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## GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

**No. R. 715****18 June 2004**

LABOUR RELATIONS ACT, 1995

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION  
OF WAGE COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 30 June 2005.

**M. M. S. MDLADLANA**

Minister of Labour

**No. R. 715****18 Junie 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING  
VAN KOLLEKTIEWE LOONOOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE**
**THE SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL  
(hereinafter referred to as the "Council")  
WAGE COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" or, "the employers' organisation") of the one part, and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Municipal Managers and persons appointed as managers directly accountable to Municipal Managers in terms of section 57 of the Municipal Systems Act shall be excluded from this particular agreement.

1.3 Clauses 3.1, 5.1, 5.2 and 7 shall not apply to non-parties.

**2. DEFINITIONS**

All expressions used in this agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and, unless contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement, on 19 July 2002 and shall terminate on 30 June 2005.

3.2 This Agreement shall come into operation in respect of non-parties, on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2005.

**4. OBJECTS**

The object of this Agreement is to make provision for the rate of pay and for matters incidental thereto for all employees and employers who fall within the registered scope of the Council.

**5. WAGE INCREASE**

The parties agree to a multi-year wage increase for the 2002 to 2004 financial years as follows:

5.1 the annual wage increase for the 1 July 2002 to the 30 June 2003 financial year shall be —

5.1.1 8% for all employees earning in excess of R3 200,00;

5.1.2 9% for all employees earning R3 200,00 and less; and

5.1.3 the minimum wage rate within the sector shall not be less than R2 100,00 per month. Provided that if the 9% is applied and an employee is still below the agreed minimum wage of R2 100,00 such employee be adjusted to the minimum wage of R2 100,00.

5.2 The annual wage increase for the 1 July 2003 to the 30 June 2004 financial year shall be the Consumer Price Index (CPIX) for the twelve (12) month period February 2002 to January 2003 (average), plus 1%.

5.3 The annual wage increase for the 1 July 2004 to 30 June 2005 financial year shall be the Consumer Price Index (CPIX), for twelve (12) month period February 2003 to January 2004 (average), plus 1.5%.

5.4 The wage increase set out above will be implemented on 1 July of each financial year for the following year.

5.5 The terms of this agreement as contained in clause 5.2 and 5.3 shall be the subject of negotiations should the February to January average CPIX be lower than 5% or higher than 10% for the respective periods.

5.6 The parties agree on the categorisation of municipalities in principle to which effect they hereby undertake to finalise a collective agreement on categorisation of municipalities within a period of three months from the date of signature hereof.

**6. DISPUTE ABOUT INTERPRETATION OR APPLICATION OF THIS AGREEMENT**

6.1 Any person or party may refer a dispute about the interpretation or application of this Collective Agreement to the Central Council of the Council.

6.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or the Central Council or, in the event that after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

6.3 The General Secretary or Regional Secretary, as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive and, in the event of a dispute not being resolved, shall—



- 6.3.1 appoint a conciliator from the appropriate panel of conciliators, doing so as far as possible on a rotational basis and;
- 6.3.2 if the dispute remains unresolved, refer the dispute to arbitration.
- 6.4 If a conciliator is appointed, the General Secretary or Regional Secretary concerned shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.
- 6.5 If the dispute is referred to arbitration, the General Secretary or Regional Secretary concerned shall appoint an arbitrator from the appropriate panel of arbitrations, doing so as far as possible on a rotational basis.
- 6.6 The General Secretary or Regional Secretary concerned in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.
- 6.7 The arbitrator shall—
- 6.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and
- 6.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.
- 6.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Collective Agreement.

## **7. EXEMPTION FOR PARTIES**

### **7.1 INTRODUCTION**

- 7.1.1 Any party may apply for exemption from provisions of this Collective Agreement.
- 7.1.2 This Agreement sets out the structures, procedures and requirements through which applications for exemption from the wage and salary settlements of the South African Local Government Bargaining Council will be managed.
- 7.1.3 The South African Local Government Bargaining Council gives notice that in the event of applications being made which are frivolous and vexatious or which could not hope to succeed, it will consider applying punitive sanctions against such application.
- 7.1.4 Where a Municipality applies for exemption it shall not implement any changes to existing wages until the exemption is finalised or the Central Exemptions Committee decides otherwise.
- 7.1.5 Notwithstanding any time periods stipulated herein every effort should be made to apply for and process Exemption Applications in the shortest time span.
- 7.1.6 The onus to prove the case for the granting of an exemption lies with the applicant Municipality.
- 7.1.7 SALGA undertakes to make every reasonable effort to assist its members to discharge such onus in a full and proper manner.
- 7.1.8 This Agreement applies to all parties to the South African Local Government Bargaining Council.

### **7.2 EXEMPTION COMMITTEES**

- 7.2.1 There will be an Exemptions Committee at Central and divisional levels of the South African Local Government Bargaining Council. Each committee shall consist of five (5) employer and five (5) trade union representatives. The trade union representatives will be three (3) from SAMWU and two (2) from IMATU.
- 7.2.2 The General Secretary of the Council or his nominee shall provide secretarial services to the above committees.
- 7.2.3 Divisional Exemption Committees shall be sub-committees of the Central Exemptions Committees and the powers and functions of each shall be as further set out below.
- 7.2.4 Only the Central Exemption Committee of the South African Local Government Bargaining Council may grant exemptions from any settlements and the role of the Divisional Bargaining Councils shall be limited to the appointment of the Divisional Exemptions Committee.
- 7.2.5 Decisions of the Central Exemptions Committee and recommendations from the Divisional Exemptions Committees shall be based on consensus.
- 7.2.6 Divisional Exemptions Committees shall have the powers and duties to—
- 7.2.6.1 investigate all exemption applications in their area of jurisdiction;
- 7.2.6.2 request that applicant Municipalities provide such further particulars as may be reasonable and necessary to investigate the applications;
- 7.2.6.3 make recommendations as to the form and terms of any exemption to be granted or to recommend that no exemption be granted;
- 7.2.6.4 in the event of a failure to reach agreement on the terms of such proposal it shall report to the Central Exemption Committee on the nature of the deadlock reached;

- 7.2.6.5 ensure that the criteria and the terms of any proposed exemption are consistent; or
- 7.2.6.6 do such other things as are consistent with achieving a full and transparent investigation;
- 7.2.6.7 co-opt any person in an advisory capacity.
- 7.2.7 A Divisional Exemption Committee shall have 90 calendar days from the date of signing the wage and salary agreement within which to conduct its investigation and report to the Central Exemption Committee on its proposal, or failure to arrive at a proposal.
- 7.2.8 The Central Exemption Committee shall have the powers and duties to—
  - 7.2.8.1 adopt policy;
  - 7.2.8.2 confirm, reject or vary an application for exemption;
  - 7.2.8.3 examine all recommendations of Divisional Exemption Committees to ensure that the criteria applied are nationally consistent;
  - 7.2.8.4 require that any Divisional Committee make additional or further investigation(s);
  - 7.2.8.5 do such other things as are consistent with achieving a full and transparent investigation and the uniform and consistent application of criteria for exemption;
  - 7.2.8.6 grant an applicant Municipality the power to introduce interim adjustments in circumstances where this will not affect the final outcome;
- 7.2.9 The Central Exemption Committee will have 120 calendar days from date of signing the wage and salary agreement to accept or reject the terms of an exemption.
- 7.2.10 Only the South African Local Government Bargaining Council or its Executive Committee shall have the power to extend the time periods provided for in terms of this agreement on good cause, provided that it may not extend the total period from date of conclusion of a salary and wage settlement by more than six (6) months.
- 7.2.11 Decisions of the Central Exemptions Committee shall be final and binding.
- 7.2.12 An exemption certificate which contains the following information shall be signed by the Chairperson of the Central Exemptions Committee and the General Secretary of the South African Local Government Bargaining Council after approval by the Central Exemptions Committee—
  - 7.2.12.1 the full name of the applicant Municipality;
  - 7.2.12.2 the date of issue;
  - 7.2.12.3 the details of the agreement for which exemption is granted;
  - 7.2.12.4 the period for which exemption shall operate;
  - 7.2.12.5 the terms and conditions, or remedial requirements of the exemption;
  - 7.2.12.6 the exemption certificate shall be sent directly to the exemption applicant and to the divisional Secretary who shall inform the parties to the division of the final terms and conditions within 7 calendar days after receipt of such certificate.
- 7.2.13 In the event of the Central Exemption Committee reaching a deadlock on whether or not to grant an exemption the matter may be referred directly to the independent exemptions body as set out below and be dealt with in the same manner as an appeal by a non-party.

### 7.3 APPLICATIONS FOR EXEMPTION

- 7.3.1 Municipalities wishing to apply for exemption shall forward their applications to SALGA's Provincial Associations within 30 calendar days of the wage settlement being signed.
- 7.3.2 SALGA shall forward such application to the Secretary of the relevant division by no later than 45 calendar days of the wage and salary settlement agreement being signed.
- 7.3.3 Applications for exemptions must comply with the following requirements:
  - 7.3.3.1 be accompanied by supporting documentation and financial information;
  - 7.3.3.2 provide a full motivation, through reference to supportive documentation as to the grounds of affordability or financial constraint necessitating the application;
  - 7.3.3.3 set out the terms of the exemption being sought in the form of a proposal, the period for which it is being sought and the extent of variation from the wage settlement that is requested;
  - 7.3.3.4 propose a strategy to guide the Municipality to achieve compliance with future wage settlements;
  - 7.3.3.5 ensure that such proposal is in a form consistent with the terms of the wage settlement and applied equitably across the full work force;
  - 7.3.3.6 provide proof that in taking steps to make such application the Municipality has informed and consulted the employees union representatives and Local Labour Forum.

#### 7.4 CRITERIA AND OTHER FACTORS TO BE CONSIDERED BY EXEMPTIONS COMMITTEES

- 7.4.1 The sole criteria for the approval of an exemption shall be that the Municipality concerned is—
- 7.4.1.1 unable to afford the costs of the settlement, or
  - 7.4.1.2 has short-term cash flow problems necessitating a limited exemption.
- 7.4.2 In considering any application and the terms of any proposed exemption the Divisional Exemption Committee shall take into consideration—
- 7.4.2.1 the written and verbal motivation and proposals of the applicant;
  - 7.4.2.2 the written or verbal submissions of any party to the Bargaining Council;
  - 7.4.2.3 any special circumstances which exists;
  - 7.4.2.4 the applicant's past record of compliance with wage settlements;
  - 7.4.2.5 the precedents for exemptions set since the introduction of this procedure and the effects of its proposal as a precedent in its own divisions or other divisions;
  - 7.4.2.6 any process or directives from the Central Exemption Committee;
  - 7.4.2.7 the financial savings to the municipalities of the delayed implementation of the wage settlement;
  - 7.4.2.8 any such other general or local economic factors relating to the restructuring of local government which impact on the application for exemption.

#### 7.5 EXEMPTIONS POLICY

- 7.5.1 No application to be adopted unless accompanied by full supporting documentation.
- 7.5.2 The full terms of the settlement are to be implemented where financially possible before the end of the financial year.
- 7.5.3 Those municipalities previously granted exemptions may apply to pay higher increases than the terms of the wage settlement in order to bridge the gap between the salaries of the municipality and those existing in the relevant division of the Bargaining Council.
- 7.5.4 All applications considered by the Central Exemptions Committee shall only be based on the written application and no verbal motivation by the municipality is allowed.

#### 7.6 APPLICATION FOR CONDONATION

- 7.6.1 If an application for exemption is referred to the Divisional Exemptions Committee outside the time limits prescribed by the policy then the applicant party must make application for condonation to the Divisional Exemptions Committee.
- 7.6.2 The application for condonation must be referred and served on all parties to the Divisional Exemptions Committee (IMATU, SAMWU and SALGA). The application for condonation must be on Affidavit. The Affidavit must explain the reason for the failure to refer the application in time. That explanation must be sufficiently full to enable the Divisional Exemptions Committee to understand how the failure to refer the application in time came about and to assess the applicants conduct and behaviour. The affidavit must deal with each of the conditions set out in clause 7.8 below.
- 7.6.3 If the application for condonation arises from the applicant party failing to attend scheduled Divisional Exemptions meetings then the reasons for the failure to attend must be given.
- 7.6.4 The Divisional Exemptions Committee must consider the application for condonation and any representations made in regard to the application. Condonation must be recommended to the Central Exemptions Committee if there are good grounds for the late referral.
- 7.6.5 If condonation is recommended then the Divisional Exemptions Committee should consider the application and make a recommendation to the Central Exemptions Committee regarding the application.
- 7.6.6 If the parties to the Divisional Exemptions Committee cannot reach consensus whether to recommend to grant or refuse condonation then such should be referred to the central Exemptions Committee for a final decision.
- 7.6.7 The divisional and Central Exemptions Committee must take the following into account in determining whether or not to recommend or grant condonation:
  - 7.6.7.1 The degree of lateness. If the application is only a few days late, that factor should weigh in favour of granting condonation. If the referral is very late, that should weigh against granting condonation.
  - 7.6.7.2 The degree of fault. If the reason for late referral was due to circumstances beyond the control of the applicant, that factor should weigh in favour of condonation.
  - 7.6.7.3 The reasonableness of the explanation. If the explanation is improbable that should weigh against granting condonation.
  - 7.6.7.4 The prejudice to the employee should condonation be granted.

- 7.6.7.5 The prospects of the application succeeding should the Committee consider the application for exemption.

## 7.7 APPEALS

- 7.7.1 The appeals to be dealt with in terms of this sub-clause shall be appeals by parties in terms of clause 7.2.13 where there has been a deadlock at the Central Exemption Committee and appeals by non parties from the decisions of the foregoing process which right is guaranteed in terms of clause 7.1.9.
- 7.7.2 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.
- 7.7.3 The Independent Exemptions Body shall consider all appeals in a manner it considers appropriate to determine the appeal fairly and quickly which may include the hearing of evidence and arguments.
- 7.7.4 The criteria which will be considered by the Independent Exemptions Body shall be—
- 7.7.4.1 fairness;
  - 7.7.4.2 the ability of the employer to afford the costs of the settlement; and
  - 7.7.4.3 the short term cash flow problems being experienced by an employer by necessitating a limited exemption.
- 7.7.5 All appeals shall be in writing and shall be lodged with the General Secretary. Such application shall contain—
- 7.7.5.1 all material details of the applicant;
  - 7.7.5.2 all details of the decision against which the applicant appeals;
  - 7.7.5.3 detailed grounds on which such appeal is sought taking into consideration the criteria specified in clause 7.7.4 above.

## 8. EXEMPTION FOR NON-PARTIES

- 8.1 In the event of a non-party to the South African Local Government Bargaining Council applying for an exemption in terms of this agreement, the application shall be processed by the Central Exemptions Committee provided that the non-party applicant shall be entitled to appeal to an Independent Exemptions Body as set out hereunder.

## 8.2 APPLICATIONS FOR EXEMPTION

- 8.2.1 Municipalities or employers wishing to apply for exemption shall forward their applications to the General Secretary within 30 calendar days of the wage settlement being signed.
- 8.2.2 Applications for exemptions must comply with the following requirements:
- 8.2.2.1 be accompanied by supporting documentation and financial information;
  - 8.2.2.2 provide a full motivation, through reference to supportive documentation as to the grounds of affordability or financial constraint necessitating the application;
  - 8.2.2.3 set out the terms of the exemption being sought in the form of a proposal, the period for which it is being sought and the extent of variation from the wage settlement that is requested;
  - 8.2.2.4 propose a strategy to guide the Municipality to achieve compliance with future wage settlements;
  - 8.2.2.5 ensure that such proposal is in a form consistent with the terms of the wage settlement and applied equitably across the full work force;
  - 8.2.2.6 provide proof that in taking steps to make such application the Municipality or employer has informed and consulted the employees union representatives and Local Labour Forum.

## 8.3 CRITERIA AND OTHER FACTORS TO BE CONSIDERED BY EXEMPTIONS COMMITTEES

- 8.3.1 The sole criteria for the approval of an exemption shall be that the Municipality or employer concerned is—
- 8.3.1.1 unable to afford the costs of the settlement, or
  - 8.3.1.2 has short-term cash flow problems necessitating a limited exemption.
- 8.3.2 In considering any application and the terms of any proposed exemption the Central Exemption Committee shall take into consideration—
- 8.3.2.1 the written and verbal motivation and proposals of the applicant;
  - 8.3.2.2 the written or verbal submissions of any party to the Bargaining Council;
  - 8.3.2.3 any special circumstances which exists;
  - 8.3.2.4 the applicant's past record of compliance with wage settlement;
  - 8.3.2.5 the precedents for exemptions set since the introduction of this procedure and the effects of its proposal as a precedent in its own divisions or other divisions;
  - 8.3.2.6 any process or directives from the Central Exemption Committee;



- 8.3.2.7 the financial savings to the municipalities or employer of the delayed implementation of the wage settlement;
- 8.3.2.8 any such other general or local economic factors relating to the restructuring of local government which impact on the application for exemption.

#### 8.4 EXEMPTIONS POLICY

- 8.4.1 No application to be adopted unless accompanied by full supporting documentation.
- 8.4.2 The full terms of the settlement are to be implemented where financially possible before the end of the financial year.
- 8.4.3 Those municipalities or employer previously granted exemptions may apply to pay higher increases than the terms of the wage settlement in order to bridge the gap between the salaries of the municipality and those existing in the relevant division of the Bargaining Council.
- 8.4.4 All applications considered by the Central Exemptions Committee shall only be based on the written application and no verbal motivation by the municipality is allowed.

#### 8.5 APPEALS

- 8.5.1 The appeals by non-parties shall be considered by the Independent Exemption Body.
- 8.5.2 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.
- 8.5.3 The Independent Exemptions Body shall consider all appeals in a manner it considers appropriate to determine the appeal fairly and quickly which may include the hearing of evidence and arguments.
- 8.5.4 The criteria which will be considered by the Independent Exemptions Body shall be—
  - 8.5.4.1 fairness;
  - 8.5.4.2 the ability of the employer to afford the costs of the settlement; and
  - 8.5.4.3 the short term cash flow problems being experienced by an employer by necessitating a limited exemption.
- 8.5.5 All appeals shall be in writing and shall be lodged with the General Secretary. Such application shall contain—
  - 8.5.5.1 all material details of the applicant;
  - 8.5.5.2 all details of the decision against which the applicant appeals;
  - 8.5.5.3 detailed grounds on which such appeal is sought taking into consideration the criteria specified in clause 8.5.4 above.

#### 9. ADMINISTRATION AND ENFORCEMENT

- 9.1 The Council is responsible for the administration of this Agreement.
- 9.2 This Agreement will be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Durban this 5th day of November 2003.

**S. SOMOYO**

Member of the Council (Representing SALGA)

**C. DUNSTAN**

Member of the Council (Representing IMATU)

**P. MASHISHI**

Member of Council (Representing SAMWU)

**S. GOVENDER**

General Secretary of the Council

R. 716

18 June 2004

#### LABOUR RELATIONS ACT, 1995

#### SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF BARGAINING LEVELS COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the schedule hereto, which was concluded in the South African Local Government Bargaining Council, and is binding in terms of section 31 of the Labour Relations Act, 1995 on the

parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004 and for the period ending 30 June 2005.

**M. M. S. MDLADLANA**

Minister of Labour

**R. 716**

**18 Junie 2004**

**WET OP ARBEIDSVERHOUDINGE, 1995**

**SUID AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN BEDINGINGSVLAKKE  
KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004 en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE**

**THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**

(hereinafter referred to as the "Council")

**BARGAINING LEVELS COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" of the "Employers' Organisation, of the one part")

and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South african Local Government Bargaining Council

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 and 6.4 shall not apply to non-parties.

**2. DEFINITIONS**

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and, unless the contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

### 3. PERIOD OF OPERATION

3.1 This Agreement shall have come into operation in respect of the parties to the Agreement on 26 March 2003 and shall remain in force until 30 June 2005.

3.2 This Agreement shall have come into operation in respect of non-parties, on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2005.

### 4. LEVELS OF BARGAINING

4.1 Collective bargaining may be conducted at either the national or divisional level and the appropriate forum shall be determined by having regard to the matter that is the subject of collective bargaining.

4.2 In furtherance of the intent to establish uniform conditions of service, the following matters shall be the subject of collective bargaining at a national level only:

- 4.2.1 medical aid;
- 4.2.2 retrenchment policy and severance pay;
- 4.2.3 retirement funds;
- 4.2.4 housing;
- 4.2.5 annual leave;
- 4.2.6 maternity leave;
- 4.2.7 sick leave;
- 4.2.8 hours of work; and
- 4.2.9 family responsibility.

4.3 In furtherance of the intent to establish uniform conditions of service, the following matters shall be the subject of collective bargaining at a divisional level only:

- 4.3.1 special leave;
- 4.3.2 acting allowance;
- 4.3.3 night work allowance;
- 4.3.4 standby allowance;
- 4.3.5 shift allowance;
- 4.3.6 long service bonus;
- 4.3.7 emergency work; and
- 4.3.8 legal indemnification.

### 5. DISPUTE ABOUT INTERPRETATION AND APPLICATION OF THIS AGREEMENT

5.1 Any person or party may refer a dispute about the interpretation or application of this Collective Agreement to the Central Council of the SALGBC.

5.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or the Central Council, or after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

5.3 The General Secretary or Regional Secretary as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved:

- 5.3.1 appoint a conciliator from the appropriate panel of conciliators, (doing so as far as possible on a rotational basis) or if the dispute remains unresolved;
- 5.3.2 refer the dispute to arbitration.

5.4 If a conciliator is appointed, the relevant General Secretary or Regional Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the Parties to the dispute.

5.5 If the dispute is referred to arbitration, the relevant General Secretary or Regional Secretary shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.

5.6 The General Secretary or Regional Secretary concerned, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

5.7 The arbitrator shall—

- 5.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and
- 5.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

5.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Collective Agreement.

## 6. EXEMPTIONS

6.1 Any person bound by this Agreement shall be entitled to apply for exemption from this Agreement.

6.2 All applications for exemption from any provisions of this Agreement shall be in writing and lodged with the General Secretary. Such applications shall set out:

6.2.1 all material details of the Applicant;

6.2.2 the specific provisions of this Collective Agreement from which the applicant seeks exemption;

6.2.3 detailed grounds on which such exemption is sought taking into consideration the criteria contained in clause 6.7 below;

6.3 The Executive Committee shall consider all applications made by a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 6.7, and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

6.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the Application subject to clause 6.7 and on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

6.5 All applications for an appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 6.11 below.

6.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.

6.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

- (a) Any written and/or verbal substantiation provided by the applicant;
- (b) fairness to the employer, its employees and other employers and employees in the Industry;
- (c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;
- (d) unexpected economic hardship occurring during the currency of this Agreement, and job creation and/or losses;
- (e) the infringement of basic conditions of employment;
- (f) the fact that a competitive advantage might be created by the exemption;
- (g) comparable benefits or provisions where applicable;
- (h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or
- (i) any other factor which is considered appropriate.

