shall cease to be a member immediately.
- 15.5 If for any reason there is a vacancy in the panel of conciliators or the panel of arbitrators, the Council may appoint a new member to the relevant panel for the unexpired portion of the predecessor's term of office.
- 15.6 The Secretary must appoint a member of the relevant panel to conciliate or arbitrate the dispute.
- 15.7 A person may be appointed to both panel of conciliators and the panel of arbitrators.
- 15.8 a member of the panel of conciliators or the panel of arbitrators whose term of office expires, will be eligible for re-appointment to the relevant panel at the end of the term.
- 15.9 If any dispute is referred to arbitration in terms of this Constitution there shall not be industrial action in connection with any issue in arbitration.

16. STRIKES AND LOCKOUTS

- 16.1 No strike or lockout shall take place until the matter giving occasion therefore has been dealt with in accordance with the provisions of the Constitution and Chapter IV of the Act and shall not in any case take place during the currency of an agreement arrived at by the parties and which deals with the matter giving occasion for the strike or lockout.
- 16.2 If any dispute is referred to arbitration in terms of this Constitution there shall be no Industrial action in connection with any issue in arbitration.

17. APPOINTMENT OF COMMITTEES

- 17.1 The Council may appoint from amongst its members and alternates, committees to perform such special duties or functions as are delegated to them by the Council. A committee shall consist of an equal number of employers and employee representatives who shall appoint from amongst themselves a Chairperson and Vice-Chairperson in the manner prescribed in clause 7 of this constitution.
- 17.2 If a seat on a committee becomes vacant, it shall be filled by an appointment to be made from the committee. Any representative so appointed to fill a vacancy on the committee shall hold office for the unexpired portion of the period of office of his/her predecessor.
- 17.3 A committee shall ordinarily meet as occasion arises at such time and place as may in the opinion of its chairperson be convenient or necessary. Seven (7) days notice of each meeting shall be given in writing to members of the committee by the Secretary, except in cases of emergency when its Chairperson may at his/her discretion authorise shorter notice. At least three days notice of a special meeting shall be given to representatives.
- 17.4 The quorum for meetings of a committee shall be the majority of representatives on such committee, provided that, if any representative withdraws or is absent, and is not represented by an alternate, the voting of the employers or of the employees, as the case may be shall be reduced as may be necessary to preserve equality of voting power.
- 17.5 The decision in favour of which not less than the majority of the representatives serving on a committee and present at a meeting of the said committee have voted shall be the decision of the committee.
Otherwise meetings of a committee shall be conducted *mutatis mutandis* in the manner provided insofar as it can be applied.

- 17.6 A committee shall have the power subject to the discretion and control of the Council:
- 17.6.1 to investigate and report to the Council on all matters connected with the Industry;
 - 17.6.2 to assist in giving effect to the decisions of the Council in connection with the administration of any agreement arrived at by the Council;
 - 17.6.3 to administer the Council's agreement and affairs in any region to which it may be appointed by the Council;
 - 17.6.4 to perform such other functions and exercise such other duties as may be delegated to it from time to time by the Council. However, the Council may not delegate to a Committee the powers, functions and duties contemplated in sub-clauses 5.5, 5.6 and clause 17 and the power of the Council to delegate.
- 17.7 The Council will have an Executive Committee that consists of the Chairperson and the Vice Chairperson of the Council, who are members by virtue of their respective offices, and to a maximum of six additional members elected in accordance with sub-clause 17.9.
- 17.8 Subject to the directions and control of the Council, the Executive Committee may exercise and perform the powers, functions and duties of the Council relating to the supervision and control of the everyday management and administration of the Council. In addition, the Executive Committee may exercise the powers and perform the functions in sub-clause 17.6.
- 17.9 At the annual general meeting, the Council must elect the additional members of the Executive Committee and an alternate for each of them. The additional members and

their alternates must be representatives in the Council, and half of the additional members, as well as their alternates, must be appointed by the employer representatives in the Council, whilst the other half of the additional members, as well as their alternates must be appointed by the employee representatives in the Council.

