



**BUILDING INDUSTRY BARGAINING COUNCIL
(CAPE OF GOOD HOPE)**

CONSTITUTION

TABLE OF CONTENTS

1. NAME.....	4
2. INTERPRETATION.....	4
3. THE CONSTITUTION.....	6
4. THE COUNCIL.....	7
5. PREMISES OF THE COUNCIL.....	7
6. POWERS OF THE COUNCIL.....	7
7. OBJECTS.....	8
8. JURISDICTION.....	9
9. PARTIES.....	9
10. APPOINTMENT OF REPRESENTATIVES.....	11
11. ALTERNATE REPRESENTATIVES.....	13
12. DISQUALIFICATION OF REPRESENTATIVES.....	13
13. REPRESENTATION OF SMALL AND MEDIUM ENTERPRISES.....	14
14. ACTIONS ON BEHALF OF THE COUNCIL.....	14
15. ELECTION AND DUTIES OF PRESIDING OFFICERS.....	15
16. MEETINGS OF THE COUNCIL.....	15
17. EXEMPTIONS FROM COLLECTIVE AGREEMENTS.....	17
18. MINUTES OF MEETINGS.....	19
19. OFFICIALS.....	19
20. DUTIES AND POWERS OF THE SECRETARY.....	20
21. SUB-COMMITTEES.....	20
22. MEETINGS OF SUB-COMMITTEES.....	21
23. EXPENSES OF THE COUNCIL.....	22
24. POWERS TO ACT.....	23
25. STRIKES AND LOCKOUTS.....	23
26. DISPUTES.....	24
27. DISSOLUTION AND WINDING UP.....	25
28. NOTICES.....	26
29. CONDUCT OF REPRESENTATIVES.....	27
30. NEGOTIATING PROCEDURE ON MATTERS OF MUTUAL INTEREST.....	28
31. GENERAL.....	28

INDEX

Accreditation, 8
Act, 5, 6, 7, 8, 10, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29
Agreement, 5, 6, 7, 8, 9, 10, 12, 17, 18, 20, 22, 23, 24, 25, 27, 29
Alternate Representatives, 13, 15, 16, 17, 20, 21, 28
Arbitration, 24
Chairperson, 6, 10, 15, 16, 17, 20, 22, 24, 28, 29, 30
Confidentiality, 28
Constitution, 5, 6, 7, 8, 10, 11, 15, 17, 21, 23, 25, 27, 29, 30
Council, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
Council property, 7, 8, 9, 10
Definitions
 Act, 5, 6
 Agreement, 9, 17, 25
 Alternate, 5, 14, 15, 17, 21, 28, 30
 Auditor, 5, 20, 21
 Building Industry, 5, 8, 10
 Employers' Organisations, 6, 10, 11, 12, 15, 16, 17, 21, 22, 23, 24, 30
 Industry, 5, 8, 9, 11, 12, 14, 15, 19, 22, 24, 25
 Parties, 5, 6, 7, 8, 9, 10, 12, 13, 15, 17, 20, 21, 23, 24, 25, 27, 28, 29, 30
 Party, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 28, 29, 30
 Representative, 5, 6, 8, 10, 13, 14, 15, 17, 21, 22, 23, 24, 27, 28, 30
 Secretary, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 28, 30
 Trade Unions, 6, 10, 11, 12, 16, 17, 21, 22, 23, 24, 30
Disputes, 8, 25, 28
Disqualification of Representatives, 2, 14
Dissolution, 2, 27
Exemptions, 2, 17
Expenses, 2, 23
Gender, 6
Jurisdiction, 8, 10, 11
Labour Court, 27
Labour Relations Act, 5
Liability, 7, 24
Meetings, 14, 16, 17, 20, 21, 22, 23
Objects, 8, 9, 10
Officials, 12, 20, 21
Powers, 8, 14, 15, 16, 21, 22, 23, 30
Premises, 8, 16
Quorum, 16, 17, 23
Revenue, 8
Small and Medium Enterprises, 2, 15
Strike or Lockout, 25, 26
Sub-committees, 2, 21, 22
Vice-Chairperson, 6, 15, 16, 22, 24, 28, 30
Withdrawal, 13, 18, 24

CONSTITUTION
OF THE
BUILDING INDUSTRY BARGAINING COUNCIL
CAPE OF GOOD HOPE

1. **NAME**

The name of the Council is the BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE).

2. **INTERPRETATION**

2.1. HEAD NOTES :

The head notes to the clauses of this Constitution are inserted for reference purposes only and shall not affect or be taken into account in the interpretation of this Constitution.