6.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

6.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out:

- (a) the applicant's name,
- (b) the provisions of the agreement from which exemption has been granted,
- (c) the conditions relating to the exemption, and
- (d) the period for which the exemption shall operate.

6.10 The Council may withdraw a certificate of exemption granted to a party to this agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

6.11 The Independent Exemptions Body shall be constituted on an *ad hoc* basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

## 7. ADMINISTRATION AND ENFORCEMENT

7.1 The Council shall be responsible for the administration of this Agreement.



7.2 This Agreement shall be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Durban this 5th day of November 2003.

**S. SOMOYO**

Member of the Council (Representing SALGA)

**C. DUNSTAN**

Member of the Council (Representing IMATU)

**P. MASHISHI**

Member of the Council (Representing SAMWU)

**S. GOVENDER**

General Secretary of the Council

**No. R. 717**

**18 June 2004**

LABOUR RELATIONS ACT, 1995

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF  
DATA BANK COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council, and is binding in terms of section 31 of the Labour Relations Act, 1995 on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004 and for the period ending 30 June 2005.

**M. M. S. MDLADLANA**

Minister of Labour

**No. R. 717**

**18 Junie 2004**

WET OP ARBEIDSVERHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN  
DATABANK KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004 en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE**

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**

(hereinafter referred to as "the Council")

**DATA BANK COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the  
**South African Local Government Association**

(hereinafter referred to as "SALGA", or the "employers' organisation), of the one part

and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 and 6.4 shall not apply to non-parties.

**2. DEFINITIONS**

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and, unless the contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 11 February 2003 and shall remain in force until 30 June 2005.

3.2 This agreement shall come into operation in respect of non-parties on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2005.

**4. DATA BANK**

4.1 The parties record that SALGA has an existing data bank which contains certain information which SALGA has agreed to release to the South African Local Government Bargaining Council who in turn will share all information it has in its possession with the South African Local Government Association.

4.2 SALGA and/or the individual Municipalities will furnish to the Council the information set out in Schedule A, B and C contained in "Annexure X" hereto.

4.3 All employers bound by this agreement shall furnish the Council updated information in regard to the data specified in clause 4.1 above on a monthly basis. Such information shall be furnished in electronic format.

4.4 The Council agrees that the information released in terms of this agreement shall be treated on a confidential basis and shall not be released to any persons other than the parties to the Council acting through the structures of the Council.

**5. DISPUTE ABOUT IMPLEMENTATION AND APPLICATION OF THIS AGREEMENT**

5.1 Any person or party may refer a dispute about the interpretation or application of this collective agreement to the Central Council of the SALGBC.

5.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or the Central Council, or after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

5.3 The General Secretary or Regional Secretary as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved:

5.3.1 appoint a conciliator from the appropriate panel of conciliators, (doing so as far as possible on a rotational basis) or if the dispute remains unresolved;

5.3.2 refer the dispute to arbitration.

5.4 If a conciliator is appointed, the relevant General Secretary or Regional Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

5.5 If the dispute is referred to arbitration, the relevant General Secretary or Regional Secretary shall appoint an arbitrator from the appropriate panel or arbitrators, doing so as far as possible on a rotational basis.

5.6 The relevant General Secretary or Regional Secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

5.7 The arbitrator shall—

5.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and

5.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

5.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to the collective agreement.

## 6. EXEMPTIONS

6.1 Any person bound by this Agreement shall be entitled to apply for exemption from this Agreement.

6.2 All applications for exemption from any provisions of this agreement shall be in writing and lodged with the General Secretary. Such applications shall contain:

6.2.1 all material details of the applicant;

6.2.2 the exact collective agreement or provisions of a collective agreement from which the applicant seeks exemption;

6.2.3 detailed grounds on which such exemption is sought taking into consideration the criteria specified in clause 6.7 hereunder;

6.3 The Executive Committee shall consider all applications from a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 6.7, and on giving its reasons therefor, grant exemption on any conditions and for any period it considers appropriate.

6.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the Application subject to clause 6.7 and on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

6.5 All applications of appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 6.11 hereunder.

6.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.

6.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority).

- (a) an written and/or verbal substantiation provided by the applicant;
- (b) fairness to the employer, its employees and other employers and the employees in the industry;
- (c) whether an exemption, if granted would undermine this agreement or the collective bargaining process;
- (d) unexpected economic hardship occurring during the currency of this agreement and job creation and/or loss thereof;
- (e) the infringement of basic conditions of employment rights;
- (f) the fact that a competitive advantage might be created by the exemption;
- (g) comparable benefits or provisions where applicable;
- (h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or
- (i) any other factor which is considered appropriate.

6.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

6.9 The Council shall issue to every person granted an exemption in terms of this clause, a certificate of exemption setting out:

- (a) the applicant's name,
- (b) the provisions of this Agreement from which exemption has been granted;
- (c) the conditions relating to the exemption, and
- (d) the period for which the exemption shall operate.

6.10 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

6.11 The Independent Exemptions Body shall be constituted on an *ad hoc* basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

## 7. ADMINISTRATION AND ENFORCEMENT

7.1 The Council shall be responsible for the administration of this Agreement.

7.2 This Agreement will be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Durban this 5th day of November 2003.

**S. SOMOYO**

**Member of the Council (representing SALGA)**

**C. DUNSTAN**

**Member of the Council (representing IMATU)**

**P. MASHISHI**

**Member of the Council (representing SAMWU)**

**S. GOVENDER**

**General Secretary of the Council**

**ANNEXURE "X"**

### **SCHEDULE A**

#### **DATA SPECIFICATION FOR EXTRACTION OF SALARY INFORMATION**

The following is a data specification for the extraction of digital information for the establishment of the labour relations database for the SALGBC.

Item No	Field Name	Data Type	Field Size	Format	Description
1	LG Code	String	20	xxxxxxxxxxxxxxxxxxxxxxxx	The code of the municipality employing the employee (assigned by Municipal Demarcation Board).
2	Employee number	String	10	xxxxxxxxxx	Payroll reference number of employee.
3	ID number	String	13	xxxxxxxxxxxxxxxxxx	Employees ID number.
4	Date Birth	Date	10	DD/MM/YYYY	Date of birth.
5	Popgrp	String	1	x	Population group of employee where: A = African      C = Coloured I = Indian      W = White O = Other
6	Marital status	String	1	x	Marital status of employee where: M = Married      S = Single D = Divorced      X = Unknown W = Widow/Widower
7	Gender	String	1	X	Gender of employee where: F = Female      M = Male      X = Unknown
8	Dependants	Number	2	99	Number of dependants of employee.
9	Date entry service	Date/Time	10	DD/MM/YYYY	Date of entry of employee into municipal service.
10	Condition of service	String	30	xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxx	Applicable condition of service for the employee.



Item No	Field Name	Data Type	Field Size	Format	Description
11	Division	String	30	xx	The primary division in which the employee works. Eg. Water, Electricity, Corporate Services, Fire, Traffic etc.
12	Current Department	String	30	xx	The department within a division that employs the individual. Eg. Information, Technology, Human Resources, Public Relations, Valuations, etc.
13	Designation	String	30	xx	The position/job title of the employee, eg. Manager, Clerk, Cashier, Fire Chief, etc.
14	Position level	String	5	xxxxxxxxxx	Position Level/Grade of the employee.
15	Trade Union Name	String	30	xx	Name of Trade Union that employee belongs to (see Attached List).
16	Employee status	String	1	x	Status of the employee where: P = Permanent T = Temporary C = Contractor U = Unknown.
17	Work time	String	1	x	Daily work time of employee where: P = Part day F = Full day U = Unknown.
18	Pay frequency	String	1	x	Frequency of payment of employee where: M = Monthly W = Weekly F = Fortnightly U = Unknown.
19	Weekly working hours	Number	5	99.99	Total working hours of employee per week. Format hours and decimals of hours, e.g. 38,70.
20	Leave day type	String	1	x	Specifies how annual and sick leave days are interpreted. Where C = Calendar days. 5 = Working days (iro a 5 day work week). 6 = Working days (iro a 6 day work week).
21	Annual leave	Number	2	99	Number of leave days per year that the employee is entitled to per annum.
22	Accumulated days	Number	6	999.99	The number of leave days accumulated leave to date.
23	Pension fund name	String	6	xxxxxxxxxxxxxxxx	Name of the Pension, Provident or Retirement Fund to which the member belongs (see Attached List).
24	Med. aid name	String	30	xx	Name of the medical aid to which the employee belongs.



Item No	Field Name	Data Type	Field Size	Format	Description
41	Overtime	Number	7	9999.99	Amount paid last month as over-time.
42	Fire allowance	Number	7	9999.99	Fire & Rescue Services monthly operational allowance (iro operational or non-operational, see FRONo).
43	Other allowances	Number	7	9999.99	Any other allowances paid to the employee in the last month.
44	FRONo	String	1	x	O = Operational Fire & Rescue Services. N = Non-operational Fire & Rescue Services. Blank = n/a.

**SCHEDULE B****DATA SPECIFICATION FOR UNION/LEVY INFORMATION**

Item No.	FieldName	Data Type	Field Size	Format	Description
1	LG code	String	20	xxxxxxxxxxxxxxxxxxxxxx	The code of the municipality employing the employee (assigned by Municipal Demarcation Board).
2	Employee number	String	10	xxxxxxxxxx	Payroll reference number of employee.
3	ID Number	String	13	xxxxxxxxxxxxxx	Employees ID number.
4	Employee name	String	30	xxxxxxxxxxxxxxxxxxxxxx	Name of Employee.
5	SAMWU contribution	Number	6	999,99	Contribution deducted from monthly pay and paid to SAMWU.
6	IMATU contribution	Number	6	999,99	Contribution deducted from monthly pay and paid to IMATU.
7	Other contribution	Number	6	999,99	Contribution deducted from monthly pay and paid to Other unions.
8	SALGBC levy	Number	6	999,99	Contribution for SALGBC Levies.
9	Agency fees	Number	6	999,99	Contribution for Agency fees to SALGBC.

**SCHEDULE C****SALARY STRUCTURE**

(a) State title/Position of the Manager/Head of Department?	
(b) Indicate the total cost to the employer (annual) in terms of:	
Base salary	
Annual bonus	
Pension fund contribution by employer	

Medical aid contribution by employer	
Car allowance	
Housing subsidy/Allowances	
Performance bonus	
(c) Enter the number of annual leave days allowed.	
(d) Provide the formula for the calculation of the performance bonus.	

**No. R. 718****18 June 2004**

## LABOUR RELATIONS ACT, 1995

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF  
CONDITIONS OF SERVICE COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the schedule hereto, which was concluded in the South African Local Government Bargaining Council, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 31 December 2006.

**M.M.S. MDLADLANA, Minister of Labour****No. R. 718****18 Junie 2004**

## WET OP ARBEIDSVARHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN  
DIENSVOORWAARDES KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004, en vir die tydperk wat op 31 Desember 2006 eindig.

**M.M.S. MDLADLANA, Minister van Arbeid****SCHEDULE****THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**

(Hereinafter referred as the Council")

**COLLECTIVE AGREEMENT ON CONDITIONS OF SERVICE**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" or the "the employers' organisation"), of the one part, and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers' Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1. This agreement shall apply to all employees and employers who fall within the registered scope of the Council in the Republic of South Africa.



1.2 Clauses 4.1 and 14.4 shall not apply to non-parties.

1.3 Clause 6.1 shall not apply to Senior Management; security, traffic, fire and emergency services personnel; and employees working less than 24 hours per month.

## 2. DEFINITIONS

2.1 All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and unless the contrary intention appears.

2.2 Words importing the masculine gender shall include the feminine, and vice versa.

2.3 All references to days shall be to working days.

2.4 An annual leave cycle means the period of twelve (12) months employment with the same employer immediately following an employee's commencement of employment or following the completion of that employee's existing leave cycle.

2.5 Senior Management shall be those employees employed as a municipal manager, deputy municipal manager, executive director, head of department, deputy head of department, director or such post as determined by the relevant division of the Council.

2.6 Medical practitioners shall mean all practitioners as defined by the Health Professionals Council of South Africa (Medical and Dental Practitioners).

2.7 A division of the Council shall be the following regional structures:

2.7.1 Cape Metropolitan;

2.7.2 Eastern Cape;

2.7.3 eThekweni Metropolitan;

2.7.4 Free State;

2.7.5 Gauteng;

2.7.6 Johannesburg Metropolitan;

2.7.7 KwaZulu-Natal;

2.7.8 Limpopo;

2.7.9 Mpumalanga;

2.7.10 Northern Cape;

2.7.11 North-West;

2.7.12 Tshwane Metropolitan;

2.7.13 Western Cape.

## 3. OBJECTIVES

To establish common and uniform conditions of service for employees within the registered scope of the Council, and to replace all existing conditions of service referred to herein.

## 4. PERIOD OF OPERATION

4.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 January 2004 and shall remain in force until 31 December 2006.

4.2 This agreement shall come into operation in respect of non-parties on a date to be determined by the Minister of Labour and shall remain in force until 31 December 2006.

## 5. EXISTING CONDITIONS OF SERVICE

All existing conditions of service referred to herein that are more favourable to employees than those provided in terms of this Agreement shall continue in force until 31 December 2005 and shall terminate on that date.

## 6. HOURS WORK

6.1 All employees are required to work a 40-hour working week.

6.2 The determination of hours of work for uniform staff, specifically those excluded in clause 1.3 above, is delegated to be dealt with and finalized in the divisions of the Council.

## 7. ANNUAL LEAVE

7.1 An employer shall grant an employee the following annual leave in a leave cycle:

7.1.1 Twenty-four (24) days for a five (5) day worker; and

7.1.2 twenty-seven (27) days for a six (6) day worker.

7.2 An employee is required to take leave within each leave cycle as follows:

7.2.1 A five (5) day worker shall take a minimum of sixteen (16) days leave; and

7.2.2 a six (6) day worker shall take a minimum of nineteen (19) days leave.

7.3 All leave accrued as at 31 December 2003 shall be dealt with as follows:

7.3.1 The value of such accrued leave shall be determined at the rate of pay as at 31 December 2003.

7.3.2 Employees shall either take or encash such leave within a period of two (2) years calculated from 1 January 2004.

7.3.3 Notwithstanding the provisions of clause 7.3.2 above, an employee is entitled to retain a maximum of forty-eight (48) days of accrued leave.

7.4 Leave accumulated subsequent to 1 January 2004 may be accumulated to a maximum of forty-eight (48) days inclusive of those days referred to in clause 7.3.3.

7.5 Any leave excess of forty-eight (48) days may be encashed should the employee be unable to take such leave as a result of operational requirements. If, despite, being afforded an opportunity to take leave, an employee fails, refuses or neglects to take the remaining leave due to him during the period, such remaining leave shall fall away.

7.6 In the event of the termination of service, an employee shall be paid his leave entitlement calculated in terms of the relevant provisions of the Basic Conditions of Employment Act, 1997.

#### **8. SICK LEAVE**

8.1 An employer shall grant an employee eighty (80) days sick leave in a three (3) year leave cycle.

8.2 The employer shall require a medical certificate from a registered medical practitioner if more than two (2) consecutive days are taken as sick leave.

8.3 The employer is further not required to pay an employee if an employee is absent on more than two occasions during an eight-week period, and on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

8.4 The Divisions of the Council shall be responsible for concluding agreements on additional paid sick leave and other measures to manage the taking, accrual and/or conversion of sick leave and administrative arrangements for the taking of sick leave.

#### **9. MATERNITY LEAVE**

9.1 An employee shall be entitled to receive three (3) months paid maternity leave, with no limit to the number of confinements.

9.2 To qualify for paid maternity leave, an employee must have one (1) year's service with the employer.

9.3 In addition the employee will be required to work back the period of paid maternity leave actually taken.

#### **10. FAMILY RESPONSIBILITY LEAVE**

10.1 Family responsibility leave applies to an employee who has been in employment with an employer for longer than four (4) months.

10.2 An employer shall grant an employee during each annual leave cycle at the request of an employee, a total of five (5) days paid leave, which the employee is entitled to take, either when—

10.2.1 the employee's child is born;

10.2.2 the employee's child is sick;

10.2.3 the employee's spouse or life partner is sick;

10.2.4 in the event of death of,

10.2.4.1 the employee's spouse or life partner; or

10.2.4.2 the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

#### **11. HOUSING SUBSIDY**

11.1 The Home Owners Allowance shall be extended to all employees, subject to the requirements of the scheme, which provides for a subsidy in respect of a mortgage bond to a maximum amount of R85 000,00.

11.2 The amount of R85 000,00 shall be increased through a process to be determined between the parties to the Council and may be so increased during the term of this agreement.

#### **12. SEVERANCE PAY**

12.1 An employee, who is dismissed as a result of the employer's operational requirements, shall be entitled to a severance pay of three (3) weeks' remuneration for each completed year of service capped to the equivalent of nine (9) months remuneration, thereafter one week's remuneration for every completed year of service.

#### **13. DISPUTE ABOUT IMPLEMENTATION AND APPLICATION OF THIS AGREEMENT**

13.1 Any person or party may refer a dispute about the interpretation or application of this collective agreement to the Central Council of the Council.

13.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or the Central Council, or after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

13.3 The General Secretary or Regional Secretary as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved:

13.3.1 appoint a conciliator from the appropriate panel of conciliators (doing so as far as possible on a rotational basis), or if the dispute remains unresolved;

13.3.2 refer the dispute to arbitration.

13.4 Once a conciliator is appointed, the relevant General Secretary or Regional Secretary shall decide the date, time and venue of the conciliation meeting and shall service notices of these particulars on the parties to the dispute.

13.5 If the dispute is referred to arbitration, the relevant General Secretary or Regional Secretary shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.

13.6 The relevant General Secretary or Regional Secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

13.7 The arbitrator shall—

13.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and

13.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

13.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to the collective agreement.

#### 14. EXEMPTIONS

14.1 Any person bound by this agreement shall be entitled to apply for exemption from this agreement.

14.2 All applications for exemption form any provisions of this agreement shall be in writing and lodged with the General Secretary. Such applications shall contain—

14.2.1 all materials details of the applicant;

14.2.2 the exact collective agreement or provisions of a collective agreement from which the applicant seeks exemption;

14.2.3 detailed grounds on which such exemption is sought taking into consideration the criteria specified in clause 14.7 hereunder.

14.3 The Executive Committee shall consider all applications from a party/non-party to this agreement (which shall include the members of such party), and may, subject to clause 14.7, and on giving its reasons therefore, grant exemption on any conditions and for any period it considers appropriate.

14.4 A party aggrieved by a decision of the Executive Committee may appeal to the Central Council who shall consider the application subject to clause 14.7 and on giving its reasons therefore, may grant and exemption on any conditions and for any period it considers appropriate. The decision of the Central Council shall be final.

14.5 All applications of appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 14.11 hereunder.

14.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.

14.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Central Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

14.7.1 Any written and/or verbal substantiation provided by the applicant;

14.7.2 fairness to the employer, its employees and other employers and the employees in the industry;

14.7.3 whether an exemption, if granted would undermine this agreement or the collective bargaining process;

14.7.4 unexpected economic hardship occurring during the currency of this agreement and job creation and/or loss thereof;

14.7.5 the infringement of basic conditions of employment rights;

14.7.6 the fact that a competitive advantage might be created by the exemption;

14.7.7 comparable benefits or provisions where applicable;

14.7.8 the applicants' compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or

14.7.9 any other factor which is considered appropriate.

14.8 Having made a decision to grant or refuse and exemption application, the Independent Exemptions Body shall advise the applicants and the Council within fourteen (14) days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

14.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out—

- 14.9.1 the applicants' name;
- 14.9.2 the provisions of the agreement from which exemption has been granted;
- 14.9.3 the conditions relating to the exemption; and
- 14.9.4 the period for which the exemption shall operate.

14.10 The Council may withdraw a certificate of exemption granted to a party to this agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

14.11 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel or arbitrators set up in terms of its constitution.

## **15. ADMINISTRATION AND ENFORCEMENT**

15.1 The Council is responsible for the administration of this Agreement.

15.2 This Agreement will be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Durban on the 29th day of December 2003.

**S. SOMOYO**

**Member of the Council (Representing SALGA)**

**C. DUNSTAN**

**Member of the Council (Representing IMATU)**

**P. MASHISHI**

**Member of the Council (Representing SAMWU)**

**S. S. GOVENDER**

**General Secretary of the Council**

## **ADDENDUM TO THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN SALGA, IMATU AND SAMWU ON CONDITIONS OF SERVICE**

1. It is recorded that SALGA, IMATU and SAMWU have entered into a collective agreement on conditions of service.
2. In terms of clause 3.2 of the said collective agreement, all existing conditions of service referred to in the collective agreement, except for working hours, which are more favourable to employees than those provided for in the collective agreement, shall continue in force and effect until 31 December 2005.
3. For the purpose of certainty, the following conditions of service are regarded as more favourable:
  - 3.1 Annual leave for five (5) day workers in excess of twenty four (24) working days.
  - 3.2 Annual leave for six (6) day workers in excess of twenty seven (27) working days.
  - 3.3 Sick leave dispensations that are more favourable than eighty (80) working days over a 3 year cycle.
  - 3.4 Maternity leave benefits that are more favourable than that which is set out in clause 9 of the collective agreement.
  - 3.5 Family responsibility leave in excess of five (5) working days leave.
  - 3.6 Housing subsidies that are more favourable than the bond calculation of R85 000,00.
  - 3.7 Severance pay, which is more favourable than that which is set out in clause 12 of the collective agreement.
4. In terms of clause 7.3.1 of the said collective agreement the parties record the following:
  - 4.1 The parties can not reach consensus on the interpretation in respect of the calculation of accrued leave.
  - 4.2 IMATU and SAMWU record the accrued leave must be calculated on remuneration.
  - 4.3 SALGA records that accrued leave must be calculated on the rate of pay.
  - 4.4 The parties will finalise the interpretation in respect of the calculation of accrued leave by considering either—
    - 4.4.1 a directive in respect of the interpretation from the Department of Labour; or
    - 4.4.2 the parties mutually agreeing on such interpretation.
5. The parties shall conclude a separate agreement on or before 15 February 2004 setting out the practical implementation of the main agreement pursuant to the phasing out of the better conditions of service (refer to paragraph 5.1 of the agreement).



No. R. 719

18 June 2004

## LABOUR RELATIONS ACT, 1995

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF DISCIPLINARY PROCEDURE  
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 31 January 2007

**M. M. S. MDLADLANA**  
Minister of Labour

No. R. 719

18 June 2004

## WET OP ARBIEDSVERHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN DISSIPLINÊRE PROSEDURE  
KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004, en vir die tydperk wat op 31 Januarie 2007 eindig.

**M. M. S. MDLADLANA**  
Minister van Arbeid

**SCHEDULE**

**SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL**  
(Hereinafter referred to as the "Council")

**DISCIPLINARY PROCEDURE  
COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA", or the "Employers' organisation"), of the one part, and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers' Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 clause 7.4 shall not apply to non-parties.