17.10 An additional member of the Executive committee will hold office for twelve months and will be eligible for re-election at the end of that term. An additional member of the Executive Committee whose term of office has expired and who is not re-elected, may nevertheless continue to act as a member of the Executive Committee until that member's successor assumes office.

17.11 An additional member of the Executive Committee:

17.11.1 may resign from the committee at any time after having given at least 30 day's notice in writing to the secretary;

17.11.2 must vacate office immediately:

17.11.3 in the case of the resignation, when the resignation takes effect; or

17.11.4 upon ceasing to be representative of the Council.

17.12 If the seat of an additional member of the Executive Committee becomes vacant, the Council must fill the vacancy from the number of candidates nominated for that purpose by:

17.12.1 the employer representatives in the Council, if that seat had been held by an additional member representing the employers; or

17.12.2 the employee representatives in the Council, if that seat had been held

by an additional member representing employees.

A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.

17.13 The Executive Committee must hold an ordinary meeting at least once every 3 months;

17.14 The Council shall appoint a finance committee which shall consist of a maximum of three delegates from amongst the employee members and a maximum of three delegates from amongst the employer members;

17.15 The finance committee shall be charged with the following duties:

17.15.1 to ensure the budgets are adhered to;

17.15.2 to ensure that proper books of account are kept and that payments are made only on the authority of the finance committee;

17.15.3 to ensure delegates fees for attending meetings of the Council and Sub-Committees of the Council are paid to not more than 6 employer association and 6 trade union representatives.

17.16 No observers will be permitted to attend any sub-committee meetings.

18. DISCIPLINARY PROCEDURE FOR REPRESENTATIVES AND ALTERNATES.

18.1 In the event of a party believing that they have been aggrieved by another representative, for reasons as stipulated in sub-clauses 18.1.1, 18.1.2, 18.1.3 and 18.1.4, and wishes to have disciplinary action against that representative, a written notice shall be given to the Secretary giving full reasons. The Secretary shall thereupon convene a meeting of the Executive Committee within 14 (fourteen) days of such written notice being received by the secretary, and then the Executive

Committee shall then attempt to resolve the dispute. If the dispute is not resolved the parties to the dispute shall attempt to agree on one of the panel of arbitrators to arbitrate the dispute. If they cannot agree then the secretary will appoint an arbitrator from the panel of arbitrators. The cost of the arbitration shall be borne by the Council. The accused may object to the appointed arbitrator and state the grounds upon which his objection is raised.

- 18.1.1 any representative uttering any slurs whilst addressing any meeting at the Council which could offend any party or representative of the Council, which will include but not be limited to politics, sex, race or religion;
- 18.1.2 any representative making any threatening statements whilst addressing any meeting at the Council to any other party or representative of the Council, be it spoken or written;
- 18.1.3 any representative has acted in such a manner as to be detrimental or harmful to the Council;
- 18.1.4 any representative who has been found to have been fraudulent and/or corrupt in their dealings with any matters pertaining to the Council;
- 18.1.5 Any conduct deemed to be normally unacceptable in a normal society. The said conduct will be determined by the arbitrator as to whether it is acceptable or unacceptable.

- 18.2 During the Executive Committee meeting attempting to resolve the dispute the representative concerned shall be entitled to be heard in his/her own defense, either personally or represented by a member of the party which he/she represents. Should the motion for disciplinary action be carried by a simple majority of members present and voting, such representative shall be suspended pending the outcome of the arbitration proceedings. The said arbitration proceedings must be conducted within thirty (30) days from the day the motion for disciplinary action was passed.

18.3 The arbitrator shall have powers to declare the suspension either fair or unfair. If the said suspension is declared fair, the following sanctions shall be imposed on the representative:

18.3.1 on the first occasion the representative shall be suspended as a representative from all activities of the Council for a period of three (3) months;

18.3.2 on the second occasion the representative shall be suspended as a representative from all activities of the Council for a period of six (6) months;

18.3.3 on the third occasion the representative shall be suspended as a representative from all activities of the Council for a period of twenty four (24) months.

18.4 If the arbitrator finds the suspension to have been unfair the arbitrator shall have powers to order the proper redress equivalent to the delegate's fee that may have been lost due to suspension.