2.2. DEFINITIONS :

In this Constitution unless repugnant to or inconsistent with the context, the following words and expressions shall have the meanings assigned to them:

- 2.2.1. “**Act**” means the Labour Relations Act, 1995, as amended from time to time, including regulations promulgated thereunder from time to time;
- 2.2.2. “**Agreement**” or “**Collective Agreement**” means any agreement entered into between the Parties in terms of the Act from time to time;
- 2.2.3. “**Alternate**” means a person appointed by a Party to act on behalf of a Representative on the Council or a sub-committee of the Council in the absence of such Representative;
- 2.2.4. “**Auditor**” means the auditor appointed from time to time in terms of clause 19.4.
- 2.2.5. “**Building Industry**” or “**Industry**” means without in any way limiting the ordinary meaning of the expression, the industry as defined in the Council’s registration certificate annexed hereto and in which the employer and the employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or making articles for use in the erection, completion or alteration of buildings and structures, whether the work is performed, the material prepared or the necessary articles are made on the sites of the

buildings or structures or elsewhere, and shall include all work executed or carried out by persons therein who are engaged in the following activities or subdivisions thereof, namely: concrete work; bricklaying; carpentry; French polishing; glazing; joinery; lead and light-making; masonry; metal work; painting; plastering; plumbing; shop, office and bank fitting; steel reinforcing; steel construction; and woodworking; and including excavations, demolitions and the preparation of sites for buildings, unless it can be shown by the employer concerned that such demolition was not carried out for the purpose of preparing the sites for building operations;

- 2.2.6. **“Chairperson”** means the Chairperson of the Council elected in terms of clause 15 and includes any person acting in his stead in terms of this Constitution;
- 2.2.7. **“Council”** means the BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE), registered in terms of section 29 of the Act;
- 2.2.8. **“Employers’ Organisations”** means the employers’ organisations as defined in the Act who are Parties to the Council from time to time;
- 2.2.9. **“Party”** or **“Parties”** means the Employers’ Organisations and the Trade Unions who are Parties to the Council from time to time;
- 2.2.10. **“Representative”** means a person appointed by a Party to represent such Party on the Council or a sub-committee of the Council;
- 2.2.11. **“Secretary”** means the Secretary of the Council appointed in terms of clause 19.1;
- 2.2.12. **“Trade Unions”** means the trade unions as defined in the Act which are parties to the Council.
- 2.2.13. **“Vice-Chairperson** means the Vice-Chairperson of the Council elected in terms of clause 15 and includes any person acting in his stead in terms of this Constitution.

2.3. DEFINITIONS IN THE ACT OR ANY AGREEMENT:

Words and expressions used in this Constitution and which are defined in the Act or any Agreement, shall bear the same meaning as in the Act or in such Agreement unless repugnant to or inconsistent with the context of this Constitution.

2.4. NUMBER AND GENDER:

Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and vice versa.

3. **THE CONSTITUTION**

- 3.1. Should any dispute arise between the Parties as to the interpretation or application of the Constitution and/or any of its clauses, such dispute shall be resolved as follows :
 - 3.1.1. The Party or Parties who claim that a dispute exists must refer the dispute to the Council within seven (7) days for a decision as to the interpretation or application of the provision(s) in dispute, and the Council shall deliver its decision within fourteen (14) days of such referral.
 - 3.1.2. Any party which is aggrieved by the decision of the Council in terms of clause 3.1.1. above may, within seven (7) days of having been informed thereof, request that the matter be referred to arbitration, failing which the decision of the Council shall be final and binding on the Parties.
 - 3.1.3. Should the dispute be referred to arbitration, the Council shall appoint an arbitrator, who shall be a practising advocate or attorney of not less than five (5) years standing. The arbitrator will have the power to decide upon the procedure to be followed at the hearing of the arbitration and may conciliate and/or arbitrate the dispute. The Council will bear the costs of the arbitration, excluding any legal costs that any Party may incur in relation thereto should the Party elect to seek and/or make use of legal advice or representation. The arbitrator's decision shall be final and binding on the Parties.
- 3.2. This Constitution may be amended or added to by a resolution accepted by at least a two-thirds majority of the Representatives at a Council meeting of which at least thirty (30) days' notice specifying the proposed alteration(s) or addition(s) has been given to all Representatives by the Secretary, or without notice at any Council meeting where all the Representatives are present and pass a resolution by unanimous vote. Such amendment(s) or addition(s) shall come into force and effect as provided for in the Act.
- 3.3. Subject to the terms of any Agreement, this Constitution shall be binding on all Parties and their members from time to time.

4. **THE COUNCIL**

- 4.1. The Council is a bargaining council in terms of the Act and duly registered in terms of the registration certificate issued under the Act and annexed hereto.
- 4.2. The Council is a body corporate capable in law of suing and being sued and, subject to any law prohibiting or restricting the acquisition or holding of property, of purchasing or otherwise acquiring, holding and alienating property movable or immovable, including the right of letting or hiring out such property or any rights thereto.