**2. DEFINITIONS**

2.1 All expressions used in this agreement, which are defined in the Labour Relations Act, 1995, shall bear the same meanings as in the Act and unless the contrary intention appears, words importing the masculine gender shall include the feminine, and *vice versa*.

2.2 All references to days shall be a reference to working days.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 February 2004 and shall remain in force until 31 January 2007. Any action that commenced prior to the effective date shall be regulated by the terms of the then existing code.

3.2 This Agreement shall come into operation in respect of non-parties, on a date to be determined by the Minister of Labour and shall remain in force until 31 January 2007.

**4. INTENT**

4.1 The purpose of this code is to establish a common and uniform procedure for the management of employee discipline and to replace all existing procedures and regulations.

4.2 The code is a product of collective bargaining and the application thereof is peremptory and is deemed to be a condition of service.

**5. DISCIPLINARY POLICY**

5.1 Discipline is to be effected fairly, consistently, progressively and promptly.

5.2 The maintenance of discipline is the responsibility of management and falls within the control function of any supervisory position.

5.3 The principles of natural justice and fair procedure must be adhered to notwithstanding any criminal and/or civil action having been instituted.

5.4 Subject to the requirements of substantive and procedural fairness, the tribunal has the right to determine the sanction to be applied, having regard to the seriousness of the offence and provided that the sanction is consistent with the provisions set out herein.

5.5 This procedure must be published and issued to all employees so that they are made aware, explicitly, of the standard of conduct at the workplace.

5.6 This procedure, as amended from time to time, will define the disciplinary process and the rights and obligations of management and employees.

**6. DISCIPLINE PROCEDURE**

6.1 An accusation of misconduct against an employee shall be brought in writing before the Municipal Manager or his authorised representative for investigation. If the Municipal Manager or his representative is satisfied that there is *prima facie* cause to believe an act of misconduct has been committed, he may institute disciplinary proceedings. The employer shall proceed forthwith or as soon as reasonably possible with a disciplinary enquiry.

6.2 Depending on the seriousness of the misconduct, the Municipal Manager or his representative may refer the matter before either a departmental enquiry or disciplinary tribunal. A departmental enquiry proceeding shall be reserved only for matters where the competent sanction is a verbal or final written warning. In proceedings before a departmental enquiry the employee shall enjoy the same rights as he would have had before a disciplinary tribunal.

6.3 If in the opinion of the Municipal Manager or his representative the misconduct is serious and may result in a sanction of suspension, demotion or dismissal, a disciplinary tribunal shall be established to conduct the enquiry.

6.4 In which event—

6.4.1 the Municipal Manager or his authorised representative shall constitute a disciplinary tribunal by appointing a suitably qualified person to serve as the presiding officer. In general a person appointed to serve as the presiding officer should be a senior employee in the employ of the employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.

6.4.2 The Municipal Manager or his authorised representative shall also appoint a person to be referred to as the prosecutor to represent the employer and to serve the function of prosecution. In general a person appointed to serve as prosecutor should be a person in the employ of the employer. However if this is not possible or desirable, any suitably qualified person may be appointed.

6.5 The Prosecutor shall, within five (5) days of his appointment, formulate and present the charges to be brought against the employee. The charge(s) is (are) to be sent out in a notice of misconduct detailing—

6.5.1 the alleged misconduct as is contemplated in “Annexure A” hereto;

6.5.2 the time, date and venue at which the enquiry will be conducted;

6.5.3 the name of the presiding officer and the prosecutor and the address at which notices and correspondence may be served on the disciplinary tribunal;

6.5.4 the fact that the employee may appoint a representative of choice who may be a fellow employee, shop steward, union official and if this is not possible or desirable, any suitably qualified person; and

6.5.5 the fact that if the employee or his representative fails to attend the enquiry it may be conducted *in absentia*.

6.5.6 The employee should, whenever possible, acknowledge receipt of the notice.

6.5.7 The disciplinary enquiry should commence on a date not less than five (5) days or more than fifteen (15) days calculated from the date of service of the notice of misconduct on the employee.

6.5.8 The period referred to in clause 6.5.7 above may be varied by agreement and failing agreement, either party may apply to the disciplinary tribunal for an extension of the period.

6.5.9 The disciplinary tribunal, on good cause shown, may extend any period of time fixed by or under this clause provided a return date is fixed and made certain.

## 7. CONDUCT OF THE ENQUIRY

7.1 The hearing shall be conducted by the presiding officer who may determine the procedure to be followed subject to the following:

7.1.1 The rules of natural justice must be observed in the conduct of the proceedings;

7.1.2 unless otherwise agreed to by the parties, the hearing must be adversarial in nature and character; and

7.1.3 the presiding officer in discharging this obligation is to exercise care, proceed diligently and act impartially.

7.2 The prosecutor shall bear the duty to commence and the burden to prove each and every allegation(s) on a balance of probability set out in the notice of misconduct.

7.3 In discharging these duties, the prosecutor shall be entitled to call before the disciplinary tribunal any witnesses and produce any books, documents or things; and—

7.3.1 subject to legal objection cross-examine any witness called to testify on behalf of the employee and inspect any books, documents or things produced; and

7.3.2 present argument based on the evidence in support of any submission.

7.4 The employee summoned before the disciplinary tribunal shall have the right to be heard in person or through a representative and to call before the disciplinary tribunal any witness and produce any books, documents or things; and—

7.4.1 cross-examine any witness subject to legal objection called to testify on behalf of the employer and to inspect any books, documents or things produced; and

7.4.2 present argument based on the evidence in support of any submission.

7.5 The presiding officer shall have the power to—

7.5.1 determine the procedure to be followed for the conduct of the enquiry that he deems appropriate with the minimum of legal formalities provided that the rules of natural justice shall be observed.

7.5.2 put questions, without cross-examining, to the parties or their witness on any matter relevant to the issues;

7.5.3 proceed with the enquiry in the absence of a party who is in wilful default or fails to attend any meeting despite the expiry of a notice to attend;

7.5.4 make such interim determinations or rulings as he deems necessary;

7.5.5 propose to the parties compromise settlements in disposal of the whole or portion of the issues;

7.5.6 make a finding of fact after having considered the evidence;

- 7.5.7 invite and hear any plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose; and
- 7.5.8 impose, inter alia, any of the following sanctions:
  - 7.5.8.1 written warning;
  - 7.5.8.2 final written warning;
  - 7.5.8.3 transfer to another position either with or without financial loss;
  - 7.5.8.4 suspension without pay for a maximum of ten (10) days as is furthermore referred to in clause 2.5.3 of "Annexure A" hereto;
  - 7.5.8.5 the withholding of any salary increment for a period not exceeding twelve months;
  - 7.5.8.6 demotion to another post with or without financial loss; or
  - 7.5.8.7 dismissal.

7.6 The presiding officer shall within ten (10) days of the last day of the hearing confirm in writing the findings of fact, sanction imposed and the reasons in support thereof and provide a copy of the determination to the Municipal Manager or his representative and to the employee or his representative.

#### SUMMARY PROCEDURE

7.7 If the employer and the employee so agree in writing, the summary procedure as set out hereunder may apply to the proceedings. The presiding officer shall, at such meeting(s) with the parties, as he/she deems necessary—

- 7.7.1 confirm that the matter is ready for adjudication;
- 7.7.2 ascertain and record in writing, signed by himself/herself and the parties, the facts on which the parties agree and those on which they disagree herein called the "issues";
- 7.7.3 receive from the parties such documents or copies thereof as they consider relevant to the determination of the issues;
- 7.7.4 receive evidence or submissions, orally or in writing, sworn or un-sworn at joint meetings with the parties or, if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the presiding officer provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other;
- 7.7.5 deliver a determination, in writing, within ten (10) days of the last day of the hearing or submission of the last document to the presiding officer, if there was no hearing.

#### 8. RIGHT OF RESIGNATION

8.1 An employee who receives a notice of misconduct shall be entitled to resign from employment or to retire, if eligible, in terms of the retirement fund rules, provided that—

- 8.1.1 the employee does so prior to the handing down of a determination;
- 8.1.2 employee consents in writing to the deductions of all and any amounts owing by him to the employer from any monies payable to him by the employer (including but not limited to retirement fund monies) arising out of or in connection with his resignation or retirement. In such an event the disciplinary enquiry shall not proceed.

#### 9. DISCIPLINARY TRIBUNAL

9.1 In general a person appointed to serve as the presiding officer should be a senior employee in the employ of the employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.

9.2 During the conduct of the enquiry the employee may make application on good cause shown for the recusal of the presiding officer.

9.3 The presiding officer shall not consult, confer or have casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other party.

9.4 The determination of the disciplinary tribunal shall be final and binding on the employer save that the employee may lodge an appeal thereto.

9.5 In general a person appointed to serve as prosecutor should be a person in the employ of the employer. However, if this is not possible or desirable, any suitably qualified person may be appointed.

#### 10. RECORDING

10.1 The proceedings of the disciplinary tribunal shall be recorded by means of a mechanical device.

10.2 The record of the proceedings shall be kept in safe custody by the employer and upon request a copy thereof provided to the employee or his representative.

#### 11. NON-ATTENDANCE

In the event of the failure by the employee, or a duly appointed representative, to attend an enquiry or appeal without good cause and after proper service of the Notice of Misconduct was affected, the enquiry may be conducted *in absentia* and discipline effected.



## 12. RIGHT OF REPRESENTATION

An employee shall be entitled to representation at any enquiry by an employee, a shop steward or union official who is willing and able to represent the employee and, if this is not possible or desirable, any suitable qualified person.

## 13. SUSPENSION

13.1 The employer may at any time before or after an employee has been charged with misconduct, suspend the employee or utilise him temporarily in another capacity should the Municipal Manager be of the opinion that it would be detrimental to the interests of the employer if the employee remains in active service.

13.2 If the Municipal Manager intends to suspend an employee he shall give notice of such intention and afford the employee with an opportunity to make representation as to why he should be suspended. The enquiry shall be done by means of the summary procedure as provided for herein.

13.3 The suspension or utilization in another capacity shall be for a fixed and pre-determined period and at any rate shall not exceed a period of three (3) months. Any person affected shall be on full remuneration.

## 14. APPEAL

14.1 The employee has the right to appeal against any disciplinary sanction, which has been given at a disciplinary enquiry.

14.2 An appeal must be lodged on the prescribed form within five (5) days of receipt of written notification of the disciplinary decision and the grounds of appeal must be clearly set out provided that the failure by a party to raise a ground of appeal shall not preclude that party from subsequently raising it before the disciplinary appeal tribunal.

14.3 Appeals will be heard by a management level above that of the presiding officer of the enquiry in the case of final written warnings and by a higher level of management who does not exercise direct management control over the affected employee in the case of dismissals and suspensions without pay.

14.4 By agreement, an appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.

14.5 The appeal will only be heard on the grounds of an appeal submitted by the employee and any amendment thereto and by having regard to the record of the proceedings and submissions and arguments based thereon. The appeal should not entail the rehearing of the matter *de novo*.

14.6 The presiding officer of the Disciplinary Appeal Tribunal shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed.

14.7 The presiding officer of the Disciplinary Appeal Tribunal shall fix the time and date of the hearing which will take place within ten (10) days of the date of appointment. In consultation with the parties, the presiding officer may vary the time and date and order a mutually convenient time, date and place.

14.8 The parties shall deliver to the other and to the presiding officer a brief statement of case at least two (2) days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.

14.9 The statement of case shall concisely set out the facts upon which the party relies, the conclusions of law upon which the party relies and the relief which the party seeks.

14.10 The hearing will be conducted by the presiding officer in whatever manner and procedure, including the summary procedure as set out in clause 7.7 above that will produce the most expeditious hearing of the matter.

14.11 The Disciplinary Appeal Tribunal is to consider whether the disciplinary enquiry and sanction was fair. The Presiding Officer in his sole discretion shall be entitled to make whatever order he deems reasonable in the circumstance.

14.12 The Disciplinary Appeal Tribunal shall make its determination, in writing, within ten (10) days from the last day of the hearing and provide a copy of the determination to the Municipal Manager or his representative and to the employee or his representative.

## 15. PRE-DISMISSAL ARBITRATION

An employer may, with the consent of the employee, request the Bargaining Council, an accredited agency or the Commission for Conciliation, Mediation and Arbitration to conduct an arbitration into allegations about the conduct or capacity of an employee as provided for under section 188 A of the Labour Relations Act, 1995.

The provisions of Section 138 of the Labour Relations Act, read with the changes required by the context, applies to any pre-dismissal arbitration.

## 16. DISPUTE ABOUT IMPLEMENTATION AND APPLICATION OF THIS AGREEMENT

16.1 Any person or party may refer a dispute about the interpretation or application of this Collective Agreement to the Central Council of the SALGBC.

16.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or to the Central Council, or in the event that after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

16.3 The General Secretary or Regional Secretary as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved; shall—

16.3.1 appoint a conciliator from the appropriate panel of conciliators, doing so as far as possible on a rotational basis and

16.3.2 if the dispute remains unresolved; refer the dispute to arbitration.

16.4 If a conciliator is appointed, the General Secretary or Regional Secretary concerned shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

16.5 If the dispute is referred to arbitration, the General Secretary or Regional Secretary concerned shall appoint an arbitrator from the appropriate panel or arbitrators, doing so as far as possible on a rotational basis.

16.6 The General Secretary or Regional Secretary concerned, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

16.7 The arbitrator shall—

16.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and

16.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

16.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Collective Agreement.

## 17. EXEMPTIONS

17.1 Any person or Party bound by this Agreement shall be entitled to apply for exemption from this Agreement.

17.2 All applications for exemption from any provisions of this Agreement shall be in writing and lodged with the General Secretary. Such applications shall set out—

17.2.1 all material details of the applicant;

17.2.2 the specific provisions of this Collective Agreement from which the applicant seeks exemption;

17.2.3 detailed grounds on which such exemption is sought, taking into consideration the criteria contained in clause 17.7 below.

17.3 The Executive Committee shall consider all applications made by a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 17.7, and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

17.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the Application subject to clause 17.7 and, on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

17.5 All applications for an appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 17.11 hereunder.

17.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.

17.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

(a) Any written and/or verbal substantiation provided by the applicant;

(b) fairness to the employer, its employees and other employers and the employees in the Industry;

(c) whether an exemption, if granted, would undermine this agreement or the collective bargaining process;

(d) unexpected economic hardship occurring during the currency of this Agreement, and job creation and/or losses;

(e) the infringement of basic conditions of employment;

(f) the fact that a competitive advantage might be created by the exemption;

(g) comparable benefits or provisions where applicable;

(h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act 55 1998, the Skills Development Act 97 1998, the Skills Development Act 9 1999, or the Unemployment Insurance Act 63 2001; or

(i) any other factor which is considered appropriate.

17.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within ten (10) days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

17.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out—

- (a) the applicant's name;
- (b) the provisions of this Agreement from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

17.10 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

17.11 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

Signed by the parties at Kempton Park this 3rd day of February 2004.

**F. RATLHAGA**

**Member of the Council (Representing SALGA)**

**C. DUNSTAN**

**Member of the Council (Representing IMATU)**

**P. MASHISHI**

**Member of the Council (Representing SAMWU)**

**S. GOVENDER**

**General Secretary of the Council**

## **ANNEXURE A**

### **CONDUCT AND SANCTIONS**

#### **1. STANDARD OF CONDUCT**

- 1.1 Employees are expected to comply in every respect with the conditions of employment and collective agreements and any related regulation, order, policy and practice and to refrain from any conduct which would give just cause for discipline.
- 1.2 In particular, employees should—
  - 1.2.1 Attend work regularly and punctually;
  - 1.2.2 Conform to the reasonable dress and uniform requirements of the employer;
  - 1.2.3 Perform their tasks and job responsibilities diligently, carefully and to the best of their ability;
  - 1.2.4 Obey all lawful and reasonable instructions given by a person having the authority to do so;
  - 1.2.5 Conduct themselves with honesty and integrity;
  - 1.2.6 Request permission in advance for any leave of absence whenever possible;
  - 1.2.7 Refrain from being absent from duty without leave or permission, except on good cause;
  - 1.2.8 Refrain from accepting any other employment outside of normal working hours without the prior permission of the Department Head or Municipal Manager, which permission shall not be unreasonably withheld;
  - 1.2.9 Refrain from any rude, abusive, insolent, provocative, intimidatory or aggressive behaviour to a fellow employee or member of the public;
  - 1.2.10 Refrain from wilful or negligent behaviour, which may result in the damage of property;
  - 1.2.11 Refrain from participating, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the employer, other than actions contemplated by the Labour Relations Act, 1995;
  - 1.2.12 Refrain from wrongfully disclosing privileged information; and
  - 1.2.13 Refrain from consuming alcohol or using intoxicating drugs whilst on duty.

#### **2. SANCTIONS FOR MISCONDUCT**

- 2.1 In accordance with the Disciplinary Policy, any sanction that is imposed for misconduct will be intended to deter future repetition of that behaviour. The sanction imposed must be based on the seriousness of the offence and considering the employee's disciplinary record;

- 2.2 The imposition of discipline is progressive in that sanctions are to be applied with increasing severity with the repetition of the offence. Sanctions will generally be applied by first issuing a written warning and then a final written warning, except in cases of misconduct which would constitute grounds for immediate dismissal or suspension without pay or the immediate imposition of a final written warning.
- 2.3 All written warnings and suspensions are to be recorded in the employee's personal file.
- 2.4 A written warning will remain valid and on the record of the employee for a period of six (6) months from the date of imposition.
- 2.5 The employer may impose as a sanction a suspension without pay having regard either to the serious nature of the misconduct or the fact that there has been a previous warning or warnings for the same behaviour in which event—
- 2.5.1 the maximum period will be ten (10) days;
  - 2.5.2 the period of suspension will run consecutively;
  - 2.5.3 in the event of a suspension in excess of five (5) days, the suspension without pay shall be spread over three (3) monthly pay periods;
- 2.6 a suspension without pay shall be regarded as a sanction more serious than a final written warning.
- 2.7 As a guideline, an employee may be dismissed on the first occasion for, *inter alia*:—
- 2.7.1 intimidation, fighting and/or assault;
  - 2.7.2 theft, unauthorised possession of or malicious damage to the employer's property;
  - 2.7.3 being under the influence of alcohol or intoxicating drugs whilst on duty such that performance is seriously impaired or diminished;
  - 2.7.4 the consumption of alcohol or intoxicating drugs whilst on duty if the nature of work to be performed is such that intoxication endangers the safety of the employee or that of others;
  - 2.7.5 any act of gross dishonesty;
  - 2.7.6 any act of gross negligence;
  - 2.7.7 gross insubordination;
  - 2.7.8 wrongful disclosure of privileged information;
  - 2.7.9 any act of bribery or corruption; and
  - 2.7.10 any other act of misconduct which would constitute just cause for dismissal.

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**No. R. 720****18 June 2004****LABOUR RELATIONS ACT, 1995****SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF  
TASK JOB EVALUATION COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council, and is binding in terms of section 31 of the Labour Relations Act, 1995 on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004 and for the period ending 30 June 2005.

**M. M. S. MDLADLANA****Minister of Labour**

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**No. R. 720****18 Junie 2004****WET OP ARBEIDSVERHOUDINGE, 1995****SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN  
WERKTAAK EVALUERINGS KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004 en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA****Minister van Arbeid**



**SCHEDULE**  
**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**  
 (hereinafter referred to as "the Council")

**TASK JOB EVALUATION COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the  
**South African Local Government Association**

(hereinafter referred to as "SALGA", or the "employers' organisation"), of the one part  
 and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and by all employees who fall within the registered scope of the Council.

1.2 Municipal Managers and persons appointed as managers directly accountable to Municipal Managers in terms of Section 57 of the Municipal Systems Act shall be excluded from this particular agreement.

1.3 Clauses 3.1 and 7.4 of this Agreement shall not apply to non-parties.

**2. DEFINITIONS**

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in that Act and, unless the contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 September 2002 and shall remain in force until 30 June 2005.

3.2 This agreement shall come into operation in respect of non-parties on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2005.

**4. OBJECTS**

The object of this Agreement is to make provision for job evaluation.

**5. TASK EVALUATION**

The parties have reached agreement on the implementation of the Task Job Evaluation System and the procedural manual in respect of this Task Job Evaluation System is annexed hereto marked "A".

**6. DISPUTE ABOUT INTERPRETATION OR APPLICATION OF THIS AGREEMENT**

6.1 Any person or party may refer a dispute about the interpretation or application of this Collective Agreement to the Central Council of the SALGBC.

6.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or to the Central Council, or in the event that after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.



6.3 The General Secretary or Regional Secretary, as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive, and in the event of a dispute not being resolved, shall—

6.3.1 appoint a conciliator from the appropriate panel of conciliators, doing so as far as possible on a rotational basis, and

6.3.2 if the dispute remains unresolved, refer the dispute to arbitration.

6.4 If a conciliator is appointed, the relevant General Secretary or Regional Secretary concerned shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

6.5 If the dispute is referred to arbitration, the relevant General Secretary or Regional Secretary shall appoint an arbitrator from the appropriate panel or arbitrators, doing so as far as possible on a rotational basis.

6.6 The General Secretary or Regional Secretary concerned, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

6.7 The arbitrator shall—

6.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and

6.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

6.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this collective agreement.

## 7. EXEMPTIONS

7.1 Any person bound by this Agreement shall be entitled to apply for exemption from this Agreement.

7.2 All applications for exemption from any provision of this Agreement shall be in writing and lodged with the General Secretary. Such application shall set out—

7.2.1 all material details of the applicant;

7.2.2 the specific provisions of this Collective Agreement from which the applicant seeks exemption;

7.2.3 detailed grounds on which such exemption is sought, taking into consideration the criteria contained in clause 7.7 below;

7.3 The Executive Committee shall consider all applications made by a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 7.7, and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

7.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the application subject to clause 7.7 and on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

7.5 All applications for an appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council.

7.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the application fairly and quickly, which may include the hearing of evidence and arguments.

7.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

- (a) Any written and/or verbal substantiation provided by the applicant;
- (b) fairness to the employer, its employees and other employers and employees in the Industry;
- (c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;
- (d) unexpected economic hardship occurring during the currency of this Agreement, and job creation and/or loss;
- (e) the infringement of basic conditions of employment;
- (f) the fact that a competitive advantage might be created by the exemption;
- (g) comparable benefits or provisions where applicable;
- (h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or
- (i) any other factor which is considered appropriate.

7.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

7.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out—

- (a) the applicant's name;
- (b) the provisions of this agreement from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

7.10 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

7.11 The Independent Exemptions Body shall be constituted on an *ad hoc* basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

## **8. ADMINISTRATION AND ENFORCEMENT**

8.1 The Council shall be responsible for the administration of this Agreement.

8.2 This Agreement shall be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Durban this 5th day of November 2003.

**S. SOMOYO**

**Member of the Council (Representing SALGA)**

**C. DUNSTAN**

**Member of the Council (Representing IMATU)**

**P. MASHISHI**

**Member of the Council (Representing SAMWU)**

**S. GOVENDER**

**General Secretary of the Council**

## **TASK JOB EVALUATION SYSTEM**

### **ANNEXURE "A"**

#### **PREAMBLE**

Part one sets out the structures and processes to be adopted during the initial project to implement the Task Job Evaluation System within the Municipal Sector.