18.5 During the arbitration process both parties may be represented by themselves, a representative from their party or an attorney.

18.6 The arbitrator's decision will be final and binding. Should any of the parties to the dispute be dissatisfied, then that party may take the matter on review to the High Court.

19. COMPLIANCE PROCEDURE.

19.1 The Council shall take all reasonable steps necessary to ensure compliance with this Constitution and with the collective agreements concluded in the Council, governing terms and conditions of employment. If, whether through its own investigation or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:

- 19.1.1 the Secretary shall appoint a designated agent to investigate the alleged breach;
- 19.1.2 if upon completion of the investigation the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement through conciliation;
- 19.1.3 at the end of the conciliation process, the designated agent shall submit a report to the Secretary as to the result of the investigation, the steps taken to secure compliance through conciliation and the outcome thereof;
- 19.1.4 upon receipt of the report, the Secretary of the Council may;
 - 19.1.4.1 require the designated agent to undertake further investigations; or
 - 19.1.4.2 refer the matter to arbitration and require the arbitrator to hear and determine the alleged breach of the agreement and according to his findings make an appropriate award;
 - 19.1.4.3 take such further steps as he deems reasonable.

19.2 The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

20. WINDING UP

- 20.1 At a special meeting called for that purpose, the Council by resolution adopted by a two thirds majority of the total number of representatives in the Council, may decide to be wound up.
- 20.2 Upon adoption of a resolution to wind up, the Secretary must take the necessary steps

to ensure that:

- 20.2.1 application is immediately made to the Labour Court for an order giving effect to the resolution; and
 - 20.2.2 the Council's books and records of account, an inventory of its assets, including funds and investments, are delivered to the liquidator appointed by the Labour Court, and that whatever may be necessary is done to place the assets, funds and investments of the Council at the disposal and under the control of the liquidator.
- 20.3 All parties to the Council remains liable for any unpaid liabilities to the Council as at the adoption of a resolution to wind up the Council.
- 20.4 If all the liabilities of the Council have been discharged, the Council must transfer any remaining assets to the active members of the Council at the time of winding – up on a proportional basis.

21. STATUS OF CONSTITUTION

No relaxation or indulgence which the one party may grant to the other party shall constitute a waiver of any of its rights under this Constitution.

22. LANGUAGE

The Council has adopted English as the official language of correspondence. The Council respects the rights of members to use the language of their choice in addressing any meeting of the Council, provided that prior arrangements are negotiated with the Secretary of the Council in advance of the meeting.

23. AMENDMENTS

23.1 This Constitution may be amended or added to by resolution of a two thirds majority of the representatives of the parties, but no amendment will be considered unless at least one calendar month's notice has been given to the Secretary and circulated to representatives at least two weeks before the date of the meeting at which it is to be considered, provided that the Council may, by unanimous vote amend the Constitution without notice.

23.2 Any amendment to this Constitution becomes effective after the resolution effecting that amendment has been certified by the Registrar in terms of section 57(3) of the Act.

**SIGNED AT DURBAN FOR AND ON BEHALF OF THE EMPLOYERS ORGANISATIONS
AND THE REGISTERED TRADE UNIONS DULY AUTHORISED THERETO,
THIS 6^Th DAY OF NOVEMBER 2006:**

FOR THE EMPLOYERS ORGANISATION:

NATIONAL CONTRACT CLEANERS ASSOCIATION

FOR THE TRADE UNIONS

SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS UNION

NATIONAL GENERAL WORKERS UNION

BLACK ALLIED WORKERS UNION

HEALTH & OTHER SERVICE PERSONNEL TRADE UNION OF SA

STEEL, MINING & COMMERCIAL WORKERS UNION

AS WITNESS

SECRETARY.

OTHER ORGANISATIONS WISHING TO BECOME PARTY TO THE COUNCIL:

_____ NAME OF PARTY	_____ SIGNATURE	_____ DATE
_____ NAME OF PARTY	_____ SIGNATURE	_____ DATE
_____ NAME OF PARTY	_____ SIGNATURE	_____ DATE
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