- 4.3. No Party shall by reason only of the fact that it is a Party to the Council be liable for any of the obligations of the Council and the liability of such Party shall be limited to the amount of any levy or contribution or other amounts owing to the Council at any time by such Party.
- 4.4. The assets, property and revenue of the Council are vested in the Council and no Party, Representative, officer or employee of the Council shall have any interest in the said assets, property and revenue of the Council.
- 4.5. The Parties to the Council recognise it as the supreme authority in the Building Industry within the area of jurisdiction of the Council.

5. **PREMISES OF THE COUNCIL**

- 5.1. The Council shall conduct its affairs at such premises as may be decided by the Council from time to time. The head office of the Council shall be at 81 Voortrekker Road, Bellville, or at such other place as the Council may decide.
- 5.2. All summonses, applications and notices of proceedings for or against the Council must be served on the Secretary at the head office of the Council, which is deemed to be the chosen domicilium citandi et executandi of the Council.

6. **POWERS OF THE COUNCIL**

- 6.1. The Council shall have the power to carry out the objects and duties set out in this Constitution, any Agreement and the Act including all things ancillary to any such object or incidental thereto, including the power to delegate any function or power as the Council deems fit.
- 6.2. The Council shall have the power to apply for accreditation as a dispute resolution agency in terms of section 52 of the Act and perform the functions thereof, including the powers conferred upon such an agency in terms of the Act, or appoint an accredited agency to perform the dispute resolution functions referred to in section 51 of the Act in respect of the Industry.

7. **OBJECTS**

The objects of the Council shall be to promote the objects of the Act in the best interests of the Building Industry, and the Council shall, without limiting the generality of the foregoing, be entitled to in its discretion:

- 7.1. do such things and exercise such powers as it may be obliged or entitled to do in terms of this Constitution, any Agreement, the Act or any other legislation;
- 7.2. consider and regulate in accordance with this Constitution, any Agreement and the Act matters of mutual interest to the parties and prevent and settle disputes;
- 7.3. promote good relationships between employers and employees to secure co-operation and the recognition of mutual interests;

- 7.4. establish and regulate uniform conditions of employment for employees within the Industry;
- 7.5. establish means of securing to employees the greatest possible security of earnings and employment;
- 7.6. endeavour to promote job creation and growth within the Industry;
- 7.7. secure the recognition and observance by all persons in the Industry (including non-parties) of any Agreement relating to wages and working conditions negotiated by the Parties;
- 7.8. administer and enforce any Agreement in force from time to time and ensure that it's provisions are complied with by all employers and employees on which it is binding, and issue expressions of opinion on the interpretation of an Agreement;
- 7.9. establish and operate or terminate and wind-up any fund as the Council may consider requisite and desirous in the interests of the Industry and the employees therein from time to time;
- 7.10. determine the rates of contribution and enforcement of the provisions of any fund where it relates to the Industry in terms of any Agreement in force from time to time;
- 7.11. consider, report, advise and make representations or proposals to Nedlac or any other appropriate forum on any policy, legislation or proposed legislation affecting the Industry or the relationship between employers and employees;
- 7.12. raise moneys by such means as the Council may from time to time consider advisable for the purpose of furthering the objects of the Council, the Industry and the interests of employers and employees in the Industry and applying such moneys for such purposes, as the Council deems appropriate;
- 7.13. do all things necessary for, or incidental to the proper carrying out of all or any of the objects of the Council as it deems necessary and, without limiting the generality of the foregoing, enter into agreements for such purposes;
- 7.14. provide means to secure for employees more responsibility for the determination and observance of the conditions of health and safety under which work is carried on;
- 7.15. do such other things as may tend to the furtherance of the above objects or any of them in the Council's discretion and to the maintenance of industrial peace;
- 7.16. own, purchase, lease or otherwise acquire any land, buildings, property (movable or immovable), or rights whether real or personal which may be needed for the purposes or interests of the Council or are capable of being eventually used in connection with any of the objects of the Council and sell, let, alienate or otherwise

dispose of such land, buildings, property or rights, including, without limiting the generality of the foregoing, the bonding of any such property as the Council determines in its discretion;

- 7.17. erect or build such buildings or other structures or amenities as might be required by the Council in the furtherance of its objects and for this purpose, improve or develop any land belonging to or occupied by the Council;
- 7.18. in its own name, institute and/or defend any such legal proceedings as may be considered necessary to enforce compliance with the provisions of this Constitution and/or any Agreement which may be in force from time to time and/or the Act by any person(s) upon whom such provisions are binding, or which may further be considered necessary in the interests of the Council and settle or abandon same;
- 7.19. appoint the Secretary and/or Chairperson or any one or more Representative to act on behalf of the Council to do anything and/or to sign any affidavit, power of attorney, agreement and/or any document of any nature whatsoever to give effect to anything done or to be done by the Council;
- 7.20. establish policies, guidelines and terms of reference that may be deemed necessary by the Council for the performance of the Council's discretionary functions;
- 7.21. consider and deal with any other matter that affects the interests of the Parties;
- 7.22. determine in the Council's discretion what the objects of the Council are.