Part two sets out the structures to be established at the end of the implementation phase in order to maintain the system. On the one hand this provides for employees to apply for re-evaluation of their jobs and on the other for continued monitoring and review of the established system and its reliability.

The Implementation project is a consequence of an agreement by the South African Legal Government Bargaining Council (SALGBC) that there needs to be a uniform Job Evaluation System within the local government sector. It is the view of all parties that such uniformity is essential for a variety of sector processes such as wage bargaining, comparative understanding of workforce establishment levels and organisational form, sector skills, planning and the organisation of education and training.

This procedural document must be read in the context of the Task Job Evaluation System, Task Job Evaluation System Training Manuals and the Task Job Evaluation Notes for the Municipal Sector.

It is intended to guide the process to prevent unnecessary disagreements and disputes from slowing down implementation. It is the objective to seek to complete the initial implementation phase within a period of approximately 18 months.

It is important that this process be as inclusive as possible and enjoys general acceptance by employees. No employee will end up with any less favourable terms and conditions of employment than they currently enjoys as a result of the job evaluation exercise. On the other hand employees must not expect that the implementation phase can provide satisfaction to every individual. It is also important to understand that the negotiations to align wages to the new evaluations are not automatically about wage increases for every employee but an exercise in conversion from existing Job Evaluation Systems to a single system.

The first step is it to get the system implemented. Thereafter every individual will have the opportunity to apply for re-evaluation of their post in the event that they feel that their grade level does not fairly reflect their job content or that their job content has changed since the time of its initial evaluation.

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**PART ONE: THE PROJECT TO IMPLEMENT THE TASK SYSTEM****SECTION A: IMPLEMENTATION STRUCTURES****1. JOB EVALUATION REGIONS**

- 1.1 Job Evaluation Regions are the demarcated jurisdictions within which Principal Job Evaluation Committees (PJECs) will be established for the duration of the implementation phase.
- 1.2 Every Metropolitan Council shall be a Job Evaluation Region.
- 1.3 Further Job Evaluation Regions shall be determined by the Executive Committee of the SALGBC on recommendations made by Provincial Divisions of the SALGBC.
- 1.4 Such recommendations must at minimum be inclusive of one district area where there is a high concentration of employees or propose a combination of districts areas where there is a lower concentration of employees.<sup>1</sup>

**2. ESTABLISHMENT OF JOB EVALUATION REGIONS**

- 2.1 The General Secretary shall address a letter to the Metropolitan Division or Metropolitan Labour Forums<sup>2</sup> requesting that they take steps to:
  - (a) consult on councils arrangements in respect of the designation of a Job Evaluation Manager<sup>3</sup>, the allocation of staff to establish a Job Evaluation unit and matters of administrative and technical support for implementation;
  - (b) arrange for the appointment by parties of PJEC members;
  - (c) make arrangements for full time release for PJEC members with effect from the date of implementation;
  - (d) convene an initial PJECs meeting to discuss preparations and forward planning for the commencement of implementation;
  - (e) initiate the job description writing process as set out in 2 of Section C.
- 2.2 The General Secretary of the SALGBC shall write to the Provincial Divisions requesting that they make recommendations on the establishment of Job Evaluation Regions under their division.

<sup>1</sup> The term "District Area" is as used in the Structures Act and means the Districts Council and all local Councils within its demarcated area.

<sup>2</sup> Nelson Mandela and Ekurhuleni Metropolitan Councils only have Local Labour Forums the rest have Metropolitan Divisions.

<sup>3</sup> There must be one Manager appointed to take overall responsibility. This person is referred to as the designated JE Manager. Other managers who may be part of the process may have a workplace job title of evaluation manager, but for the purposes of this agreement is not the designated JE Manager. They may be part of the Job Evaluation Unit and are referred to as job evaluation practitioners.

- 2.3 Subject to the SALGBC Executive Committee's approval or amendment of their recommendations, the Provincial Divisions shall undertake such further steps as are necessary to ensure that—
  - (a) the municipalities concerned designate a Job Evaluation Manager for the approved Job Evaluation Regions;
  - (b) consult on such Municipalities arrangements in respect of the allocation of staff to establish a Job Evaluation Unit and such further steps as may be necessary to establish the administrative and technical support for implementation;
  - (c) arrange for the appointment by parties of PJEC members;
  - (d) make arrangements for full time release for PJEC members with effect from date of implementation;
  - (e) convene an initial PJECs meeting to discuss the preparations and forward planning for the commencement of implementation;
  - (f) initiate the job description writing process as set out in 2 of Section C;

**3. PRINCIPAL JOB EVALUATION COMMITTEES (PJECs)****3.1 Composition and Duration**

- 3.1.1 PJECs shall be composed of the following employer and trade union parties:
  - (a) Four (4) Employer representatives including the designated Job Evaluation Manager;
  - (b) Four (4) Labour representatives being two (2) from SAMWU and two (2) from IMATU.
- 3.1.2 A consultant will be attendance at the initial phase, as per the contract with HCC, and thereafter as and when required in a technical, monitoring and advisory role.
- 3.1.3 Parties may appoint in each job evaluation region alternatives and may replace a representative at any time subject to such alternates or representative being adequately trained.<sup>4</sup>
- 3.1.4 If for any reason a representative withdraws, or is removed, from the committee it is the responsibility of the party to nominate a replacement to take up such vacancy subject to training and certification.



- 3.1.5 No observers are allowed to attend committee meetings except where agreed in relation to training.
- 3.1.6 The parties undertake to make every effort to appoint representatives who have a good understanding and experience of the local government workforce context.
- 3.1.7 PJECs operate on a full time basis during the implementation phase and continue for function thereafter in the second phase as and when required.

<sup>4</sup> Note that the employer and unions are the defined parties. While alternates and replacement are allowed it is not encouraged. As far as possible all representatives must be withdrawn from other duties to work full time on job evaluation.

### **3.2 Powers and Functions**

- 3.2.1 A PJEC is responsible for preparation, supervision, planning, and implementation of the process of evaluation of all post levels and jobs on its area or jurisdiction, subject to the resolution of a dispute as to whether the Municipal Systems Act, Section 57 Managers are included or excluded from job evaluation, subject to the guidelines set out below.
- 3.2.2 Any proposed changes to implementation plans or arrangements must be submitted to the committee for prior approval.
- 3.2.3 A co-ordinated communication strategy must be devised to inform the workforce on the task job evaluation system and its implementation.
- 3.2.4 Function in terms of procedural norm and processes of work as set out under 3 of section C.
- 3.2.5 PJECs make all decisions through consensus.
- 3.2.6 The quorum for any meeting is a minimum of one representative from each party.
- 3.2.7 To fulfil its functions a PJEC shall be provided with access to all relevant data and records which may be necessary to plan implementation and to provide insight into evaluation as set out in Annexure A.<sup>5</sup>
- 3.2.8 The PJEC may conduct any site or job process inspections or demonstrations of technology that are necessary to provide insight to assist with job evaluation.
- 3.2.9. The PJEC may, as set out in 2.1.7 of section C amend and approve a job description for purposes of evaluation.
- 3.2.10 The PJEC may establish SJECs as it deems necessary to achieve the implementation of its objectives subject to the approval of the Moderation Commission.
- 3.2.11 The PJEC is required to confirm, or amend and confirm, the evaluation outcomes determined by all SJEC.
- 3.2.12 The PJEC shall remain functionally responsible for the operational conduct of job evaluation notwithstanding its establishment of SJECs.
- 3.2.13 The PJEC is responsible for all functions related to ensuring consistency in the application of the process throughout its jurisdiction and such responsibilities may not be delegated to a SJEC.
- 3.2.14 The PJEC is responsible for ensuring that the external auditing process is conducted as frequently as may be determined and must adhere to any rulings made by the Moderation Commission.
- 3.2.15 The provisional outcomes report of a PJECs is subject to ratification by the Moderation Commission as a Final Outcomes Report prior to notification of any employee. [see further under section D 1]
- 3.2.16 The PJECs function under the relevant division of the SALGBC in respect of any disputes that may arise as detailed below.

<sup>5</sup> Annexure A is intended to set out obvious information on which there should be no dispute about disclosure and other matters where disclosure may be contested.

- 3.2.17 The PJEC exercises the above powers through consensus and in the event of any failure to agree on the exercise of such powers shall refer the matter to each party, to the Moderation Commission in the case of a disagreement, or to the SALGBC in respect of any dispute, as set out under section B.
- 3.2.18 The PJECs may make recommendations to the Moderation Commission on any matter they consider may assist in the uniform implementation of job evaluation or the relationalisation of job title designations.

### **3.3 Rights and Responsibilities of Members**

- 3.3.1 All nominees for membership shall make a written undertaking to undergo training as job evaluators.
- 3.3.2 Members shall report to work through the designated Job Evaluation Manager in terms of normal working hours that shall not be less than an 8-hour working day.
- 3.3.3 All members shall acknowledge in writing the normal starting and finishing hours that are agreed.
- 3.3.4 Members of the committee shall maintain confidentiality on all scores and grading outcomes prior to formal notification and shall otherwise avoid disclosing information obtained in the process of job evaluation in a manner that may prejudice effective implementation.<sup>6</sup>

- 3.3.5 Members of the Committee enjoy equal standing the conducting of job evaluation, as members of a composite committee, irrespective of the union membership or non-membership of employees or categories of employee, that are being evaluated.
- 3.3.6 Labour representatives shall be provided with full time release from their normal work duties to fully participate in the job evaluation process.
- 3.3.7 Such release shall be provided notwithstanding the full time rights accorded in terms of the organisational rights agreement but will terminate as and when the implementation phase is completed.
- 3.3.8 Employer representatives must be provided with adequate arrangements to ensure they are able to conduct job evaluation on a full time basis.
- 3.3.9 Municipalities shall ensure that no committee member is prejudiced in their position or job advancement as a result of their participation.
- 3.3.10 Members will where possible be provided with reasonable administrative and transport facilities to undertake duties directly related to the PJEC's work programme.
- 3.3.11 It is the responsibility of every member of a PJEC to:
- (a) conduct evaluation with due respect of the integrity of the task job evaluation system, its accepted rules, definitions and terminology;

<sup>6</sup> Confidentiality of scores and provisional grades is necessary to avoid misinformation and premature "appeals". The process is not one of "mandate bargaining". A lack of transparency on the other hand is counter-productive. Parties have a duty to keep their constituencies informed.

- (b) seek, in so far as is reasonably possible, to reach agreement on evaluations through consensus;
  - (b) co-ordinate their communication with employees and provide support to their constituencies to facilitate the implementation of the job evaluation process;
  - (d) maintain confidentiality in respect of any information provided under the agreed terms of confidentiality.<sup>7</sup>
- 3.3.12 The parties have the right to:
- (a) consult with their constituency on any matter except on scores and grading outcomes prior to formal notification;
  - (b) request information or the further analysis or reformulation of information that is relevant to job evaluation;
  - (c) request the conduct of site inspections and work demonstrations.
  - (d) be furnished with written reasons for a refusal to disclose information or conduct a site inspection or work demonstration.
- 3.3.13 In any dispute which may arise over information disclosure, site inspection requests, or any other exercise of the PJECs powers and functions the parties may refer the matter to their party but shall otherwise abide by the terms set out under section B.

<sup>7</sup> The more general ethos of confidentiality is dealt with in 3.3.4. This is for when specific undertakings are made.

#### **3.4 Duties and Responsibilities of the Designated Job Evaluation Managers**

- 3.4.1 In respect of every PJEC and its Job Evaluation Region the employer shall ensure that a designated Job Evaluation Manager is appointed to oversee the process as a whole for the duration of the implementation phase.
- 3.4.2 The SALGBC division concerned shall be informed of the names of such persons, or any change that may arise.
- 3.4.3 The employer is responsible for allocating additional job evaluation practitioner capacity and administrative support necessary for implementation, which staff shall be known as the Job Evaluation Unit <sup>8</sup>and function under the supervision of the designated Job Evaluation Manager.
- 3.4.4 Designated Job Evaluation Managers are responsible for servicing and making arrangements on behalf of the PJEC and subsidiary structures as set out below or as may be agreed by the PJEC.
- 3.4.5 The designated Job Evaluation Manager is responsible for arranging administrative support and systems including:
- (a) administrative and secretarial support to the committees;
  - (b) obtaining and preparing any information necessary for the evaluation process or as may be requested by the committee;
  - (c) effective translation services when necessary;
  - (d) notice of meetings and co-ordinating attendance at meetings;
  - (e) establishing and maintaining a Data Bank and administrative systems as prescribed;
  - (f) arranging communication strategies and information sessions as agreed by the PJEC;
  - (g) arranging for the interview of employees, superiors and managers;
  - (h) arranging site inspections or similar exercises;

- (i) forward planning of the programme of work and any other proposals to advance the implementation process;
- (j) any further matters including such as are set out under Section C.

3.4.6 The designated Job Evaluation Manager may delegate any of his or her responsibilities to other staff within the Valuation Unit.

#### 4. **SUBSIDIARY JOB EVALUATION COMMITTEES (SJECs)**

- 4.1 May be set up by a PJEC where the volume of work required to complete the job evaluation exercise within a period of approximately 18 months so requires.
- 4.2 Shall be composed of the same number of members as the PJEC and subject to the same rights and responsibilities of members.

<sup>8</sup> This is not meant to imply a physical unit in one place—it can be a “network” of staff from different departments or municipalities.

- 4.3 Shall be limited to the function of evaluating jobs subject to confirmation or amendment of their findings by the PJEC.
- 4.4 Shall function in terms of the same procedures as the PJEC subject to the referral of any disagreement or dispute to the PJEC for its decision.
- 4.5 All outcomes arrived at by SJEC's shall be subject to confirmation by the PJEC.
- 4.6 SJEC's cease to exist at the end of the implementation phase.

#### 5. **NATIONAL MODERATION COMMISSION**

##### 5.1 **Establishment and Composition**

- 5.1.1 Shall be established at the commencement of the job evaluation implementation process.
- 5.1.2 Shall be composed of five (5) representatives of SALGA, three (3) representatives of SAMWU and two (2) representatives of IMATU.
- 5.1.3 Such representatives should preferably be active PJEC members but shall in any event have undergone training in the Task System as a pre-condition of membership.
- 5.1.4 Shall include up to two principal representatives of Human Capital Corporation (HCC) in an advisory capacity as and when required.

##### 5.2 **Powers and functions**

- 5.2.1 The Commission makes its decisions by consensus.
- 5.2.2 The powers and functions of the committee (to be read in conjunction with Annexure B) is to moderate <sup>9</sup>job evaluation outcomes decided by PJECs through inter alia—
  - (a) seeking to reach consensus on the consistent application of the Task Job Evaluation system in terms of its rules, definitions and terminology;
  - (b) receiving auditing<sup>10</sup> reports and moderation recommendations;
  - (c) intervening where necessary to correct a PJEC's application of the system;
  - (d) recommend refinement, customisation or modification changes;
  - (e) evaluate the possible effects of language barriers and or literacy factors on the application of the system;
  - (f) evaluating, in relation to occupational categories, issues of equal value for equal working in respect of race, gender and disability;
  - (g) seeking to resolve any disagreements that may arise through consensus.

<sup>9</sup> Moderating means to adjust outcomes or results to achieve an equivalent norm or standard.

<sup>10</sup> Auditing is used to refer to a technical exercise in identifying whether in the view of “auditor” the system is being correctly applied. Such report may be correct but could differ in its assessment from another audit. Or it may be in error. Moderating is the process of agreeing on adjustments which will either confirm the audit recommendation, or may correct it in one or another respect.

- 5.2.3 Shall be responsible for developing proposals to be tabled at the SALGBC for agreement on a uniform system of post or job title designations to apply throughout the sector.
- 5.2.4 May establish such ad hoc committees as it considers necessary to carry out its functions.
- 5.2.5 Such committees may be composed of any persons provided they are either PJEC or Moderation Commission members.
- 5.2.6 The Moderation Commission may delegate to any committee referred to in 5.2.4 any of its functions provided that such delegation is limited to carrying out functions within prescribed terms consistent with previously agreed moderating determinations.

- 5.2.7 The Moderation Commission has overall responsibility for the supervision of the implementation phase but is accountable to the SALGBC Executive Committee in terms of such rules as the Executive Committee may determine.
- 5.2.8 Without limitation of 5.2.7 the Moderation Commission:
- (a) shall refer any matter having financial implications for prior approval;
  - (b) may make recommendations on the amendment of this agreement or any related matters;
  - (c) provide periodic reports on the implementation process and any related matters.
  - (d) prepare the final outcome report of the PJEC for notification.

## SECTION B: DISAGREEMENTS AND DISPUTES<sup>11</sup>

### 1. DISAGREEMENTS

#### 1.1 Disagreement refers to:

- 1.1.1 A failure to reach agreement on a job evaluation outcome which measures the intrinsic value of the job.
- 1.1.2 An allegation by one or other party that another party is—
- (a) failing to respect the integrity of the process, with due regard to the evaluation systems definitions, rules and internal logic;
  - (b) placing undue emphasis on any matter external to the evaluation process including, but not limited to, the impact of pre-existing job descriptions, job titles or grades, the organogram(s) of the municipality, and the potential costs of wage adjustments;
  - (c) misinterpreting the terms of this agreement in so far as it relates to procedures.

1.2 Such disagreements are subject to referral to the Moderation Commission, or to a PJEC in the case of a SJEC.

1.3 Determinations made by a PJEC are final and binding on an SJEC and determinations made by the National Moderation Commission are final and binding on all PJECs.

### 2. DISPUTES

2.1 Disputes refers to any matter which arises from an allegation that there has been a failure or refusal to:

- 2.1.1 Provide any representative with adequate facilities to fulfil their role as a committee member.
- 2.1.2 Disclose adequate information and documentation or to provide for investigation and fact-finding in order to reach consensus on a job description.
- 2.1.3 Agree on an implementation plan and or adhere to the guidelines and procedures set out in this agreement to an extent that undermines the commencement or continued implementation of the process.
- 2.1.4 Agree to avoid or correct alleged frivolous or obstructive behaviour by any representative.
- 2.1.5 Any matter on which the Moderation Commission is unable to agree on a determination.

<sup>11</sup> It is necessary to distinguish between "disputes" which arise as a failure to agree on a matter between the employer and unions which are external to the job evaluation process as such and "disagreements" which arise within the application of the system. Many of the later are likely to be evidently in contradiction with the basics of systems and will be moderated. The provision that it goes to arbitration if the Moderating Commission cannot resolve the matter must be seen as the exception. Most disagreements will be about misapplication of the rules. Hence the detail about likely terms of reference which clearly indicate "high order" issues of principle.

2.2 Disputes referred to from 2.1.1. to 2.1.4. shall be referred to the relevant Division of the SALGBC which shall attempt to resolve the matter failing which the party having declared the dispute may have recourse to arbitration in terms of the disputes resolution procedure of the SALGBC.

2.3 Disputes in terms of 2.1.5. shall be referred to Arbitration.

2.4 In any Arbitration in terms of 2.3 Human Capital Corporation shall be entitled to give evidence in their own right and shall not be called to give evidence on behalf of either the employer or union parties.

2.5 The terms of reference of such arbitration, subject to the details of the particular matter giving rise to the dispute, shall be for the arbitrator to adjudicate the dispute having due regard to—

- (a) the task job evaluation system and prior decisions of the Moderation Committee;
- (b) the terms of this Agreement;
- (c) general principles of law having to do with fair labour practices and equity in employment relations;
- (d) general principles and arguments as to the purpose and objective of job evaluation.

## SECTION C: GUIDELINES FOR LOCAL IMPLEMENTATION

### 1. DESCRIPTION OF CONTEXT

1.1 The job evaluation process takes place within the context of related employee management systems and established labour relations arrangements.



- 1.2** The purpose of this section is to:
- (a) identify where it is necessary to take steps in terms of normal workplace and industrial relations procedures to support the job evaluation exercise;
  - (b) provide guidelines to govern the normal working arrangements of PJECs or SJECs.
- 1.3** Unless otherwise specified the Organisational Rights Agreement and constitution of the SALGBC regulate matters undertaken through normal labour relation's arrangements.
- 1.4** Matters to be undertaken through labour relation's procedures should only commence once the PJEC members have been appointed.
- 2. NORMAL LABOUR RELATIONS PROCEDURES**
- 2.1 Compilation of Job Descriptions**
- 2.1.1** A prerequisite for the effective operation of PJECs is the compilation and agreement of Job Descriptions in terms of a standard format consistent with the requirements of the task job evaluation system.
- 2.1.2** This activity falls primarily within the area of normal labour relations and requires the engagement of Managers and shopstewards through normal labour relation's channels.
- 2.1.3** Supervision of job description compilation takes place through the Metropolitan and Provincial Divisions of the SALGBC and Local Labour Forums subject to the plan devised by the PJEC.
- 2.1.4** The designated Job Evaluation Manager must at the earliest opportunity take steps to ensure that—
- (a) all information relevant to existing job descriptions is obtained and collated as base documentation to support job description writing;
  - (b) persons in the Job Evaluation Unit are trained to assist in training workplace managers or shopstewards the writing and compilation of job descriptions;
  - (c) training briefings are conducted with relevant departmental and line managers to assist with this process;
  - (d) all Local Labour Forums (LLFs) within the Evaluation Region are briefed of the job description writing process;
  - (e) trade unions identify persons from amongst their LLF representatives to be provided with training on job description compilation.
- 2.1.5** The trade union parties to each Local Labour Forum shall:
- (a) identify one each of their number on each forum as their primary co-ordinator in respect of the job description compilation exercise;
  - (b) identify further shopstewards for training on the basis of an additional 1 where there are more than 500 but less than 1 000 employees, 2 where there are more than 1 000 employees but less than 3 000 and thereafter 4 unless otherwise agreed.
  - (c) ensure that such co-ordinator and shopstewards participates in a one day training session on the key issues underlying the task job description format conducted by the Job Evaluation Managers with the participation of PJEC members.
  - (d) conduct any further training of shopstewards or members in job description inputs and writing as they may consider necessary subject to the organisation rights agreement.
- 2.1.6** In order to arrive at an agreed job description the following steps shall be taken—
- (a) the Job Evaluation Manager and/or unit will provide all relevant pre-existing records to the Head of Department, or a delegated manager, and to the identified trade union co-ordinators;
  - (b) provide the participants in the job description writing exercise with sufficient copies of the prescribed job description form for their separate use in obtaining inputs on the job description. The representatives identified in 2.1.5 above shall consult with their members or post incumbents to provide input on the job description;
  - (c) they shall also be responsible in the case of generic or interchangeable<sup>12</sup> posts for identifying such representative interviewees as the PJEC may require;
  - (d) management shall consult each posts immediate superior, and where relevant, immediate subordinates, to obtain inputs on the job description.
  - (e) the trade union and management shall be consulted on to seek to reach consensus on a final job description form.
  - (f) where points of dispute remain the HOD, or delegated representative will convene a meeting of the shopsteward, post interviewees, posts immediate superior and or subordinate and seek to reach agreement. In the case of a post without an incumbent, a similar procedure in terms of clause (a), (b), (c), (d), (e), (f), (h) will apply;

- (g) once there is agreement on the Job Description it shall be signed by the post incumbent/s, the trade union representatives, the immediate superior to such post and the HOD and be forwarded to the Job Evaluation Manager.