8. **JURISDICTION**

The area, nature and extent of jurisdiction of the Council is as set out in its registration certificate and as may be amended from time to time.

9. **PARTIES**

- 9.1. The Parties to the Council shall be registered Employers' Organisations and registered Trade Unions whose members are engaged or employed in the Building Industry.
- 9.2. Any Employers' Organisation or Trade Union registered in terms of the Act in respect of persons engaged or employed in the Building Industry may apply in writing to the Council for admission as a Party to the Council and may be admitted as a Party to the Council as provided for in section 56 of the Act and subject to the provisions of the Act, this Constitution and any Agreement.
- 9.3. An application for admission as a Party to the Council must be accompanied by:
 - 9.3.1. a certified copy of the applicant's registered constitution;

- 9.3.2. a certified copy of the applicant's certificate of registration;
 - 9.3.3. details and proof to the satisfaction of the Council of the applicant's membership within the registered scope of the Council as referred to in 9.4 below;
 - 9.3.4. a statement of the reasons why the applicant ought to be admitted as a Party to the Council; and
 - 9.3.5. any other information on which the applicant relies in support of its application.
- 9.4. No Trade Union or Employers' Organisation shall be admitted as a Party to the Council or retain its admission as a Party to the Council unless:
- 9.4.1. a Trade Union has a paid up membership in good standing of at least one thousand (1000) employees who have been registered by the Council as employees that are active in the Industry in the area of jurisdiction of the Council;
 - 9.4.2. an Employers' Organisation represents employers in good standing who collectively employ at least one thousand (1000) employees who have been registered by the Council and are employees that are active in the Industry in the area of jurisdiction of the Council.
- 9.5. For the purposes of clause 9.4:
- 9.5.1. when an employee belongs to two (2) or more Party (or applicant Party) Trade Unions simultaneously, the membership of all Party (or applicant Party) Trade Unions he belongs to will be taken into account when establishing proportional representativeness, provided that no more than 50% of any Party's (or applicant Party) membership shall be multi membership; and
 - 9.5.2. when an employer belongs to two (2) or more Party (or applicant Party) Employers' Organisations simultaneously, the membership of all Party (or applicant Party) Employers' Organisations it belongs to will be taken into account when establishing proportional representativeness, provided that no more than 50% of any Party's (or applicant Party) membership shall be multi membership.
- 9.6. Admission as a party to the Council shall be renewed on an annual basis in the following manner:
- 9.6.1. each Party shall submit to the Council a list, together with proof, of its paid-up members in good standing by 28 February each year;

- 9.6.2. the Council shall validate the employees represented by a Trade Union, or in the collective employ of the members of an Employers' Organisation, as the case may be, who are paid-up members in good standing for the twelve-month period ending 28 February by 30 April of that year and inform each Party of the outcome of the validation;
 - 9.6.3. a Party who does not agree with the validation of the Council referred to in 9.5.2 above shall have fourteen (14) days to dispute the validation and to provide the Council with proof, to the Council's satisfaction, of its paid-up membership in good standing;
 - 9.6.4. in the event of any Party failing to submit a list of its paid-up members by 28 February of any year, the Council's validation figures referred to in 9.5.2 above shall prevail;
 - 9.6.5. any Party who does not comply with the membership requirement as set out in 9.4 above following the renewal of membership process shall cease to be a Party.
- 9.7. Any Party may withdraw from the Council on giving three (3) months' notice in writing to the Secretary provided that no such notice shall take effect before the expiry of any Agreement which is at that stage in force, and provided further that such party and its members shall remain bound by the provisions of any such Agreement until the expiry thereof.

10. **APPOINTMENT OF REPRESENTATIVES ON THE COUNCIL**

- 10.1. The Council shall consist of eight Representatives of each of the Employers' Organisations Parties and the Trade Unions Parties respectively, who shall either be persons actually engaged or employed in the Industry or officials or employees of the Parties.
- 10.2. Representatives on the Council shall be appointed by the Employers' Organisations and the Trade Unions in accordance with the provisions of their respective constitutions.
- 10.3. The number of Representatives on the Council to which a party is entitled, shall be determined as follows :
 - 10.3.1. each Trade Union Party shall be entitled to the proportional number of Trade Union Representatives rounded to the nearest whole number, that the total number of benefits purchased for the registered employees it represents bears to the total number of benefits purchased for all registered employees represented by the Trade Unions that are Parties to the Council, as determined in clause 9.4 above;
 - 10.3.2. each Employers' Organisation shall be entitled to the proportional number of Employer Representatives rounded to the nearest whole number, that

the total number of benefits purchased for the registered employees in the collective employ of its members, bears to the total number of benefits purchased for the registered employees of the employer parties to the Council, as determined in clause 9.4 above;

10.3.3. should a dispute arise as to the number of Representatives to which any Party is entitled in terms of this clause, such Party shall retain its existing number of representatives until such time as the dispute is determined in terms of clause 3.1.

10.4. Representatives shall hold office for twelve (12) months which shall commence on 1 June of each year and terminate on 31 May of the following year.

Representatives shall be presumed to represent and hold a valid

10.5. mandate from the Party appointing them.

10.6. Should it be discovered that the appointment or the continuance in office of any Representative is invalid, any act performed by the Representative prior to such discovery shall be valid as if such Representative had been duly appointed or has duly continued in office.

10.7. A Party may at any time withdraw any of its Representatives on the Council by giving at least three (3) days' notice in writing to the Secretary and shall appoint another in his place.

10.8. A Representative may resign by giving at least three (3) days' notice in writing to the Secretary and to the Party which appointed him.

10.9. If a seat on the Council becomes vacant through the withdrawal, resignation, death or disqualification of a Representative, then the vacancy shall be filled by the Party who appointed such Representative. The relevant Party should supply details of such new appointment in writing to the Secretary within (30) days after the vacancy arose, failing which the Party will cease to be a Party.

10.10. Any Representative so appointed to fill a vacancy shall hold office for the unexpired portion of the period of office of his predecessor.

10.11. Any Representative on the Council shall observe the provisions of section 201 of the Act.

11. **ALTERNATE REPRESENTATIVES ON THE COUNCIL**

11.1. The Parties shall appoint Alternates to each of the Representatives on the Council appointed by them.

11.2. The appointment of Representatives on the Council and the termination and other conditions of appointment of Representatives shall apply to the Alternates equally in all respects.

- 11.3. An Alternate shall act during the absence of a Representative or during his inability to act for any reason whatsoever and shall, while so acting, have the powers and be subject to the duties of the Representative for whom he is an alternate.
- 11.4. An Alternate shall continue to hold office if the Representative to whom he is an alternate ceases to be a Representative and shall for all purposes be deemed to have taken his place until such time as a new Representative has been appointed.
- 11.5. Any Alternate on the Council may attend a Full Council meeting as an observer only with the prior approval of the Secretary and shall not be entitled to take part in, debate or vote unless he is attending the Council meeting in accordance with clause 11.7 below.
- 11.6. If a Representative of an Employers' Organisation or of a Trade Union is absent from any Council meeting, an Alternate to a Representative of the Employer's Organisation or of the Trade Union, as the case may be, may act in his stead at that meeting and at that meeting he shall in all respects be regarded as a Representative of the Employers' Organisation or of the Trade Union, as the case may be, provided that each Party shall only have one (1) Alternate present at any meeting of the Council.
- 11.7. Any Alternate on the Council shall observe the provisions of section 201 of the Act.

12. **DISQUALIFICATION OF REPRESENTATIVES AND ALTERNATES**

- 12.1. A person may not be appointed as a Representative and a Representative shall cease to hold office as such if:
- 12.1.1. He is no longer engaged or employed in the Industry;
 - 12.1.2. he is or becomes of unsound mind;
 - 12.1.3. he surrenders his estate as insolvent or if his estate is sequestrated;
- 12.2. he is convicted of an offence which involves dishonesty;
- 12.2.1. he is or becomes disqualified from being appointed or acting as a director of a company in terms of the Companies' Act, 2008;
 - 12.2.2. he is absent from four (4) consecutive meetings of the Council without having obtained leave to be so absent from the Council unless an explanation to the satisfaction of the Council is given.
 - 12.2.3. He is removed as Representative of the Council in terms of clause 29.4.

12.3. The provisions of clause 12.1 above shall apply equally to Alternates.

13. **REPRESENTATION OF SMALL AND MEDIUM ENTERPRISES**

If one or more Employers' Organisations Party to the Council represent small and medium enterprises, at least one of the employer Representatives referred to in clause 10.3.2 shall be allocated to those organisations and should such a Representative withdraw or be removed from the Council as provided for in this Constitution, such Representative shall be replaced by a Representative representing small and medium enterprises.

14. **ACTIONS ON BEHALF OF THE COUNCIL**

14.1. Every Representative or Alternate or other official or employee of the Council shall be indemnified by the Council against all costs, losses, expenses and claims which he may incur or become liable for by reason of any act done by him in the discharge of his duties in good faith unless such costs, losses, expenses or claims are caused by the wilful default or fraudulent act or gross negligence of such person.

14.2. The Council shall reimburse to the Representative or Alternate or other official or employee of the Council all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers, provided that the Council had approved such expenses prior to the expenses being incurred.

14.3. No Representative shall be disqualified from voting in respect of any contract or proposed contract or any litigation with the Council by virtue of any interest he might have therein, provided that he declares the nature and extent of the interest which must thereupon be noted in the records of the meeting, provided that if the majority of Representatives decide that the nature of the interest is such that it will have a material impact on the issue at hand, the Representative must recuse himself.