<sup>12</sup> A generic job description applies where there are a large number of posts in an occupational level all of which do essentially the same work. Examples are Electricians, general workers or basic clerical or administrative jobs. Interchangeable jobs are jobs in which the category or content of work can change but remains essentially similar in its skill level content. Examples are similar. Whether or not a post is regarded as interchangeable may be a matter of contractual conditions.

- (h) the post identification numbers must be reflected on all final job descriptions.

- 2.1.7 The job description in 2.1.6 (h) is final save to the extent that it may be amended by the PJEC as set out in 3.2.9, Section A.
- 2.1.8 Where no agreement can be reached the areas of agreement and disagreement will be recorded and jointly referred as a dispute within 14 days to the relevant division of the SALGBC.
- 2.1.7 The Divisional Disputes Resolution Committee shall seek to conciliate such dispute through fact finding, including on site intervention, and or reference to other job descriptions in its jurisdiction and agree on a single job description.
- 2.1.10 In the event that the disputes committee cannot reach agreement between the trade union and employer parties the matter shall be referred to Arbitration.
- 2.1.11 The terms of reference of such arbitration are to make a determination on the job description.
- 2.1.12 The agreed job description or job description determined by arbitration is final and binding on all parties and posts incumbents, and shall be forwarded to the PJEC for evaluation.

## **2.2 Other Matters**

- 2.2.1 The parties undertake to familiarise their respective constituencies with the content of this document.
- 2.2.2 PJECs role is to conduct job evaluations and where ever necessary shall refer matters which require changes to organograms or any other matter extraneous to job evaluation to their parties for normal labour relations consultation and dispute resolution.

## **3. PJEC WORKING ARRANGEMENTS**

### **3.1 Meeting Rules**

- 3.1.1 The PJECs and SJECs shall appoint a chairperson and vice chairperson to perform the normal duties associated with such office.
- 3.1.2 Where the chair is from the employer party the vice chair shall be from the labour parties and vice versa.
- 3.1.3 The committee functions in terms of normally understood rules of meeting procedure.
- 3.1.4 An agenda should be prepared for every meeting or defined session of meetings per week.
- 3.1.5 The proceedings of all meetings must be minuted with particular reference to all prescribed administrative recording requirements.

### **3.2 Initial Phase**

- 3.2.1 The implementation process starts with appointment of the designated Job Evaluation Manager, identification of persons in the job evaluation unit and appointment of PJEC, and where necessary SJEC members.
- 3.2.2 The designated Job Evaluation Manager shall then take such steps as are necessary to obtain data and information and establish an administrative system and commence the job description writing process as set out above.
- 3.2.3 Briefings and training in Job Description writing as set out above will be organised through the Job Evaluation unit and with the participation of PJEC or SJEC members and based on training material devised by the SALGBC. <sup>13</sup>
- 3.2.4 The SALGBC shall as soon as possible arrange for PJEC training in the task job evaluation system.
- 3.2.5 The training course [of two (2) days] will include material relating to this agreement and only persons who participate fully will be issued with certificates.
- 3.2.6 The preparatory and planning phase which follows must be seen as an extension of training at the practical level and parties must ensure the full participation of their representatives.

### **3.3 Preparatory Planning and Evaluations**

- 3.3.1 This requires that documentation, as set out in Annexure C is developed to enable the PJEC to agree on a plan of action:
- 3.3.2 The committee shall discuss such information and develop a plan with due regard to identifying an approach which will insulate the job evaluation exercise from undue influence by issues which are extraneous to the integrity of the Task system.

- 3.3.3 The committee shall consider proposals from designated job evaluation management on the selection of a range of "benchmark" posts across all post levels and job categories in the workforce to be evaluated in order for PJEC members to familiarise themselves with the process.
- 3.3.4 Particular attention must be paid to selecting jobs or categories of jobs that have traditionally been reserved on gender, racial or disability grounds in order to assess questions of equal value for equal work.<sup>14</sup>
- 3.3.5 The order of procedure during this initial exercise shall seek to be random relative to the order of the hierarchy of jobs.<sup>15</sup>
- 3.3.6 Posts evaluated in this phase should be selectively reviewed for consistency with subsequent evaluation outcomes towards the end of the implementation phase prior to finalising the Provisional outcomes report referred to in 1.3 of section D.
- 3.3.7 No evaluation shall proceed to the next stage before the preliminary auditing and moderation of its work.
- 3.3.8 The designated Job Evaluation Manager shall in conjunction with this step present a plan of action identifying the Municipalities or sections and subsections of the Municipality in which full job evaluation will be sequenced.

<sup>14</sup> "Equal value for equal work" is not the same as "the rate for the job". It is about ensuring that there are not hidden factors or traditions which have for example undervalues a particular occupation because it is normally or predominantly occupied by women or a particular race group.

- 3.3.9 The order in which post are evaluated within such sections or sub-sections should seek to balance the need to follow a top-down or bottom-up approach to the hierarchy of occupational levels for reasons of the logistical efficiency with the potential prejudicial affect of a simply one directional approach.
- 3.3.10 The PJEC shall discuss and seek agreement on this plan and the designated Job Evaluation Manager shall then take such further steps as are necessary with the assistance of PJEC members to ensure that arrangements are made to commence with the task job evaluation.
- 3.3.11 In the event of any disagreements or disputes arising from this process they will be dealt with in terms of section B above.
- 3.4 Procedures in Evaluation Process**
- 3.4.1 Once agreement is reached on the plan of action the implementation of the task job evaluation commences.
- 3.4.2 In operational terms the committee must first—
- ensure that adequate job descriptions have been presented together with relevant supporting documentation;
  - be provided by the HOD or senior management in the section concerned with an overview of its functions and sub-functions and methods of work arrangement;
  - interview, where necessary, the post incumbent or "representative" incumbent(s) their immediate superior and Head of Department and, as may be necessary to determine the facts, carry out site inspections, and requesting further information or explanations of work arrangements and technology utilised.
- 3.4.3 Interviewees may make oral and written submissions.
- 3.4.4 Every effort must first be made to reach consensus on the validity of the job description presented relative to information gained and otherwise to record accurately the factors on which there is disagreement.
- 3.4.5 In the event of a refusal by any person to confirm such description, or to participate in being interviewed, the committee may determine a job description for the purposes of its own progress.
- 3.4.6 Any such individual interviewee who refuses to sign, or participate, may approach any party to submit the matter to disputes resolution within 10 working days failing which the PJEC determined description prevails.
- 3.4.7 The scoring exercise takes place around a computer with the committee making every effort to reach consensus on—
- determination of the skill level of the post;
  - the scoring of the factors relating to complexity, knowledge, influence and pressure;
  - the scoring of the sub-factors relating to complexity, knowledge, influence and pressure.
- 3.4.8 In the event of a failure to reach agreement on 3.4.7 (a) or (b) and unless otherwise agreed, the evaluation shall be held in abeyance and or be referred to auditing and moderation as a disagreement.
- 3.4.9 In disagreement on a selection in 3.4.7 (c) in the fine tuning sub factors the committee may continue to generate as many alternative outcomes as seem reasonable under the circumstances to examine the extent of such disagreement.
- 3.4.10 The nature and motivations leading to any disagreement at every factor and sub-factor score must be recorded.

- 3.4.11 If more than one alternative outcome has been generated it is incumbent on the committee to make further efforts to reconcile their differences and seek to agree on a single provisional outcome.<sup>16</sup>
- 3.4.12 Such report must include a special report on any disagreement that continues to exist.
- 3.4.13 These reports will be audited and referred to the Moderation Commission for approval and the resolution of any disagreements.

<sup>16</sup> Different levels of "outcome" are defined below.

#### SECTION D: OUTCOMES, NOTIFICATION<sup>17</sup> AND WAGE CURVE,

##### 1. OUTCOMES

- 1.1 Provisional outcomes are those on which agreement has been reached and confirmed by the PJEC.
- 1.2 During implementation the auditing and Moderation process will have provided confirmation of many of these outcomes, but not withstanding this such outcomes remain provisional until the full provision outcomes report is confirmed by the Moderation Commission.
- 1.3 A Provisional outcomes report covering the entire Job Evaluation Region shall be confirmed by the PJEC and submitted to the Moderation Commission when all posts in a Job Evaluation Region have been evaluated.
- 1.4 The Moderation Commission shall confirm, or amend and confirm such report, as the final outcomes report for each Job Evaluation Region where after the Municipalities concerned will notify employees of their final task grades.
- 1.5 No employee shall be informed of his or her provisional Grade prior to confirmation of the final outcomes report and the determination of the wage curve.
- 1.6 Employees are entitled to appeal against their notified Grade to the Provincial Appeals Commission within 6 weeks of notification as set out under Part 2 below.

##### 2. WAGE CURVE ALIGNMENT NEGOTIATIONS

- 2.1 From the start of the implementation of job evaluation it shall part of or the brief of the designated Job Evaluation Manager to gather data on existing wage rates and the wage curve and to develop a comprehensive report on all wages in that job evaluation region.
- 2.2 Such data or report must be submitted to the SALGBC which shall ensure that it is entered into the National Data Bank.
- 2.3 The designated Job Evaluation Manager must further ensure regular updates of such information if there are any major changes and will be required to provide a final wage data update report immediately prior to the commencement of wage curve alignment negotiations.
- 2.4 The SALGBC shall be responsible for the compilation of appropriate national, reports and analysis necessary to support the wage curve alignment negotiations as may be determined by its Executive Committee.
- 2.5 The SALGBC shall, by no later than 31 October 2002 commission an analysis of key features of wage curves and their labour market comparability.
- 2.6 The SALGBC Executive Committee shall then convene a meeting of the National Bargaining Committee to negotiate on a framework and terms of reference for the implementation of new wage curves.<sup>18</sup>

<sup>17</sup> Note that "notification" is used though rather than "publishing".

- 2.7 Every effort shall be made to complete such framework negotiations by no later than 15th December 2002 failing which dispute resolution must commence by no later than 1st February 2003.
- 2.8 The parties acknowledge that—
  - (a) The objective of such negotiation is not to provide for across the board wage or salary increases but to adjust wages as a necessary element in the implementation of the newly evaluated posts with due regard to labour market data.
  - (b) Adjustment of wages to achieve implementation does not imply that all employees will necessarily be accorded a higher wage rate.
  - (c) The exercise is to convert from existing job evaluation systems to the Task System and in so far as is possible wages shall remain consistent with prevailing levels subject to such adjustments as are necessary to achieve a rational wage structure with a minimum of anomalies due to the retention of personal to holder or contractual to holder conditions.
- 2.9 The implementation of new wage curves per municipality shall, in so far as this is possible, be done simultaneously within each Job Evaluation Region subject to clause 2.17.



- 2.10 An analysis of each municipalities wage curve within the job evaluation region based on final wage data update reports and the framework determined in terms of 2.6 will be commissioned setting out:
- (a) The relationship of the evaluation curve to the existing wage scales in the municipalities concerned.
  - (b) Its relationship to National and Regional Labour Market Data.
- 2.11 Such report or reports shall be tabled at the relevant division of the SALGBC and such division will be briefed on the findings.
- 2.12 The parties shall discuss such reports and advise on any alternative analyses or projections of the data that parties may severally require.
- 2.13 Any dispute over the requirements of any party in respect of additional analysis or projections shall be treated as a dispute over disclosure of necessary information required for bona fide negotiation.
- 2.14 The division shall discuss such wage curve report and proposal and provide a report to the SALGBC Executive Committee on the vies of all parties in respect of the proposal.
- 2.15 Arising form these reports the National Bargaining Committee shall enter into a final round of negotiations to attempt to reach agreement on the new municipal wage curves to be introduced [in any given Job Evaluation Region].
- 2.16 Once agreement on the pay scales has been reached employees shall be notified of their new grade and pay rate.

<sup>18</sup> The framework will look at a report that will identify actual wage gaps, issues such as different notch systems, the relationship to market data. The framework will then guide in more detail the principle on which new wage curves in each demarcation are constructed.

- 2.17 New pay rates will be implemented with effect from the next ensuing pay day after the date of notification or the 1st January 2004, whichever is the sooner, provided that no municipality shall be required to implement before 1st July 2003.
- 2.18 The relevant dispute provisions of the SALGBC shall govern any dispute, and or applications for exemption or delayed implementation for reasons of inability to pay.
- 2.19 The following conditions apply when placing staff on the new task grade and salary scale:
- (a) Employees will be placed on the salary notch on the new pay scale for the applicable task grade which is the closest higher salary notch to their existing salary notch;
  - (b) employees whose currently salary notch is lower than the minimum of the applicable task grade scale will be placed on the minimum of the applicable new task salary scale;
  - (c) employees whose existing basic salary is higher than the new task grade maximum will retain their higher existing basic salary scale;
  - (d) annual cost-of-living adjustments will be applied to the salary rate as retained by the employee;
  - (e) an employee who has retained his/her salary and scale, and who successfully applies for a promotion to a post with a task grade maximum which is lower than his/her existing basic salary and scale, will continue to receive his/her existing salary and scale and annual cost of living adjustments will be based on his/her salary.

## PART TWO: PROVINCIAL APPEALS COMMISSIONS AND NATIONAL EVALUATION COMMISSIONS

### 1. PROVINCIAL APPEALS COMMISSIONS

#### 1.1 Establishment and Composition

- 1.1.1 Provincial Job Evaluation Appeals Commissions (PJEACs) shall be established under the SALGBC as soon as the implementation process nears completion.
- 1.1.2 Will be composed on the same terms as Principal Job Evaluation Committees as per clause 3.1.1. in Section A.

#### 1.2 Powers and Functions

- 1.2.1 The function of the PJEAC's shall be to—
- (a) hear appeals by individuals or categories of employees, and to make a determination on such application as set out on 4 below;
  - (b) conducts wider reviews of job evaluation on a periodic basis as may be determined by the National Job Evaluation Commission;
  - (c) institute specific review in any municipality if in its opinion the number of appeals from such municipality require such review.
- 1.2.2 The Commission must strive to make its decisions by consensus but shall otherwise determine its finding through a 50% plus one concurrent vote of employer and trade union representatives voting separately.
- 1.2.3 Any minority views shall be recorded.
- 1.2.4 Such determination is final and binding on the employer and employee(s) concerned and there shall be no further recourse to any other forum.

## **2. NATIONAL JOB EVALUATION COMMISSION**

### **2.1 Establishment and Composition**

- 2.1.1 The National Moderation Commission will be renamed the National Job Evaluation Commission at an appropriate time in relation to the transition from the implementation to maintenance phase.
- 2.1.2 Shall be composed on the same terms as the National Moderation Commission as per clause 5.1.2 in Section A.

### **2.2 Powers and Functions**

- 2.2.1 The National Job Evaluation Commission retains the powers and functions of the National Moderation Commission set out under 5.2 of Section A as suitably amended and read in the new context.
- 2.2.2 Makes its decisions or seeks to resolve any dispute that may arise between the parties on the same terms as apply to the National Moderation Commission.
- 2.2.3 Shall perform functions in respect of the auditing, moderation and ratification of:
- (a) new changed posts as set out in clause 3 below;
  - (b) appeal findings in which an appeal is upheld in terms of 4.1.7. below;
- 2.2.4 Shall not entertain any application directed to itself or any purported appeal against the findings of a Provincial Appeals Commission.
- 2.2.5 Shall periodically review all findings of Provincial Appeals Commission and may require a Provincial Appeals Commission to re-hear any appeal with due regard to such defined criteria or issues as it may determine.
- 2.2.6 Monitor the maintenance of the task system within the sector, investigate any matter in relation to job evaluation in general, and make recommendations to the SALGBC on any such matters.

## **3. NEW POSTS AND RE-EVALUATION OF POSTS**

### **3.1 The Role of PJECs**

- 3.1.1 PJECs continue to function for the purpose of the evaluation of re-evaluation of posts arising from applications by—
- (a) municipalites for proposed new posts grading;
  - (b) management and employees where there is mutual recognition that a job has changed;
  - (c) individual employees or categories of employee.

### **3.2 Criteria and Procedure for Applications**

- 3.2.1 The procedures for compiling job descriptions for an evaluating a new posts shall be in conformity with those set out for the implementation phase.
- 3.2.2 Application for re-evaluations, whether initiated by management or by an employee or category of employee, may be made at any time provided such application is based on evidence of a substantive and permanent material changes to the content of the post, or on new evidence which the applicant could not have been reasonably expected to have been in possession of at the time of the initial application.
- 3.2.3 An employee claiming substantive and permanent material changes to the content of the post must provide proof of such change in respect of one or more of followin:
- (a) Responsibilities, tasks, activities and duties attached to the post;
  - (b) frequency and complexity of work content;
  - (c) the application of a higher order of knowledge and know how that was previously required;
  - (d) identifiable factors increasing the physical or mental stress level, and;
  - (e) information demonstrating how these changes came about due to changes in the general context of work, or re-organisation of word relations.
- 3.2.4 A claim that the previous outcome determined by the PJEC failed to correctly apply the task system must—
- (a) demonstrate in specific terms why it is considered that the grading result were not in conformity with the correct application of the task system.
  - (b) be made within 6 weeks of notification of grade at the time of implementation, or provide proof that it is based on new information not previously available to the applicant at time of first notification;
  - (c) be supported by a statement of support from one or more PJEC member.
- 3.2.5 Every application shall be in a prescribed format and included—
- (a) the employees past evaluation record and documentation;
  - (b) a new job description form indicating the changes to the job on the basis of which the application is being made and such other documentation as the applicant may consider relevant or consistent with requirement under 3.2.3 and or 3.2.4 above;
  - (c) record the consent of the posts immediate superior and Head of Department to the new description or otherwise record their disagreement with all or part of the applicants' description.

- 3.2.6 The application shall then be submitted to the manager responsible for job evaluation in that Municipality who shall liaise with the applicant, any shop steward in the case of a union member, and the relevant managers, to ensure that all relevant information and or disagreements are fully recorded before submission to the PJEC.
- 3.2.7 The PJEC may if it considers that the application is evidently lacking in any substance request that it be resubmitted to be in compliance 3.2.3 and/or 3.2.4 or be withdrawn and failing compliance may formally reject the application.<sup>19</sup>
- 3.2.8 On receipt of such application the PJEC shall proceed to investigate the applications as it may deem necessary in terms of its powers and functions and the process the application as set out under section C 3.4 and seek to determine an outcome.
- 3.2.9 In the event that it determines that there has been no change in grade, or if the PJEC fails to reach consensus on an outcome, the applicant(s) must be informed that the application has failed and that an appeal may be lodged.
- 3.2.10 Where a new outcome is determined it shall be referred to the National Job Evaluation Commission for audit, moderation and ratification prior to notification or advertising<sup>20</sup>.
- 3.2.11 Every effort must be made to ensure that the steps in 3.2.8 and 3.2.9 are completed within no more than 6 weeks where after the applicant shall be informed of the final outcome.

#### 4. APPEALS

- 4.1.1 Appeals to the Provincial Appeals Commission must conform to the criteria as set out in 3.2.3 and contain the documentation as set out in 3.2.4.
- 4.1.2 On receipt of a notice of rejection in terms of 3.2.7, 3.2.9 or 3.2.11. the applicant shall have 6 weeks to accept or reject this result and decide whether to proceed with an appeal.
- 4.1.3 An applicant may, provided that it conforms to the criteria in 3.2.4 amend or add to the application prior to its submission to the Provincial Appeals Commission.
- 4.1.4 The Provincial Appeals Commission on receipt of such application shall first satisfy itself that there are reasonable grounds for such appeal and may if it has consensus that no grounds exist summarily reject such appeal.
- 4.1.5 Where the Provincial Appeals Commission has satisfied itself that there are reasonable grounds for an appeal it shall hear the appeal in a manner best suited to deal with the appeal and it may process the application de nova as set out in section C 3.4. it may rehear the application from any stage of the procedure as set out under section C3.4 or it may hear the case by following the procedure that would be used in an arbitration, whichever is most appropriate to ensure the expeditious and fair hearing of the appeal. The Provincial Appeals Commission shall notify the applicant in writing of the procedure that is to be followed in dealing with the appeal.
- 4.1.7 Where an appeal is not upheld the Provincial Appeals Commission shall notify the applicant.
- 4.1.6 Where an appeal is upheld the Provincial Appeals Commission shall refer its findings to the National Job Evaluation Commission for audit and ratification prior to notification.
- 4.1.8 In the event of such rejection no appeal by the applicant or applicants shall be allowed for a period of one year from the date of rejection.

<sup>20</sup> Advertising refers to a Municipality advertising a post before it known the grade of the post, and therefore its costs.

- 4.1.9 The determinations of a Provincial Appeals Committee are final and binding on both the employee(s) and employer and there is no right of appeal to the National Job Evaluation Commission nor shall there be any right to process the dispute through the dispute procedures of the South African Local Government Bargaining Council or any other external dispute resolution body such as the CCMA.

#### ANNEXURE "A"

##### BASIC INFORMATION NECESSARY TO SUPPORT JOB EVALUATION

In this Annexure section A and B set out that minimum body of information which it is agreed should be made available for job evaluation to be effectively undertaken.

Section C refers to other types of information which trade unions or particular employees may consider should be disclosed but which the employer, or another individual employee may consider confidential and which should not be disclosed.

In respect of section A and B information committee members shall be subject only to the provision contained at 3.3.4. This is to say that members should be advised to apply their discretion in treating such information with a reasonable degree of confidentiality to prevent unnecessary disputes or disagreements but are not subject to a blanket confidentiality requirement and have the right, as representatives of their parties, to report honestly and fully as they see fit.

##### A. INITIAL PLANNING AND FAMILIARISATION PHASE

In order to plan this phase and devise a plan to pursue job evaluation the following data should be prepared and made available to the committee.

1. A schedule of the existing grading system, its occupational levels and job title designations based on the approved establishment.



2. An analysis of the actual number of employees currently employed broken down as an employment equity analysis in respect to race, gender and disability.
3. A reasonable range of existing job descriptions or duty schedules applying to such posts.
4. An analysis of occupational levels which can be regarded as having a generic or interchangeable job description and will only require sample evaluation and such other posts or groupings which will require more individualised evaluation.
5. An analysis of all specific entry level requirements currently being applied to such posts specifically noting where—
  - (a) qualification requirements or criteria are statutory;
  - (b) are or may be a product of the pre-existing evaluation system;
  - (c) are essentially a matter of policy justified on stated terms.
6. Information setting out the administrative systems with particular reference to the system of unique post identification numbers as prescribed.
7. A copy of any existing organogram (s), any proposed organograms, and a description of all sections, departments or service units and sub-sections together with a proposal as to their classification in terms of the generic terms used in the task systems.<sup>21</sup>
8. A proposed plan of action to be followed in evaluating benchmark posts across the broad bands of the task system, which plan should seek approach this process in a manner which will not prejudice its purpose by either moving top down or bottom up.
9. A proposal as to the manner in which specific interviewees will be selected for initial evaluation.