15. **ELECTION AND DUTIES OF PRESIDING OFFICERS**

15.1. The Council shall, at its first meeting, following the appointment of Representatives, elect a Chairperson and a Vice-Chairperson from nominations addressed to the Secretary in writing no later than seven (7) days before the meeting, neither of whom shall be a duly elected Representative or Alternate of any of the Parties to the Council but both of whom shall preferably be connected with or involved in the Industry.

15.2. At such meeting, the Secretary shall act as Chairperson. If more than one person is proposed and seconded, a vote by secret ballot shall be taken and the nominee who receives the highest number of votes shall be declared elected as Chairperson. In the event of an equal number of votes being cast for two or more

candidates, the Chairperson shall be decided by the drawing of lots. A like procedure shall be followed in the election of a Vice-Chairperson.

- 15.3. The Chairperson and the Vice-Chairperson shall hold office for twenty four (24) months or until the expiration of the period for which they have been appointed, whichever period is the shorter, and shall be eligible for re-election.
- 15.4. The Chairperson and Vice-Chairperson shall not be entitled to vote at any meeting of the Council.
- 15.5. The Chairperson, or in his absence, the Vice-Chairperson shall preside at all meetings of the Council. If the Chairperson and the Vice-Chairperson are both absent from any meeting, that meeting shall be presided over by a person elected at that meeting by those present.
- 15.6. The Chairperson shall enforce order at all meetings, sign minutes of meetings after confirmation and endorse financial statements after approval by the Council. He shall, in addition, perform such other duties as delegated to him by the Council and such duties which by usage and custom pertain to his office.
- 15.7. The Vice-Chairperson shall attend all meetings and exercise the powers and perform the duties of the Chairperson in the absence or indisposition of the latter.
- 15.8. At any meeting the Chairperson may, at the close of any discussion and before a vote is taken make an impartial resume of the matter under discussion in order to assist the Council to arrive at a definite decision.
- 15.9. The Chairperson and Vice-Chairperson of the Council shall cease to hold office and shall be removed from office by the Council for serious neglect of duty, serious misconduct or due to incapacity, provided that the procedure as per clause 29.4 are followed.

16. **MEETINGS OF THE COUNCIL**

- 16.1. The Council shall meet at its premises at least every six (6) months or as per a schedule determined by the Chairperson.. Special meetings shall be called upon a requisition by not less than five (5) Representatives and may also be called at the discretion of the Chairperson or as determined by the Council.
- 16.2. Notice of any meeting of the Council showing the business to be transacted shall be given to Representatives by the Secretary in writing at least seven (7) days before the date of such meeting provided that, in the case of special meetings the Chairperson may authorise the giving of shorter notice.
- 16.3. The quorum for meetings of the Council shall be a majority of the total number of Representatives or their Alternates of the Employers' Organisations and Trade Unions respectively.

- 16.4. If the number of Representatives present at the time and place fixed for a meeting is insufficient to form a quorum, a meeting of the Council shall upon written notice to Representatives by the Secretary be held on a day fixed by the Chairperson but not less than seven (7) days thereafter and at that meeting if the majority of the Representatives or their Alternates of the Employers' Organisations or the majority of the Representatives or their Alternates of the Trade Unions are absent from such adjourned meeting, the Representatives who are present shall be deemed to form a quorum.
- 16.5. Each Representative shall have one vote only.
- 16.6. If any Representative is absent from any meeting and is not represented by an Alternate, the voting power of the Employers' Organisations or Trade Unions as the case may be shall be reduced as may be necessary to preserve equality of voting power.
- 16.7. A decision in favour of which not less than two-thirds of the Representatives present at the meeting at which the decision is taken and who are entitled to vote in terms of this clause have voted shall be the decision of the Council and shall and shall accordingly bind all of the Parties to the Council, irrespective of whether such Parties voted in favour of the decision or not. Notwithstanding the provisions of section 31 of the Act, any Agreement entered into by the Council in terms of a decision taken in accordance with this clause shall be binding upon all of the Parties to the Council, irrespective of whether they are parties to the Agreement or not.
- 16.8. If the Chairperson so determines, all motions shall be reduced to writing and shall be read by the Chairperson. No motion shall be considered unless seconded.
- 16.9. Points of procedure on which this Constitution is silent shall be decided by a majority of the votes of those present at a meeting and entitled to vote. In the event of an equal division of opinion on a point of procedure, the Parties shall revert back to their constitutes and the matter will be reconsidered at the following meeting.
- 16.10. The meetings of the Council shall be conducted in private, unless the Council decides otherwise.
- 16.11. A representative of the Department of Labour shall be entitled to attend any meeting of the Council, but shall not be entitled to vote.

17. **EXEMPTIONS FROM COLLECTIVE AGREEMENTS**

- 17.1. Any Party to the Collective Agreement or any member of a Party to the Collective Agreement may apply to the Council for exemption from any of the terms of the Collective Agreement.
- 17.2. All applications for exemption shall be in writing (on an application form as provided by the Council) and shall be addressed to the Secretary of the Council.

The Secretary of the Council shall place the applications for exemption on the agenda of the next Council meeting, for decision.

- 17.3. The Council shall decide an application for exemption within thirty (30) days.
- 17.4. All applications for exemption shall be substantiated, and such substantiation shall include the following details:
 - 17.4.1. The period for which the exemption is required;
 - 17.4.2. the Agreement and clauses or sub-clauses of the Agreement from which exemption is required; and
 - 17.4.3. proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives, and the responses resulting from such consultation, either in support of or against the application, are to be included with the application.
- 17.5. Applications for exemption referred to the Council shall be considered by the Council in accordance with the exemption criteria set out in clause 17.12, and the applicant(s) shall be advised, in writing, of the Council's decision within ten (10) days following the meeting at which the applications were considered.
- 17.6. Any non-party to which this Agreement has been extended in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of this Agreement.
- 17.7. Within ten (10) days after having been advised of the Council's decision regarding an application for exemption, the Party or non-party who feels aggrieved by the Council's decision may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal shall be fully reasoned.
- 17.8. In terms of section 32 of the Act, the Council hereby establishes an independent body to be known as the "Exemption Board" to hear and decide any appeal brought against:
 - 17.8.1. the Council's refusal of a Party or non-party's application for exemption from the provisions of the Agreement; and
 - 17.8.2. the withdrawal of such an exemption by the Council.
- 17.9. An appeal shall be decided within thirty (30) days.
- 17.10. The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board which shall as soon as possible and not later than 30 days in terms of

section 32 (3) of the Act after the appeal is lodged hear and decide the matter with reference to the exemption criteria set out in sub clause 17.12.

- 17.11. Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant(s) within 10 normal working days of the date of the decision, clearly specifying-
 - 17.11.1. the terms of the exemption; and
 - 17.11.2. the reporting requirements by the applicant and the monitoring and re-evaluation processes.
- 17.12. When the Exemptions Board decides against granting an exemption or part of an exemption requested it shall advise the applicant(s) within ten (10) days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.
- 17.13. **Exemption criteria:** The Exemptions Board shall consider all applications for exemption with reference to the following criteria:
 - 17.13.1. The written and verbal substantiation provided by the applicant;
 - 17.13.2. the extent of consultation and the petitions for or against granting the exemption as provided by employers or employees who will be affected by the exemption, if granted;
 - 17.13.3. the terms of the exemption;
 - 17.13.4. the infringement of basic conditions of employment rights;
 - 17.13.5. the fact that a competitive advantage is not created by the exemption;
 - 17.13.6. the effect of the exemption on any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability;
 - 17.13.7. the extent to which the proposed exemption undermines collective bargaining and labour peace in the Industry; ,
 - 17.13.8. financial stability;
 - 17.13.9. any existing special economic or other circumstances which warrant the granting of the exemption;
 - 17.13.10. reporting requirements by the applicant and monitoring and re-evaluation processes; and

17.13.11. cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.

17.14. The Council may also refer any application for exemption by a Party or non-party directly to the Exemptions Board. The Exemptions Board's decision regarding the granting or denying of the exemption will be final and both the applicant and the Council will be bound by the decision of the Exemption Board.

18. **MINUTES OF MEETINGS**

18.1. Minutes of all decisions taken at meetings of the Council and of sub-committees shall be taken by the Secretary and copies circulated to all Representatives and Alternates.

18.2. The Secretary shall submit the minutes of any meeting of the Council and the sub-committees to the next succeeding ordinary meeting of the Council or of the sub-committees, as the case may be, and at that meeting the Council or sub-committee shall, after making such corrections as it deems necessary, confirm the minutes by resolution and the person presiding at that meeting shall sign the minutes so confirmed. All sub-committee minutes must be tabled at a Council meeting and must be approved by the sub-committee prior to the next Council meeting in order for the minutes to be submitted for consideration at the Council meeting timeously.

18.3. Any minutes purporting to be signed by a person describing himself as Chairperson shall upon their mere production by any person be received as prima facie evidence of the proceedings recorded therein.

18.4. Copies of all the minutes of the Council shall be kept for a period of not less than five (5) years and forwarded to the Registrar in conformity with the provisions of the Act.

19. **OFFICIALS**

19.1. The Council shall appoint, on such terms and conditions of employment as it deems appropriate, a Secretary who shall perform such duties as the Council may direct.

19.2. The Council may resolve to appoint one or more agent/s to assist in giving effect to the terms of any Agreement which may be arrived at by the Parties, and may request the Minister to appoint such agent/s in terms of section 33 of the Act.

19.3. The Council may also appoint, on such terms and conditions of employment as it deems appropriate, such other paid officials as may be necessary who are to assist the Secretary in the performance of his duties.