#### **B. INFORMATION FOR JOB EVALUATIONS**

1. During the process of job description writing and actual evaluation more detailed analysis of each department or service unit, or sub-section identified should be supplied.
2. Particular attention must be given to making available all existing job descriptions and duty schedules applying to the posts being evaluated and, in so far as generic posts are concerned to providing a spread of duty rosters and or tasks allocated beyond those of any identified interviewees.
3. Any additional documentation or information pertinent to job evaluation as may be provided by management and or post incumbents.
4. Information on technology and systems in operation whether in terms of machinery or information technology and including where relevant greater detail on operating procedures and or the particular software systems in use.
5. Actual site inspections and/or the demonstration of actual operation of particular machinery, technology or process plants should be arranged.

#### **C. FURTHER INFORMATION**

In the course of planning the above information will be presented for discussion. It is however the right of any member to ask for additional analysis and or the reformulation of such information. Such requests need to be reasonable in the sense that they are aimed at gaining greater insight for the purposes of Job Evaluation. If they are unreasonable Job Evaluation Management can refuse to undertake such additional work.

In the course of job description writing or actual evaluation it may be seen as being of advantage to obtain documentary or other evidence in the form of a "portfolio" of the type of work undertaken by the incumbent interviewee or similar incumbents. Similarly a disagreement over a job description of a post between an incumbent interviewee and their superior could involve counter claims as to who actually does particular work. In such cases the evaluation committee may only be able to settle the matter through viewing actual work. In members seeking such evidence they can be confronted by 2 claims of confidentiality—

- (a) that the documentary evidence contains information, which is classified, or confidential internal council information;
- (b) that the nature of the documentation requested is of such a nature that it discloses personal private information held by council on the understanding that it is confidential, or is of such a nature that if disclosed would be prejudicial to the persons safety.

There are any number of scenarios in which such claims will be justifiable, or on the contrary are spurious and arise, for example, because a particular superior wants to down play the content of a subordinates post in order to elevate the content of their own post.

To avoid or limit the number of disputes that can arise in this area it is important that Management clarify the delegated powers of the designated Job Evaluation Manager. Ideally they must be able to exercise discretion about disclosures and be in a position to over-rule some of the more spurious refusals of disclosure that may arise. It also needs to be clear when the Job Evaluation Manager has access to documentation or must first seek permission. Establishing parameters within which they may disclose information either fully, or under given terms of confidentiality is also important. For example permission may be given to the committee members to view and read a document "in the office" but not to make notes or copy such document. In all of these matters it is again the general rule that requests for disclosure must be pertinent to gaining insight into the work of a post for the purposes of evaluation.



It should be noted that such refusals of access to information could arise for any members of the committee including councillors and managers. Generally however it will arise from requests by trade union representatives or incumbents.

Members and incumbents have the right to make request. Council and delegated Managers have a right to refuse disclosure that is confidential or is not reasonably related to gaining insight into the work of a post for purposes of evaluation.

In terms of the Labour Relations Act, 1995, trade unions, or trade unions acting on behalf of their member, have the right to dispute a refusal to disclose information. When there is a refusal it is required by the Labour Relations Act, 1995, that the employer set out their reasons for such refusal in writing.

## **ANNEXURE B**

### **NATIONAL MODERATION COMMISSION**

#### **TERMS OF REFERENCE**

1. The powers and functions of the Commission are to:
2. Check for consistent application on the job evaluation results as decided on by the (PJECS).
3. Not to re-evaluate the job content of posts but to check for those results that appear to be anomalous with the general tendency in respect of the different post (category) levels.
4. Determine the reason for the deviation and either confirm or adjust the result.
5. Receive audit reports and either confirm or take remedial action.
6. Prepare a basis of comparison between different categories of municipalities in respect of the evaluation results.
7. Evaluate applicability of existing terminology and definitions and propose amendments or adjusted wording to ensure consistent and correct application of the system.
8. Determine guideline post levels across the whole spectrum of post categories and levels in the industry.
9. Prepare periodic progress reports to SALGBC in respect of—
  - (a) results received;
  - (b) job evaluations processed;
  - (c) problems experienced and anticipated as well as proposed solutions, that require policy decisions/resolutions from the SALGBC;
  - (d) intervene in respect of incorrect (PJECS) application of the job evaluation system; and
  - (e) recommend in general refinement, customization or modification of system.
10. Evaluate possible effect of language barriers and/or literacy factors on the application of the system and make recommendations to rectify or address the negative effect thereof.
11. Submit proposals on a uniform system of post designation.
12. May establish ad-hoc committees to perform or assist in the performance of any of the duties/functions of the commission.
13. Perform any of the functions listed in clauses 5.2.2 to 5.2.8 that are not specifically addressed under any of the above points.

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**No. R. 721****18 June 2004**

#### **LABOUR RELATIONS ACT, 1995**

#### **SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL EXTENSION OF RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE SALGBC TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 30 June 2005.

**M. M. S. MDLADLANA****Minister of Labour**

No. R. 721

18 Junie 2004

## WET OP ARBEIDSVERHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN REËLS TEN OPSIGTE VAN DIE VERRIGTINGE PROSEDURE VOOR DIE SALGBC NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 20 Junie 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE****THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**

(hereinafter referred to as the "Council")

**COLLECTIVE AGREEMENT ON RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE SALGBC**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" or the "employers' organisation"), of the one part, and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions") of the other part, being the parties to the South African Local Government Bargaining Council.

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**1. SCOPE OF APPLICATION OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 and 7.4 of this Agreement shall not apply to non-parties.

**2. EDEFINITIONS**

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in that Act and, unless the contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 November 2003 and shall remain in force until 30 June 2006.

3.2 This Agreement shall come into operation in respect of non-parties on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2006.

**4. OBJECTS**

The object of this Agreement is to make provision for a set of rules governing the conduct of conciliation, arbitration, service of documents, and other proceedings, together with the prescribed forms.

## 5. RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE COUNCIL

The parties have reached agreement on the rules governing the conduct of conciliation, arbitration, service of documents and other proceedings together with the prescribed forms, marked hereto as "Annexure A".

## 6. DISPUTE ABOUT INTERPRETATION OR APPLICATION OF THIS AGREEMENT

6.1 Any person or party may refer a dispute about the interpretation or application of this Collective Agreement to the Central Council of the SALGBC.

6.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or to the Central Council or, in the event that after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such Division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

6.3 The General Secretary or Regional Secretary, as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive and, in the event of a dispute not being resolved, shall—

6.3.1 appoint a conciliator from the appropriate panel of conciliators, doing so as far as possible on a rotational basis; and

6.3.2 if the dispute remains unresolved, refer the dispute to arbitration.

6.4 If a conciliator is appointed, the General Secretary or Regional Secretary concerned shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

6.5 If the dispute is referred to arbitration the General Secretary or Regional Secretary concerned shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.

6.6 The General Secretary or Regional Secretary concerned, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

6.7 The arbitrator shall—

6.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and

6.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

6.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Agreement.

## 7. EXEMPTIONS

7.1 Any person or party bound by this Agreement shall be entitled to apply for exemption from this Agreement.

7.2 All applications for exemption from any provision of this Agreement shall be in writing and lodged with the General Secretary. Such application shall set out—

7.2.1 all material details of the applicant;

7.2.2 the specific provisions of this Agreement from which the applicant seeks exemption;

7.2.3 detailed grounds on which such exemption is sought, taking into consideration the criteria contained in clause 7.7 below.

7.3 The Executive Committee shall consider all applications made by a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 7.7, and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

7.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council who shall consider the application subject to clause 7.7 and, on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

7.5 All applications for an appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council.

7.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the application fairly and quickly, which may include the hearing of evidence and arguments.

7.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

(a) Any written and/or verbal substantiation provided by the applicant;

(b) fairness to the employer, its employees and other employers and employees in the industry;

(c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;

(d) unexpected economic hardship occurring during the currency of this Agreement, and job creation and/or losses;

(e) the infringement of basic conditions of employment;

(f) the fact that a competitive advantage might be created by the exemption;

- (g) comparable benefits or provisions where applicable;
- (h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or
- (i) any other factor which is considered appropriate.

7.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

7.9 The Council shall issue to every person granted an exemption in terms of this clause, a certificate of exemption setting out—

- (a) the applicant's name;
- (b) the provisions of this Agreement from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

7.10 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

7.11 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

## **8. ADMINISTRATION AND ENFORCEMENT**

8.1 The Council shall be responsible for the administration of this Agreement.

8.2 This Agreement shall be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

Signed by the parties at Kempton Park this 3rd day of February 2004.

### **F. RATLHAGA**

**Member of the Council (Representing SALGA)**

### **C. DUNSTAN**

**Member of the Council (Representing IMATU)**

### **P. MASHISHI**

**Member of the Council (Representing SAMWU)**

### **S. GOVENDER**

**General Secretary of the Council**

## **ANNEXURE A**

### **RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE SALGBC**

#### **PART ONE**

#### **SERVING AND FILING**

##### **1. How to contact the SALGBC**

- (1) The addresses, telephone numbers and telefax numbers of the offices of the SALGBC are listed in Schedule 1 to these Rules.
- (2) Documents may only be filed with the SALGBC at the addresses or telefax numbers listed in Schedule 1.

##### **2. Office hours of the SALGBC**

- (1) The head office and the provincial offices of the SALGBC will be open from Monday to Friday, excluding public holidays and the annual shut-down period between Christmas and New Year, between 08:00 and 17:00, or as determined by the SALGBC.
- (2) Documents may be filed with the SALGBC only during the hours referred to in subrule (1).
- (3) Notwithstanding subrule (2), documents may be faxed at any time to the SALGBC within the time frames approved by the SALGBC for the filing of documents as set out in Part Two for conciliation, in Part Three for conciliation-arbitration (con-arb), in Part Four for arbitration and in Part Six for applications.



**3. How to calculate time periods in these Rules**

- (1) For the purpose of calculating any period of time in terms of these Rules—
  - (a) “day” means a working day; and
  - (b) the first day is excluded and the last day is included, subject to subrule (2).
- (2) The last day of any period shall be excluded if it falls on a Saturday, Sunday, public holiday or between 16 December and 7 January.

**4. Who must sign documents**

- (1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A written list of the names of the employees who have mandated the employee to sign on their behalf shall be attached to the referral document.

**5. How to serve documents on other parties**

- (1) A party shall serve a document on the other parties as follows:
  - (a) By handing a copy of the document to—
    - (i) the person concerned;
    - (ii) a representative authorized in writing to accept service on behalf of the person;
    - (iii) a person who appears to be at least 16 years old and in charge of the person's place of residence, business or place of employment at the time; or
    - (iv) a person identified in subrule (2);
  - (b) by leaving a copy of the document at—
    - (i) an address chosen by the person to receive service; or
    - (ii) any premises in accordance with subrule (3);
  - (c) by faxing or telexing a copy of the document to the person's fax or telex number respectively, or to a number chosen by that person to receive service;
  - (d) by sending a copy of the document by registered post or telegram to the last known address of the party or to an address chosen by the party to receive service.
- (2) A document may also be served on—
  - (a) a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office or its principal place of business within the magisterial district in which the dispute first arose;
  - (b) an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
  - (c) a trade union or employer's organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employer's organisation or at its office in the magisterial district in which dispute arose;
  - (d) a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing body or other controlling body of the association, as the case may be;
  - (e) a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;
  - (f) a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or
  - (g) the State or province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- (3) If no person identified in subrule (2) is willing to accept service, service may be effected by affixing a copy of the document to—
  - (a) the main door of the premises concerned; or
  - (b) if this is not accessible, a post box or other place to which the public has access.
- (4) The SALGBC or an arbitrator may order service in a manner other than prescribed in this rule.

**6. How to prove that a document was served in terms of the Rules**

- (1) A party shall prove to the SALGBC or an arbitrator that a document was served in terms of these Rules, by providing the SALGBC or an arbitrator with the following:
  - (a) A copy of proof of mailing the document by registered post to the other party;
  - (b) a copy of the telegram or telex communicating the document to the other party;
  - (c) a copy of the telefax transmission report indicating the successful transmission of the whole document to the other party; or
  - (d) if a document was served by hand—
    - (i) a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) an affidavit confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (2) If proof of service in accordance with subrule (1) is provided, it shall be presumed until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The SALGBC may accept proof of service in a manner other than prescribed in this rule as sufficient.

**7. How to file documents with the SALGBC**

- (1) A party shall file documents with the SALGBC—
  - (a) by handing the document to the office of a relevant Regional Secretary in the case of a divisional dispute or to the General Secretary in the case of a national dispute, at the address listed in Schedule 1;
  - (b) by sending a copy of the document by registered post to the relevant office at the address listed in Schedule 1; or
  - (c) by faxing the document to the office of the Regional Secretary/General Secretary at a number listed in Schedule 1.
- (2) A document is filed with the SALGBC when—
  - (a) the document is handed to the office of the Regional Secretary/General Secretary;
  - (b) a document sent by registered post is received by the office of the Regional Secretary/General Secretary; or
  - (c) the transmission of a fax is completed.
- (3) A party shall only file the original of a document transmitted by fax if requested to do so by the SALGBC or an arbitrator. A party shall comply with a request to file an original document with seven days of the request.

**8. Documents and notices sent by registered post**

Any document or notice sent by registered post by a party or the SALGBC shall be presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

**9. How to seek condonation for documents delivered late**

- (1) This rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules or the constitution of the SALGBC.
- (2) A party shall apply for condonation when delivering the document to the SALGBC.
- (3) An application for condonation in the prescribed SALGBC form (Annexure 1) shall set out the grounds for seeking condonation and shall include details of the following:
  - (a) The degree of lateness;
  - (b) the reasons for the lateness;
  - (c) the referring party's prospects of succeeding with the referral and obtaining the relief sought against the other party;
  - (d) any prejudice to the other party; and
  - (e) any other relevant factors.

**PART TWO****CONCILIATION OF DISPUTES****10. How to refer a dispute to the SALGBC for conciliation**

- (1) A party shall refer a dispute to the SALGBC for conciliation by filing a completed SALGBC form (Annexure 2—Request for conciliation).
- (2) The referring party shall—

- (a) sign the referral document in accordance with rule 4;
- (b) attach to the referral document written proof, in accordance with rule 6, that the referral document was served on the other parties to the dispute;
- (c) attach an application for condonation in accordance with rule 9 if the referral document is filed out of time.

(3) The SALGBC shall refuse to accept a referral document until subrule (2) has been complied with.

#### **11. The notice the SALGBC is to give of a conciliation hearing**

The SALGBC shall give the parties at least 10 working days' written notice of a conciliation hearing, unless the parties agree to a shorter period of notice.

#### **12. SALGBC may seek to resolve a dispute before conciliation**

The SALGBC or an arbitrator of the Conciliation Committee may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

#### **13. What happens if a party fails to attend or is not represented at conciliation**

- (1) The parties to a dispute shall attend a conciliation in person, irrespective of whether or not they are represented.
- (2) If a party is represented at the conciliation but fails to attend in person, the arbitrator or Conciliation Committee may—
  - (a) continue with the proceedings;
  - (b) adjourn the proceedings; or
  - (c) dismiss the matter by issuing a written ruling.

Section 135(4) provides that: 'In the conciliation proceedings a party to the dispute may appear in person or be represented only by—

- (a) a director or employee of that party; or
- (b) any member, office bearer or official of that party's registered trade union or registered employer's organization.

Rules for the Conduct of Proceedings before the SALGBC.

- (3) In exercising a discretion in terms of subrule (2), an arbitrator/conciliation committee shall take into account, amongst other things—
  - (a) whether or not the party has previously failed to attend a conciliation in respect of that dispute;
  - (b) any reason given for the party's failure to attend;
  - (c) whether or not conciliation can take place effectively in the absence of that party;
  - (d) the likely prejudice to the other party of the arbitrator's/conciliation committee's ruling; and
  - (e) any other relevant factors.

#### **14. How to determine whether or not an arbitrator may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the SALGBC shall require the referring party to prove that the SALGBC has the jurisdiction to conciliate the dispute.

#### **15. Issuing of a certificate in terms of section 135 (5) of the Act**

A certificate issued in terms of section 135(5) of the Act stating that a dispute has or has not been resolved, shall identify the nature of the dispute as described in the referral document or as identified by the arbitrator/conciliation committee during the conciliation process.

#### **16. Conciliation proceedings may not be disclosed**

- (1) Conciliation proceeding shall be treated as private and confidential and conducted without prejudice. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree to this in writing.
- (2) No person, including an arbitrator or an employee of the SALGBC may be called as a witness during any subsequent proceedings, unless the parties agree to this in writing.

### **PART THREE**

#### **CON-ARB IN TERMS OF SECTION 191 (5A) OF THE ACT**

#### **17. Conduct of con-arb in terms of section 191 (5A) of the Act**

- (1) The SALGBC shall give the parties at least 10 working days' written notice that a matter has been scheduled for con-arb in terms of section 191(5A) of the Act.

- (2) A party that intends to object to a dispute being dealt with in terms of section 191(5A) of the Act, shall deliver written notice to the SALGBC and the other party, at least five working days prior to the scheduled date in terms of subrule (1).
- (3) Subrule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation.
- (4) If a party fails to appear or to be represented at a hearing scheduled in terms of subrule (1), the arbitrator shall conduct the conciliation on the date specified in the notice issued in subrule (1).
- (5) Subrule (4) applies irrespective of whether or not a party has lodged a notice of objection in terms of subrule (2).
- (6) In con-arb proceedings a party to the dispute may appear in person or be represented only by—
  - (a) subject to subrule (7) a legal practitioner;
  - (b) a director or employee of that party; or
  - (c) any member, office bearer or official of that party's registered trade union or registered employers' organisation<sup>2</sup>.
- (7) If the dispute concerns an unfair dismissal and the party has alleged the reason for the dismissal relates to the employee's conduct or capacity, a party may only be represented by a legal practitioner in the circumstances contemplated in section 140(1)<sup>3</sup> of the Act.
- (8) The provisions of the Act and these Rules that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to con-arb proceedings.
- (9) If the arbitration does not commence on the date specified in terms of the notice in subrule (1), the SALGBC shall schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 21.

<sup>2</sup>Subrules (6) and (7) apply item 27 (1) (c) of Schedule 7 to the Act

<sup>3</sup>The text of section 140(1) is reproduced in rule 25

Rules for the Conduct of Proceedings before the SALGBC

## PART FOUR ARBITRATIONS

### 18. How to request arbitration

- (1) A party may request the SALGBC to arbitrate a dispute by delivering a document in the prescribed SALGBC form (Annexure 3—Request for arbitration).
- (2) The referring party shall—
  - (a) sign the referral document in accordance with rule 4;
  - (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 6; and
  - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 9<sup>4</sup>.
- (3) The SALGBC shall refuse to accept a referral document until subrule (2) has been complied with.
- (4) This rule does not apply to con-arb proceedings held in terms of section 191(5A).

### 19. When must the parties file statements

- (1) An arbitrator may direct—
  - (a) the referring party in an arbitration to deliver a statement of case; and
  - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of subrule (1) shall—
  - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
  - (b) be delivered within the time period in the notice referred to in subrule (2).

### 20. When the parties may hold a prearbitration conference

- (1) The parties to an arbitration may hold a prearbitration conference dealing with the matters referred to in subrule (2).
- (2) In a prearbitration conference, the parties shall attempt to reach consensus on the following:
  - (a) Any means by which the dispute may be settled;

<sup>4</sup>In terms of section 136 (1) (b), a party shall request the SALGBC to arbitrate a dispute within 90 days after the SALGBC has issued a certificate that the dispute has not been resolved. A request made outside of this time period may be condoned on good cause shown.



## Rules for the Conduct of Proceedings before the SALGBC.

- (b) facts that are agreed between the parties;
  - (c) facts that are in dispute;
  - (d) the issues that the arbitrator is required to decide;
  - (e) the precise relief claimed and, if compensation is claimed, the amount of the compensation and how it is calculated;
  - (f) the sharing and exchange of relevant documents, and the preparation of a volume of documents in chronological order with each page numbered;
  - (g) the manner in which documentary evidence is to be dealt with; including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
  - (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine;
  - (i) which party must begin;
  - (j) the necessity for any on-the-spot inspection;
  - (k) securing the presence at the arbitration of any witness;
  - (l) the resolution of any preliminary points that are intended to be taken;
  - (m) the exchange of witness statements;
  - (n) expert evidence;
  - (o) any other means by which the proceedings may be shortened;
  - (p) an estimate of the time required for the hearing;
  - (q) the right of representation; and
  - (r) whether or not an interpreter is required and, if so, for how long and for which languages.
- (3) Unless a dispute is settled, the parties shall, draw up and sign the minutes setting out the facts on which the parties agree or disagree.
- (4) The minutes in terms of subrule (3) may also deal with any other matter listed in subrule (2).
- (5) The referring party shall ensure that a copy of the prearbitration conference minutes is delivered to the appointed arbitrator within five working days of the conclusion of the prearbitration conference.

**21. What notice the SALGBV is to give of an arbitration**

The SALGBC shall give the parties at least 15 working days' written notice of an arbitration hearing, unless the parties agree to a shorter period.

**22. How to determine whether or not an arbitrator may arbitrate a dispute**

If, during the arbitration proceedings, it appears that a jurisdictional issue has not been determined, the arbitrator shall require the referring party to prove that the SALGBC has jurisdiction to arbitrate the dispute.

**23. How to postpone an arbitration**

- (1) Arbitration proceedings may be postponed—
  - (a) by agreement between the parties in terms of subrule (2); or
  - (b) by application and on notice to the other parties in terms of subrule (3).
- (2) The SALGBC shall postpone an arbitration without the parties appearing if—
  - (a) all the parties to the dispute agree in writing to the postponement; and
  - (b) the written agreement for the postponement is received by the SALGBC more than five working days prior to the scheduled date of the arbitration.
- (3) If the conditions of subrule (2) are not met, any party may apply in terms of rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the SALGBC before the scheduled date of arbitration.
- (4) After considering the written application, the arbitrator may—
  - (a) without convening a hearing, postpone the matter; or
  - (b) convene a hearing to determine whether or not to postpone the matter.

## PART FIVE

## RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS

**24. Where a conciliation or arbitration will take place**

- (1) A dispute shall be conciliated or arbitrated in the province or division in which the cause of action arose.
- (2) The SALGBC within a province or division shall determine the venue for conciliation or arbitration proceedings.

**25. Objections to a representative appearing before the SALGBC**

- (1) In the conciliation proceedings a party to the dispute may appear in person or be represented only by—
    - (a) a director or employee of that party; or
    - (b) any member, office bearer or official of the party's registered trade union or registered employers' organisation.
  - (2) In any arbitration proceedings—
    - (a) a party to the dispute may appear in person or be represented only by—
      - (i) a legal practitioner;
      - (ii) a director or employee of the party; or
      - (iii) any member, office-bearer or official of that party's registered trade union or a registered employers' organisation;
    - (b) if the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employees's conduct or capacity, the parties, despite section 138 (4), are not entitled to be represented by a legal practitioner in the proceedings unless—
      - (i) the commissioner and all other parties consent;
      - (ii) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering—
        1. the nature of the questions of law raised by the dispute;
        2. the complexity of the dispute;
        3. the public interest; and
        4. the comparative ability of the opposing parties or their representatives to deal with the dispute.
  - (3) If a party to the dispute objects to the representation of another party to the dispute or the arbitrator suspects that the representative of a party does not qualify in terms of the Act, the arbitrator shall determine this issue.
  - (4) The arbitrator may call upon the representative to establish why the representative should be permitted to appear in terms of the Act.
  - (5) A representative shall tender any documents requested by the arbitrator, in terms of subrule (2), including constitutions, payslips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employer's organisation.
- 26. How to join or substitute parties to proceedings**
- (1) The arbitrator may join any number of persons as parties in proceedings if their right to relief depends on substantially the same question of law or fact.
  - (2) An arbitrator may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
  - (3) An arbitrator may make an order in terms of subrule (2)—
    - (a) of its own accord;
    - (b) on application by a party; or
    - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
  - (4) An application in terms of this rule shall be made in terms of rule 31.
  - (5) When making an order in terms of subrule (2), an arbitrator may—
    - (a) give appropriate directions as to the further procedure in the proceedings; and
    - (b) make an order of costs in accordance with these rules.

- (6) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the SALGBC for an order substituting that party for an existing party, and an arbitrator may make such order or give appropriate directions as to the further procedure in the proceedings.
- (7) An application to join any person as a party to proceedings or to be substituted for an existing party shall be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (8) Subject to any order made in terms of subrules (5) and (6), joinder or substitution in terms of this rule shall not affect any steps already taken in the proceedings.

#### **27. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, an arbitrator may, on application and on notice to the parties concerned, correct the error or defect.

#### **28. When the SALGBC may consolidate disputes**

The SALGBC or an arbitrator, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

#### **29. Disclosure of documents**

- (1) The parties may agree on the disclosure of documents.
- (2) Either party may request an arbitrator to make an order as to the disclosure of relevant documents.

#### **30. What happens if a party fails to attend proceedings before the SALGBC**

- (1) If a party to the dispute fails to attend or be represented at any proceedings before the SALGBC, and that party—
  - (a) had referred the dispute to the SALGBC, an arbitrator may dismiss the matter by issuing a written ruling; or
  - (b) had not referred the matter to the SALGBC, the arbitrator may—
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the proceedings to a later date.
- (2) An arbitrator shall be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
- (3) If a matter is dismissed, the SALGBC shall send a copy of the ruling to the parties.

### **PART SIX**

#### **APPLICATIONS**

#### **31. How to bring an application**

- (1) This rule applies to any—
  - (a) application for condonation, joinder, substitution, variation or rescission;
  - (b) application in a jurisdictional dispute;
  - (c) other preliminary or interlocutory application.
- (2) An application shall be brought on notice to all persons who have an interest in such application.
- (3) The party bringing the application shall sign the notice of application in accordance with rule 4 and shall state—
  - (a) the title of the matter;
  - (b) the case number assigned to the matter by the SALGBC;
  - (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
  - (e) that any party intending to oppose the matter shall deliver a notice of opposition and answering affidavit within 10 working days after the application has been delivered to it;
  - (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and
  - (g) that a schedule is included listing the documents that are material and relevant to the application.

- (4) The application shall be supported by an affidavit. The affidavit shall clearly and concisely set out—
  - (a) the names, description and addresses of the parties;
  - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
  - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 9; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.
- (5) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 10 working days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering affidavit shall contain, with the changes required by the context, the information required by subrules (3) and (4), respectively.
- (6) (a) The party initiating the proceedings may deliver a replying affidavit within five working days from the day on which any notice of opposition and answering affidavit are served on it.
- (b) The replying affidavit shall address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (c) An arbitrator may permit the affidavits referred to in this rule to be substituted by a written statement.
- (d) In an urgent application, an arbitrator—
  - (i) may dispense with the requirements of this rule; and
  - (ii) may only grant an order against a party that has had reasonable notice of the application.
- (7) (a) The SALGBC shall allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.
- (b) The SALGBC shall notify the parties of the date, time and place of the hearing of the application.
- (c) Applications may be heard on a motion roll.
- (8) Despite this rule, the SALGBC or an arbitrator may determine an application in any manner it deems fit.

### **32. How to apply to vary or rescind arbitration awards or rulings**

- (1) An application for the variation or rescission of an arbitration award or ruling shall be made within 10 working days of the date on which the applicant became aware of—
  - (a) the arbitration award or ruling; and
  - (b) a mistake common to the parties to the proceedings.
- (2) A ruling made by an arbitrator which has the effect of a final order, shall be regarded as a ruling for the purposes of this rule.

### **33. How to apply to refer a dismissal dispute to the Labour Court**

- (1) An application in terms of section 191 (6) of the Act to refer a matter to the Labour Court, shall be delivered—
  - (a) within 90 calendar days of a certificate that the dispute has not been resolved being issued; or
  - (b) by a party that has not requested arbitration, within 10 working days of the referral for arbitration being filed.
- (2) Despite subrule (1), a party that requests arbitration may not thereafter make an application in terms of section 191(6).
- (3) The application shall state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party shall state the grounds for the objection within five working days of receipt of the application.
- (5) The SALGBC shall notify the parties of its decision in terms of section 191 (8) within 10 working days of receiving the objection.

## **PART SEVEN**

### **PREDISMISSAL ARBITRATION IN TERMS OF SECTION 188A**

#### **34. How to request a predissmissal arbitration in terms of section 188A**

- (1) An employer requesting the SALGBC to conduct a predissmissal arbitration, shall do so by delivering a completed prescribed SALGBC predissmissal arbitration referral form to the SALGBC.



- (2) The employee shall sign the prescribed SALGBC form unless the employee has consented in terms of section 188A (4)(b)6 to predissmissal arbitration in a contract of employment, in which case a copy of the contract shall be attached to the form.
- (3) When filing the prescribed SALGBC form the employer shall pay the prescribed fee to the SALGBC, and the payment method shall be by—
  - (a) bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the SALGBC.
- (4) Within 15 working days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the SALGBC shall notify the parties to the predissmissal and the arbitration of when and where the predissmissal arbitration will be held.
- (5) Unless the parties agree otherwise, the SALGBC shall give the parties at least 10 working days' notice of the commencement of the predissmissal arbitration.

## PART EIGHT

### GENERAL

#### 35. Condonation for failure to comply with the Rules

An arbitrator may condone any failure to comply with the time frames in these Rules, on good cause shown.

#### 36. Recordings of arbitration proceedings

- (1) The SALGBC shall keep a record of—
  - (a) any evidence given in an arbitration hearing;
  - (b) any sworn testimony given in any proceedings before the SALGBC; and
  - (c) any arbitration award or ruling made by an arbitrator.
- (2) The record may be kept by legible handwritten notes or by means of an electronic recording.
- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of subrule (2), on payment of the costs of the transcription.
- (4) After the person who makes the transcript of the record has certified that it is correct, the record shall be returned to the SALGBC.
- (5) The transcript of a record certified as correct in terms of subrule (4) shall be presumed to be correct, unless the Labour Court decides otherwise.

#### 37. How to have a subpoena issued

- (1) Any party who requires the SALGBC or an arbitrator to subpoena a person in terms of section 142(1) of the Act, shall file a completed LRA Form 7.1, together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the SALGBC to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) shall set out the reasons for the request in writing at the time of requesting the SALGBC to issue a subpoena in respect of that witness.
- (3) An application in terms of subrule (1) shall be filed with the SALGBC at least 10 working days before the arbitration hearing, or as directed by the arbitrator hearing the arbitration.
- (4) An arbitrator may refuse to issue a subpoena if—
  - (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
  - (c) the arbitrator is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena shall—
  - (a) be served on the witness subpoenaed by the person who has requested the issue of the subpoena or the sheriff, at least five days before the scheduled date of the arbitration; and
  - (b) if so directed by the SALGBC, be accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the *Gazette* in terms of section 142 (7) of the Act and the witnesses' reasonable travel costs.
- (6) Subrules 4 (c) and 5 (b) do not apply if the SALGBC in terms of section 142 (7) (c), has waived the requirement to pay witness fees.

#### 38. Payment of witness fees

- (1) A witness subpoenaed in any proceedings shall be paid a witness fee in accordance with the tariff of allowances published by notice in the *Gazette* in terms of section 142 (7) of the Act.

- (2) The witness fee shall be paid by—
  - (a) the party who requested an arbitrator to issue the subpoena; or
  - (b) the SALGBC, if the issue of the subpoena was not requested by a party of if the SALGBC waives the requirement to pay witness fees in terms of section 142 (7) (c).
- (3) Despite subrule (1), the arbitrator may make an order as to costs in an arbitration, as regulated by section 138 (10) of the Act.

#### **39. Taxation of bills of cost**

- (1) The basis on which an arbitrator may make an order as to costs in an arbitration is regulated by section 138 (10) of the Act.
- (2) The General Secretary may appoint taxing officers to perform the functions of a taxing office in terms of these Rules.
- (3) The taxing officer shall tax any bill of costs for services rendered in connection with proceedings in the SALGBC on Schedule A of the prescribed Magistrate's Courts Act No. 32 of 1944, unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation shall complete LRA Form 7.17 and shall satisfy the taxing officer—
  - (a) of that party's entitlement to be present at the taxation; and
  - (b) that the party liable to pay the bill has received notice of the date, time, and place of the taxation.
- (6) Despite subrule (4), notice need not be given to a party—
  - (a) who failed to appear or to be represented at the hearing; or
  - (b) who consented in writing to the taxation taking place in that party's absence.
- (7) Any decision by a taxing officer is subject to review by the Labour Court.

#### **40. Certification and enforcement of arbitration awards**

- (1) An application to have an arbitration award certified based on information or containing the information in LRA Form 7.18 A.
- (2) Any arbitration award that has been certified in terms of section 143 of the Act that orders the payment of an amount of money, may be executed—
  - (a) by using the warrant of execution in the LRA Form 7.18 A; or
  - (b) by the warrant of execution prescribed in the Rules for the Conduct of Proceedings in the High Court.
- (3) For the purposes of subrule (2), an arbitration award includes an award of costs in terms of section 138 (10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of section 140 (2).

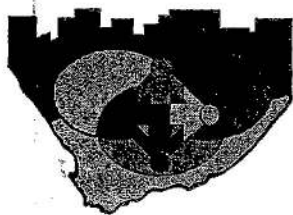
**SCHEDULE 1**  
**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**  
**HEAD OFFICE**

General Secretary	E-mail Address	Telephone	Fax	Postal Address	Street Address
Mr B. Govender 083 778 2613	bill@salgbc.org.za	(031) 267-2227 (031) 267-1598	(031) 267-0929	Private Bag X12 Westville 3630	Westville Civic Centre 1 William Lester Drive Westville 3630

**REGIONAL OFFICES**

Division	Regional Secretary	Email address	Telephone	Fax	Postal Address	Street Address
Gauteng	Mr L. Dlamini 082 469 8354	rs gauteng@salgbc.org.za aa gauteng@salgbc.org.za	(011) 333-5467 (011) 336-1390	(011) 333-8091	PO Box 144 Johannesburg 2000	13th Floor Sanlam Centre 208-212 Jeppe Street Johannesburg 2000
Eastern Cape	Mr F. Gaushe 083 571 2343	rs easterncape@salgbc.org.za aa easterncape@salgbc.org.za	(041) 585-3074 (041) 585-7362	(041) 585-0646	PO Box 12627 Central Port Elizabeth 6000	Tailer House 27 Cuyler Street Central Port Elizabeth 6000
KwaZulu-Natal	Mr A. Singh 082 483 8665	anilising@salgbc.org.za ronika@salgbc.org.za	(031) 267-2221 (031) 267-2388	(031) 267-0930	Private Bag X12 Westville 3630	Westville Civic Centre 1 William Lester Drive Westville 3630
Western Cape	Mr O. Wilson 083 462 4826	rs westerncape@salgbc.org.za aa westerncape@salgbc.org.za	(021) 930-9241	(021) 930-9244	PO Box 445 Parow 7499	21A Mc Intyre Street Parow 7499
Northern Cape/ Free State	Mr M. Faas 072 237 2165	rs freestate@salgbc.org.za aa freestate@salgbc.org.za	(053) 832-1216 (053) 832-1215	(053) 831-3608	PO Box 1671 Kimberley 8300	54 Transvaal Road Kimberley 8300
North West/ Mpumalanga/ Limpopo	Mr E. Shelembe 072 150 1035	rs pretoria@salgbc.org.za aa pretoria@salgbc.org.za	(012) 322-4583 (012) 322-4574	(012) 320-4136	PO Box 11046 Tramshed 0126	18th Floor Sanlam Centre Cnr Andries and Pretorius Streets Pretoria 0001

## ANNEXURE 1

SOUTH AFRICAN LOCAL GOVERNMENT  
BARGAINING COUNCIL

Division: ..... Case number: .....

Applicant/employee: .....

Respondent/employer: .....

## AFFIDAVIT IN RESPECT OF APPLICATION FOR CONDONATION

I, the undersigned .....

(Full name of applicant/respondent) *(delete whichever is not applicable)*

do hereby make oath and say:

**1. Background****1.1 Unfair labour practice**

1.1.1 Applicant became aware of the act or omission on: .....

1.1.2 Respondent refused to correct the act or omission on: .....

**1.2 Unfair dismissal**

1.2.1 Internal proceedings were exhausted on: .....

1.2.2 Internal procedures not yet exhausted as at: .....

**2. The degree of lateness (how late is the referral)**

2.1 The dispute should have been referred on: .....

2.2 The referral is ..... days late.

**3. Reasons for lateness**

Reasons for late referral by applicant: .....

.....

.....

.....

.....



4. **Attempts made by the applicant to pursue his/her rights.** (Did the applicant approach his/her union, Department of Labour, Community Advice Centre or Legal Advice Centre for assistance? If so, stipulate dates.)

.....

.....

.....

.....

5. **Prospects of success**

Applicant believes that he/she has good cause because (give reasons why you believe dismissal/unfair labour practice to be unfair, both procedurally and substantively):.....

.....

.....

.....

6. **Prejudice**

If condonation is not granted, I will not be prejudiced because:.....

.....

.....

.....

.....

If condonation is granted, I believe the respondent will be prejudiced because:.....

.....

.....

.....

7. **General**

Any other relevant information:.....

.....

.....

Signed .....

Signed before me at.....

on the..... day of .....

20.....

by the deponent who acknowledged that he/she knows and understands the contents of the affidavit, has no objection to taking the oath/affirmation and considers it binding on his/her conscience.

Commissioner of oaths: .....

Name:.....

Address: .....

.....

Capacity: .....

### **GUIDELINES TO COMPLETING AND RESPONDING TO CONDONATION APPLICATIONS**

The Labour Relations Act (LRA) and the constitution of the South African Local Government Bargaining Council have certain time frames for the submission of referrals. A condonation application needs to be completed for the late submission of the referral form. In the case of dismissal disputes, a condonation application is necessary if the dispute is referred to the Council more than:

- 30 days after exhausting internal procedures, as contemplated in terms of section 191(1)(b)(i) of the LRA;
- 90 days from the date of dismissal if internal procedures have not yet been exhausted, as contemplated in terms of section 191(1)(b)(i) of the LRA.

In the case of unfair labour practice disputes, a condonation application is necessary if the dispute is referred after 90 days of the alleged unfair labour practice.

If you refer your case outside of the time frames indicated above, you will need to make an application for your late referral to be condoned. These guidelines should assist you.

#### **THE APPLICANT (referring party)**

The application must be in the form of a sworn affidavit, and the application form is set out in such a format as to assist you.

The following issues must be dealt with in your application:

#### **1. The degree of lateness and the reason(s) for the delay**

You must give reasons for the lateness that account for the full period that the referral was late. It is, for example, not sufficient to say you were in hospital for a week if the referral is six weeks late. This would explain only one week's lateness and not that of the other five weeks.

Proof is also required. For example, just stating you were in hospital without proof does not carry much weight. If proof cannot be supplied, give reasons why not.

If the referral has been incorrectly made to the CCMA or another bargaining council, the reason for the mistake must be given.

#### **2. Prospects of success**

You must state why there is a good chance of your case being successful should it eventually go for arbitration or to the Labour Court. Enough detail must be given to allow the employer to respond. For example, just stating that the chairperson of the disciplinary hearing was biased is not enough. Reason for and, if available, proof of the allegation made must be given.

#### **3. Prejudice**

It is important to indicate your personal circumstances and whether you have obtained other employment. Any other relevant circumstances must also be mentioned.

**4. The importance of the matter**

If the matter is important from a general policy viewpoint, such as potential unrest, it must be stated.

**5. Any other important information**

You can give any other relevant information that you think supports your application. Please attach any documents that support your application.


**THE RESPONDENT**

Should you wish to respond to the applicant's affidavit, it must reach the offices of the Council within 10 working days of receiving the application. It should deal with the issues raised in the application and must also be in the form of a sworn affidavit. Proof of service must be attached.

The applicant then has five working days to respond to the respondent's affidavit.

The Council may request additional information or it may call the parties to a hearing if there is insufficient information or if this will assist in making an appropriate order.

**ANNEXURE 2**

<b>Labour Relations Act, 1995 sections 51 (8), 135, 191</b>	<b>SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL</b>  <b>REQUEST FOR CONCILIATION</b>	
---	---	---

DIVISION: .....

**1. WHAT IS THE PURPOSE OF THIS FORM?**

This form enables a person or organisation to refer a dispute to the South African Local Government Bargaining Council "SALGBC" for conciliation.

**2. WHO FILLS IN THIS FORM?**

Any party to the dispute, such as an employer, employee, trade union or employer's organisation.

**3. WHERE DOES THIS FORM GO?**

To the Regional Secretary of the Council in the division where the dispute arose or, if the dispute is a national dispute, to the General Secretary of the Council.

**4. WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?**

When you refer the dispute to the SALGBC, the Council will try to resolve the dispute, through conciliation, within 30 days of the date of referral.

**5. FURTHER INSTRUCTIONS**

A copy of this form must be served on the other party.

Proof that a copy of this form has been served on the other party must be supplied by attaching one of the following:

- A copy of a registered slip from the Post Office; or
- a copy of a signed receipt if hand delivered; or
- a signed statement confirming service by the person delivering the form; or
- a copy of a fax confirmation slip; or
- any other satisfactory proof of service.

**6. PLEASE NOTE**

The following disputes must be forwarded directly to the CCMA and cannot be dealt with by a bargaining council in terms of the Labour Relations Act, No. 66 of 1995 (the "LRA"):

- Disclosure of information disputes (section 16 and 189 of the LRA);
- Organisational rights disputes (Chapter III part A of the LRA);
- Agency shop disputes (section 25 of the LRA);
- Closed shop disputes (section 26 of the LRA);
- Interpretation or application of collective bargaining provisions [section 63 (1) of the LRA];
- Picketing disputes [section 69 of the LRA];
- Workplace forum disputes (Section 86 and 94 of the LRA);



**READ THIS FIRST**Tick the correct box ☒

The name of the employee or an employer that is referring the dispute must be filled in (a).

If there is more than one employee to the dispute and the referring party is not a trade union, then each employee must supply their personal details and signature on a separate page, which must be attached to this form.

These alternative contact details should be of a union official or representative, a relative or a friend.

The name of the trade union or employers organization that is referring the dispute or assisting a member to refer a dispute must be filled in (b).

**OTHER PARTIES**

If more than one party is referring the dispute or if the dispute is referred against more than one party, write down the additional names and particulars on a separate page and attach to this form.

Tick the correct box ☒**1. DETAILS OF PARTY REFERRING THE DISPUTE**

As the referring party, are you:

☐ An employee or member of a union ☐ A trade union ☐ IMATU  
☐ SAMWU

☐ An employer ☐ An employer's organisation

**(a) Name of the party if the referring party is an employee or employer**

Name: .....

ID number: .....

Postal address: .....

..... Postal code: .....

Tel: ..... Cell: .....

Fax: ..... Email: .....

**(b) Alternative contact details of employee:**

Name: .....

Postal address: .....

..... Postal code: .....

Tel: ..... Cell: .....

Fax: ..... Email: .....

**(c) Name of the referring party, if the referring party is an employer's organisation or trade union, or if the trade union of employer's organisation is assisting a member to the dispute:**

Name: .....

Postal address: .....

..... Postal code: .....

Tel: ..... Cell: .....

Fax: ..... Email: .....

**2. DETAILS OF OTHER PARTY (PARTY WITH WHOM YOU ARE IN DISPUTE)**

The other party is:

☐ An employee or member of a union ☐ A trade union ☐ IMATU  
☐ SAMWU

☐ An employer ☐ An employer's organisation

Name of contact person: .....

Postal address: .....

..... Postal code: .....

Tel: ..... Cell: .....

Fax: ..... Email: .....

Please turn over .....

Tick the correct box ☒

If the dispute concerns dismissals, also complete B (see page 5).

This section **must** be completed.

If necessary write the details on a separate page and attach to this form.

#### UNFAIR LABOUR PRACTICE

If the dispute concerns an unfair labour practice the dispute must be referred (i.e. received by the Council) within 90 days of the act or omission that gave rise to the unfair labour practice.

If more than 90 days have elapsed you are required to apply for condonation.

### 3. NATURE OF THE DISPUTE

What is the dispute about? (Tick only one box)

- |  |   |
|--|---|
| <input type="checkbox"/> Unfair dismissal                                    | <input type="checkbox"/> Unfair labour practice (probation) |
| <input type="checkbox"/> Unilateral change to terms/conditions of employment | <input type="checkbox"/> Mutual interest                    |
| <input type="checkbox"/> Interpretation/application of collective agreement  | <input type="checkbox"/> Severance pay S41 BCEA             |
| <input type="checkbox"/> Freedom of association                              | <input type="checkbox"/> Refusal to bargain                 |
| <input type="checkbox"/> Unfair labour practice (give details)               | <input type="checkbox"/> S80 BCEA                           |
| <input type="checkbox"/> Other (please describe .....                        |   |

Summarise the facts of the dispute you are referring: .....

.....

.....

### 4. DATE DISPUTE AROSE

The dispute arose on:

.....

(give the day, month and year)

The dispute arose where:

.....

(give the city/town in which the dispute arose)

If the dispute concerns a dismissal, the date inserted here must be the same as that set out in Item 2 of Part B.

### 5. DETAILS OF DISPUTE PROCEDURES FOLLOWED

Have you followed all internal grievance/disciplinary procedures before coming to the SALGBC? ☐ YES ☐ NO

Describe the procedures followed: .....

.....

.....

### 6. RESULT OF CONCILIATION

What outcome do you require: .....

.....

.....

.....

Please turn over.....

Tick the correct box



Parties may, at their own cost bring interpreters for languages other than the official South African languages. Please indicate this under 'other'.

Special features might be the urgency of the matter, the large number of people involved, important legal or labour issues, etc.

Only fill this in if this is a dispute about unilateral change to terms and conditions of employment.

**7. INTERPRETATION SERVICES**

Do you require an interpreter at the conciliation/con-arb?

☐ YES ☐ NO

If yes, please indicate for what language:

☐ Afrikaans☐ Sesotho☐ Setswana☐ Sepedi☐ Xitsonga☐ isiXhosa☐ Tshivenda☐ isiZulu☐ siSwati☐ isiNdebele☐ Other (please indicate.....)**8. SPECIAL FEATURES/ADDITIONAL INFORMATION**

Briefly outline any special features/additional information the Council needs to note:

.....

.....

.....

**9. DISPUTE ABOUT UNILATERAL CHANGE TO TERMS AND CONDITIONS OF EMPLOYMENT [section 64 (4)]**

I/we require that the employer party not implement unilaterally the proposed changes that led to this dispute for 30 days, or that it restore the terms and conditions of employment that applied before the change.

Signed: ..... (Employee party referring the dispute)

**10. CONFIRMATION OF ABOVE DETAILS**

Signature of party referring the dispute: .....

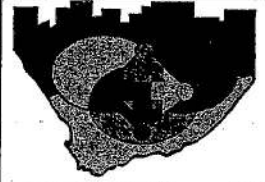
Signed at..... on this .....  
(place) (date)

Please turn over ...



**Section 135**  
**Labour Relations Act, 1995**  
**Section 191**

**PART B**  
**ADDITIONAL FORM FOR DISMISSAL**  
**DISPUTES ONLY**



**DATE OF REFERRAL**

Dismissal disputes must be referred (i.e. received by the Council) within 30 days from the date internal procedures are exhausted or within 90 days from the date of dismissal, if internal procedure have not been exhausted by that time.

If the dispute is referred outside of these time frames, you are required to apply for condonation.

Tick the correct box



Tick the correct box



If necessary write the details on a separate page and attach to this form.

**CHECK**

•Have you sent a copy of this completed form to the other party?

•Have you attached proof of service on the other party to this form?

**1. COMMENCEMENT OF EMPLOYMENT**

When did you start working at the employer?.....

**2. NOTICE OF DISMISSAL**

When were you dismissed (date)?.....

How were you informed of your dismissal?

☐

In writing

☐

Orally

☐

Other

**3. REASON FOR DISMISSAL**

Why were you dismissed?

☐

Misconduct

☐

Incapacity

☐

Operational requirements (retrenchment)

☐

Unknown

☐

Constructive

☐

Other (please describe)

**4. WAS THE DISMISSAL RELATED TO PROBATION?**

☐

YES

☐

NO

**5. FAIRNESS/UNFAIRNESS OF DISMISSAL**

**(a) Procedural issues**

Was the dismissal procedurally unfair?

☐

YES

☐

NO

If yes, why? .....

**(b) Substantive issues**

Was the reason for the dismissal unfair?

☐

YES

☐

NO

If yes, why? .....



**OTHER INSTRUCTIONS**

A copy of this form must be served on the other party.

Proof that a copy of this form has been served on the other party must be supplied by attaching:

- A copy of a registered slip from the Post Office;
- a copy of a signed receipt if hand delivered;
- a signed statement confirming service by the person delivering the form;
- a copy of a fax confirmation slip; or
- Any other satisfactory proof of service.

The certificate confirming that the dispute was unresolved through conciliation must also be attached to this form.

**CHECK!!**

Have you sent a copy of this completed form to the other party?

Have you included proof (that you have sent a copy to the other party) with this form?

Have you attached the certificate confirming that the dispute was unresolved through conciliation?

**3. WHAT DECISION WOULD YOU LIKE THE ARBITRATOR TO MAKE?**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

(The arbitrator may require a more detailed statement of case later)

**4. CONFIRMATION OF ABOVE DETAILS:**

Form submitted by: .....  
(Name)

Signature: .....

Designation: .....

Date: .....

Place: .....

**This form must be signed by the referring party, or a person entitled to represent the party in the arbitration proceedings.**

**5. DETAILS OF OTHER PARTY**

Name: .....

Designation: .....

Postal address: .....

.....

.....

Tel: ..... Fax: .....

Cell: ..... Email: .....

**ARBITRATION REQUESTS****RELEVANT SECTION/NATURE OF DISPUTE**

Relevant Section	Nature of dispute
Labour Relations Act, section 191 .....	Unfair dismissal and unfair labour practice disputes
Basic Conditions of Employment Act, section 41.....	Severance pay

**CONTACT DETAILS OF DIVISIONS OF THE COUNCIL****Head Office**

Tel: (031) 267-2227

Fax: (031) 267-0929

**Gauteng Regional Office**

Gauteng Division

Tel: (011) 333-5467

Fax: (011) 333-8091

Johannesburg Division

Tel: (011) 333-5467

Fax: (011) 333-8091

Tshwane Division

Tel: (011) 333-5467

Fax: (011) 333-8091

**Eastern Cape Regional Office**

Eastern Cape Division

Tel: (041) 585-3074

Fax: (041) 585-0646

**KwaZulu-Natal Regional Office**

eThekweni Metropolitan Division

Tel: (031) 267-2221

Fax: (031) 267-0930

KwaZulu-Natal Division

Tel: (031) 267-2221

Fax: (031) 267-0930

**Western Cape Regional Office**

Western Cape Division

Tel: (021) 930-9241

Fax: (021) 930-9244

Cape Metropolitan Division

Tel: (021) 930-9241

Fax: (021) 930-9244

**North West/Mpumalanga/Limpopo Regional Office**

Mpumalanga Division

Tel: (012) 322-4583

Fax: (012) 320-4136

North-West Division

Tel: (012) 322-4583

Fax: (012) 320-4136

Limpopo Division

Tel: (012) 322-4583

Fax: (012) 320-4136

**Northern Cape/Free State Regional Office**

Northern Cape Division

Tel: (053) 832-1216

Fax: (053) 832-1215

Free State Division

Tel: (053) 832-1216

Fax: (053) 832-1215

No. R. 722

18 June 2004

## LABOUR RELATIONS ACT, 1995

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF LEVIES COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 30 June 2005.

**M. M. S. MDLADLANA**

Minister of Labour

No. R. 722

18 Junie 2004

## WET OP ARBEIDSVERHOUDINGE, 1995

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN HEFFINGS KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE****SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL**

(hereinafter referred to as the "Council")

**LEVIES COLLECTIVE AGREEMENT**

in accordance with provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" or the "employers' organisation"), of the one part, and the

**Independent Municipal and Allied Trade Union (IMATU)**

and the

**South African Municipal Workers Union (SAMWU)**

(hereinafter referred to as the "trade unions"), of the other part, being the parties to the South African Local Government Bargaining Council.

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## 1. SCOPE OF APPLICATION OF AGREEMENT

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 and 8.4 of this Agreement shall not apply to non-parties.

## 2. DEFINITIONS

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and, unless the contrary intention appears, words importing the masculine gender shall include the feminine, and vice versa.

## 3. PERIOD OF OPERATION

3.1 This Agreement shall come into operation in respect of the parties to the Agreement on 1 July 1999 and shall remain in force until 30 June 2005.

3.2 This Agreement shall come into operation in respect of non-parties on a date to be determined by the Minister of Labour and shall remain in force until 30 June 2005.

## 4. OBJECTIVE

The objective of this Agreement is to provide for a levy to fund the Council, which funds shall be administered by the Council.

## 5. COUNCIL FUNDS

5.1 Every employer shall for employees paid monthly on each pay day, or for employees paid weekly on the last day of each month, deduct from the wages of each of its employees bond by this Agreement an amount of R2,50.

5.2 To the amount deducted in terms of clause 5.1, the employer shall add an equal amount and forward the total amount to the General Secretary of the Council, Private Bag X12, Westville, 3630, not later than the 15th day of the month following the month in which deductions were made.

5.3 Where an employee is on leave of any nature, excluding a period where an employee is on unpaid leave for an entire month, both his own and the employer's contribution shall be continued for the period of such leave.

5.4 Should any amount due in terms of clauses 5.1 and 5.2 not be received by the Council on the due date, the employer shall forthwith be liable for and be required to pay interest on such overdue amount at an interest rate determined by the Council from time to time, subject to the Prescribed Rate of Interest Act, 1975.

5.5 Interest in terms of clause 5.4 shall be charged from the date on which the payment becomes due until the date upon which payment is actually received by the Council. The Council shall, in its absolute discretion, be entitled to waive interest or part thereof.

5.6 In the event of the employer failing to submit the amount payable in terms of clause 5.4, the Council shall, for the purpose of instituting legal proceedings, be entitled to calculate all outstanding levies payable based on the last amount submitted by the employer, without prejudice to its right to recover levies actually due which are over and above this amount.

5.7 In the event of the Council instituting civil proceedings against an employer for failing to pay amounts due in terms of this Agreement, such employer shall be liable for all legal costs and disbursements incurred by the Council as between attorney and client, including collection charges.

## 6. ADMINISTRATION AND ENFORCEMENT

6.1 The Council shall be responsible for the administration of this Agreement.

6.2 This Agreement shall be monitored and enforced by the Council's agents or designated agents appointed by the Minister of Labour.

## 7. DISPUTE ABOUT INTERPRETATION OR APPLICATION OF THIS AGREEMENT

7.1 Any person or party may refer a dispute about the interpretation or application of this Agreement to the Central Council of the SALGBC.

7.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or to the Central Council or, in the event that after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee, which shall determine the appropriate jurisdiction.

7.3 The General Secretary or Regional Secretary, as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive and, in the event of a dispute not being resolved, shall—

7.3.1 appoint a conciliator from the appropriate panel of conciliators, doing so as far as possible on a rotational basis; or

7.3.2 if the dispute remains unresolved, refer the dispute to arbitration.



7.4 If a conciliator is appointed, the General Secretary or Regional Secretary concerned shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

7.5 If the dispute is referred to arbitration, the General Secretary or Regional Secretary concerned shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.

7.6 The General Secretary or Regional Secretary concerned, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

7.7 The arbitrator shall—

7.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; or

7.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

7.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Agreement.

## 8. EXEMPTIONS

8.1 Any person bound by this Agreement shall be entitled to apply for exemption from this Agreement.

8.2 All applications for exemption from any provisions of this Agreement shall be in writing and lodged with the General Secretary. Such applications shall set out—

8.2.1 all material details of the applicant;

8.2.2 the specific provisions of this Agreement from which the applicant seeks exemption;

8.2.3 detailed grounds on which such exemption is sought, taking into consideration the criteria contained in clause 8.7 below.

8.3 The Executive Committee shall consider all applications made by a party (which shall include the members of such party/non-party those this Agreement), and may, subject to clause 8.7, and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

8.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council, which shall consider the application subject to clause 8.7 and, on giving its reasons thereof may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

8.5 All applications for an appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 8.11 below.

8.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing or evidence and arguments.

8.7 When considering an application for exemption, an appeal against an Executive Committee decision or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

(a) Any written and/or verbal substantiation provided by the applicant;

(b) fairness to the employer, its employees and other employers and employees in the industry;

(c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;

(d) unexpected economic hardship occurring during the currency of this Agreement and job creation and/or loss thereof;

(e) the infringement of basic conditions of employment;

(f) the fact that a competitive advantage might be created by the exemption;

(g) comparable benefits or provisions where applicable;

(h) the applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or the Unemployment Insurance Act, 2001; or

(i) any other factor which is considered appropriate.

8.7 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

8.8 The Council shall issue to every person granted an exemption in terms of this clause, a certificate of exemption setting out—

(a) the applicant's name;

(b) the provisions of this Agreement from which exemption has been granted;

(c) the conditions relating to the exemption; and

(d) the period for which the exemption shall operate.

8.9 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemption Body for the withdrawal of a certificate granted.

8.10 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

Signed by the parties at Kempton Park this 10th day of February 2004.

**S. SOMYO**

Member of the Council (representing SALGA)

**C. DUNSTAN**

Member of the Council (representing IMATU)

**P. MASHISHI**

Member of Council (representing SAMWU)

**S. GOVENDER**

General Secretary of the Council

**No. R. 723**

**18 June 2004**

**LABOUR RELATIONS ACT, 1995**

**SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL: EXTENSION OF GRIEVANCE PROCEDURE  
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the South African Local Government Bargaining Council and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 28 June 2004, and for the period ending 30 June 2005.

**M. M. S. MDLADLANA**

Minister of Labour

**No. R. 723**

**18 Junie 2004**

**WET OP ARBEIDSVERHOUDINGE, 1995**

**SUID-AFRIKAANSE PLAASLIKE REGERINGS BEDINGINGSRAAD: UITBREIDING VAN GRIEWE PROSEDURE  
KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Suid-Afrikaanse Plaaslike Regerings Bedingingsraad aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is op die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 28 Junie 2004, en vir die tydperk wat op 30 Junie 2005 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid

**SCHEDULE**

**THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL  
(hereinafter referred to as the "Council")**

**GRIEVANCE PROCEDURE COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**South African Local Government Association**

(hereinafter referred to as "SALGA" or the "employers' organisation"), and the

**Independent Municipal and Allied Trade Union**

(hereinafter referred to as "IMATU"), and the

**South African Municipal Workers' Union**

(hereinafter referred to as "SAMWU"), (IMATU and SAMWU will together be referred to as the "trade unions").

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**1. SCOPE OF AGREEMENT**

1.1 The terms of this Agreement shall be observed in the Local Government Undertaking in the Republic of South Africa by all employers and by all employees who fall within the registered scope of the Council.

1.2 Clauses 3.1 and 7.4 shall not apply to non-parties.

**2. DEFINITIONS**

2.1 Any reference to days herein is a reference to working days.

2.2 All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall bear the same meaning as in the Act and unless the contrary intention appears, words importing the masculine gender shall include the feminine, and *vice versa*.

**3. PERIOD OF OPERATION**

3.1 This Agreement shall come into operation in respect of the parties to the Agreement, on 26 March 2003 and shall terminate on 30 June 2005. Any action that commenced prior to the effective date shall be regulated by the terms of the then existing code.

3.2 This Agreement shall come into operation in respect of non-parties, on a date to be determined by the Minister of Labour and shall terminate on 30 June 2005.

**4. INTENT**

4.1 The purpose of this procedure is to establish a common and uniform procedure for the management of employee grievances and to replace all existing procedures and regulations.

4.2 This procedure is a product of collective bargaining and the application thereof is peremptory for parties.

4.3 This procedure shall be deemed to be a condition of service.

4.4 The objectives of this grievance procedure are to ensure fair play, to resolve problems as quickly as possible and to deal with conflict through procedural means.

4.5 No employee shall suffer victimisation or occupational prejudice as a result of lodging a grievance.

4.6 This procedure shall address all grievances excluding those grievances for which a specific or particular procedure is provided.

**5. PROCEDURE****5.1 STEP ONE: IMMEDIATE SUPERIOR**

5.1.1 The lodging of a grievance shall, except in exceptional circumstances, take place within 10 days from the time the employee first becomes aware of the matter that gave rise to such grievance.

5.1.2 An aggrieved employee or group of employees must lodge with his immediate superior, a grievance in writing on the prescribed form, setting out the complaint and the desired result. Such an employee may, if he so wishes, be assisted by a shop steward, fellow employee or union official. Should the grievance concern the conduct of the employee's immediate superior, the employee may proceed directly to Step Two, provided that he submits the grievance on the prescribed form.

5.1.3 The immediate superior shall endeavour, in consultation with the affected employee(s), to resolve the grievance within five days of the grievance having been referred to him and shall inform the employee of the outcome in writing.

**5.2 STEP TWO: HEAD OF DEPARTMENT**

- 5.2.1 If a grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees, the immediate superior shall refer the matter in writing within five days to the Head of Department for his nominee.
- 5.2.2 The Head of Department or his nominee shall arrange a meeting to consult and hold discussions with the affected parties in an attempt to achieve a resolution. The employee may be assisted by a fellow employee, shop steward or union official at such a meeting and the immediate superior may also be required to attend.
- 5.2.3 The Head of Department or his nominee shall endeavour to resolve the grievance within five days of the grievance being referred and shall inform the employee of the outcome in writing.

**5.3 STEP THREE: MUNICIPAL MANAGER**

- 5.3.1 If the grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees, the Head of Department or his nominee shall refer it in writing to the municipal manager or his nominee within five days. The municipal manager or his nominee shall hold an enquiry into the grievance, attended by the employee, his representative, if required, and any other person who, in the opinion of the municipal manager or his nominee, should attend.
- 5.3.2 The municipal manager or his nominee shall hear details of the grievance, including proposals to resolve the issue, and shall endeavour to reach a decision within five days.
- 5.3.3 The municipal manager or his nominee shall inform the employee in writing of the outcome of the hearing as envisaged in clause 5.3.2 above, and such decision shall be final in terms of this procedure.
- 5.3.4 If the grievance has not been resolved to the satisfaction of the aggrieved party, that party may refer the grievance to the Council for adjudication.

**6. DISPUTE ABOUT IMPLEMENTATION AND APPLICATION OF THIS AGREEMENT**

6.1 Any person or party may refer a dispute about the interpretation or application of this Agreement to the Central Council.

6.2 In the event of uncertainty on the part of the referring party as to whether a dispute should be referred to a division or to the Central Council, or if, after a dispute has been referred to a division, a party to such division disputes the jurisdiction of such division, the dispute shall be referred to the Executive Committee which shall determine the appropriate jurisdiction.

6.3 The general secretary or regional secretary, as the case may be, shall investigate the dispute or cause the dispute to be investigated and attempt to resolve the dispute by issuing a directive and, in the event of a dispute not being resolved shall—

6.3.1 appoint a conciliator from the appropriate panel of conciliators (doing so as far as possible on a rotational basis); or

6.3.2 if the dispute remains unresolved, refer the dispute to arbitration.

6.4 If a conciliator is appointed, the relevant general secretary or regional secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.

6.5 If the dispute is referred to arbitration, the relevant general secretary or regional secretary shall appoint an arbitrator from the appropriate panel of arbitrators, doing so as far as possible on a rotational basis.

6.6 The relevant general secretary or regional secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.

6.7 The arbitrator shall—

6.7.1 endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; or

6.7.2 if the dispute remains unresolved, resolve the dispute through arbitration.

6.8 The arbitrator may make any appropriate arbitration award in terms of the Act that gives effect to this Agreement.

**7. EXEMPTIONS**

7.1 Any person bound by this Agreement shall be entitled to apply for exemption from this Agreement.

7.2 Any applications for exemption from any provisions of this Agreement shall be in writing and lodged with the General Secretary. Such applications shall state—

7.2.1 all material details of the applicant;

7.2.2 the provisions from which the applicant seeks exemption; and

7.2.3 detailed grounds on which such exemption is sought, taking into consideration the criteria specified in clause 7.7 below.

7.3 The Executive Committee shall consider all applications from a party/non-party to this Agreement (which shall include the members of such party), and may, subject to clause 7.7, and on giving its reasons therefor, grant exemption from any conditions and for any period it considers appropriate.



7.4 A party aggrieved by a decision of the Executive Committee may appeal to the Council, who shall consider the application subject to clause 7.7, and on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

7.5 All applications of appeal from non-parties shall be referred to the Independent Exemptions Body established by the Council in terms of clause 7.11 below.

7.6 The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the applications fairly and quickly, which may include the hearing of evidence and arguments.

7.7 When considering an application for exemption, an appeal against an Executive Committee decision, or an application for the withdrawal of a certificate of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):

- (a) Any written and/or verbal substantiation provided by the applicant.
- (b) Fairness to the employer, its employees and other employers and the employees in the Undertaking.
- (c) Whether an exemption, if granted, would undermine this Agreement or the collective bargaining process.
- (d) Unexpected economic hardship occurring during the currency of this Agreement and job creation and/or loss thereof.
- (e) The infringement of basic conditions of employment rights.
- (f) The fact that a competitive advantage might be created by the exemption.
- (g) Comparable benefits or provisions where applicable.
- (h) The applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act, 1993, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998, the Skills Development Act, 1998, the Skills Development Levies Act, 1999, or Unemployment Insurance Act, 2001.
- (i) Any other factor which is considered appropriate.

7.8 Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

7.9 The Council shall issue to every person granted an exemption in terms of this clause a certificate of exemption setting out—

- (a) the applicant's name;
- (b) the provisions from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

7.10 The Council may withdraw a certificate of exemption granted to a party to this Agreement by giving one month's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a certificate granted.

7.11 The Independent Exemptions Body shall be constituted on an ad hoc basis and shall be appointed by the Council from its panel of arbitrators set up in terms of its constitution.

Signed by the parties at Durban this 5th day of November 2003.

**S. SOMOYO**

**Member of the Council (Representing SALGA)**

**C. DUNSTAN**

**Member of the Council (Representing IMATU)**

**P. MASHISHI**

**Member of Council (Representing SAMWU)**

**S. GOVENDER**

**General Secretary of the Council**

# FIT LETTERHEAD OF MUNICIPALITY

## GRIEVANCE FORM

NAME OF DEPARTMENT:

### PERSONAL DETAILS

Name of employee (print):

Employee No.:

Nature of grievance:

Desired solution:

Signature of employee:

Date:

C C Y Y M M D D

### STEP 1

Name (Print):

Date received:

Results of discussions with employee:

Signature of immediate superior:

Date:

C C Y Y M M D D

Comments of employee:

Signature of employee:

Date:

C C Y Y M M D D

*Cut/tear along dotted line*

### CONFIRMATION OF RECEIPT OF GRIEVANCE FORM

Name (Print):

Employee No.:

Name of immediate superior

Signature:

Date:

C C Y Y M M D D

**STEP 2**
**To be completed by head of department or nominee within five working days of receipt**

Name (Print):														
Date received:														
Results of grievance investigation and decision of head of department or nominee:														
Signature of head of department or nominee:						Date:	C	C	Y	Y	M	M	D	D
Comments of employee:														
Signature of employee:						Date:	C	C	Y	Y	M	M	D	D
Signature of shop steward or union official:														
Signature of shop steward or union official:						Date:	C	C	Y	Y	M	M	D	D

**STEP 3**
**To be completed by municipal manager or nominee within five working days of receipt**

Name (Print):														
Date received:														
Results of grievance investigation and decision of municipal manager or nominee:														
Signature of municipal manager or nominee						Date:	C	C	Y	Y	M	M	D	D
Name of shop steward or union official:														
Signature of shop steward or union official:						Date:	C	C	Y	Y	M	M	D	D

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