19.4. The Council shall appoint an external auditor registered as such as the auditor of the Council to hold office for annual periods terminating on 30 June each year and

shall fill any vacancy that might occur from time to time, which auditor shall be paid such fee as the Council may decide.

20. **DUTIES AND POWERS OF THE SECRETARY**

20.1. The Secretary shall be responsible for the administrative and secretarial work arising from the functioning of the Council and for performing the functions and duties imposed on the Secretary by or in terms of the Act and this Constitution. This work, functions and duties include, but is not limited to:

20.1.1. keeping such books of account as the Council may direct and cause such books of account and relative records to be periodically audited at least once every calendar year. The Secretary shall submit copies of the accounts, statements and the Auditor's report to the Parties and the Registrar as contemplated in terms of the Act; and

20.1.2. conducting all correspondence on behalf of the Council, attending all meetings of the Council and any sub-committee of the Council and ensuring that the minutes of these meetings are recorded.

20.2. The Secretary may delegate his duties and powers to other officials of the Council with the view, *inter alia*, that copies of all correspondence of the Council will be kept, all moneys received on behalf of the Council will be banked, the financial statements of the Council will be prepared, the debts of the Council will be paid and all other duties and obligations of the Council in terms of the Act will be complied with.

21. **SUB-COMMITTEES**

21.1. The Council may appoint sub-committees consisting of such equal number of Representatives of each of the Employers' Organisations and Trade Unions as it may determine, and who shall be elected from amongst the Representatives on the Council or the Alternates, provided that the members of the sub-committee must collectively have sufficient qualifications and experience to fulfil their duties on the sub-committee as determined by the Council.

21.2. Alternates to Representatives on any sub-committee may be appointed, who shall be Representatives of the same Party as the Representative for whom they will be the Alternate.

21.3. The appointment of all Representatives and Alternates to sub-committees of Council must be approved by the Council.

21.4. The Representatives on any sub-committee shall hold office for a period of twelve (12) months or until the expiration of the period for which they were appointed as Representatives, whichever is the shorter, provided that the period of their appointment shall continue until their successors assume office. Representatives shall be eligible for re-election. They may resign from a sub-committee by giving

one (1) month's notice in writing to the Secretary and shall vacate their seat on ceasing to be eligible for membership of a sub-committee including when he ceases to be a Representative of the Council for whatever reason

21.5. If a seat on a sub-committee becomes vacant, the vacancy shall be filled by the Council from amongst the Representatives of the Employers' Organisations or the Trade Unions, as the case may be. Any Representative so appointed to fill a vacancy on a sub-committee shall hold office for the unexpired period of office of his predecessor.

21.6. The chairperson and vice-chairperson of a sub-committee may be the Chairperson or the Vice-Chairperson of the Council or a person chosen by the Council or that sub-committee from amongst its members or otherwise as the Council may determine. If the chairperson and/or vice-chairperson are not chosen from amongst the Representatives of the Employers' Organisations or Trade Unions on that sub-committee, they shall not be entitled to vote.

21.7. Subject to the Act, and without in any way limiting its powers, the Council may appoint one or more sub-committees to:

21.7.1. investigate and report to the Council on all matters connected with the Industry;

21.7.2. assist in giving effect to the decisions of the Council in connection with the administration of any Agreement arrived at by the Council;

21.7.3. administer and enforce any Agreement arrived at by the Council;

21.7.4. exercise the powers and perform the duties of the Council between the meetings of the Council;

21.7.5. perform any such functions and exercise any such duties as may be delegated to it from time to time.

21.8. Each sub-committee of the Council shall perform their duties, derive their powers and act in accordance with the terms of reference for such sub-committee approved by the Council.

22. **MEETINGS OF SUB-COMMITTEES**

22.1. Meetings of a sub-committee shall be held as the occasion arises at such time and place as may in the opinion of the chairperson of the sub-committee be convenient or necessary. Notice of such meeting shall be given in writing to the members of that sub-committee by the Secretary at least three (3) days before the meeting takes place, except in cases of emergency where the chairperson may, in his discretion, authorise shorter notice. Special meetings shall be called upon a requisition by not less than two (2) members of that sub-committee which meeting shall be called within three (3) days of receipt of the requisition by the chairperson.

22.2. The quorum for meetings of any sub-committee shall be one (1) Representative or alternate each of the Employers' Organisations and Trade Unions and the chairperson or vice-chairperson of the sub-committee. If within fifteen (15) minutes of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned to a date to be fixed by the chairperson, not more than seven (7) days later, and at such adjourned meeting the members present shall form a quorum.

22.3. A majority vote shall decide any question at a sub-committee meeting. Save as aforesaid, meetings of any sub-committee shall be conducted in the same way as provided in this Constitution in respect of meetings of the Council.

22.4. Minutes of meetings of any sub-committee shall be taken by the Secretary of the Council and shall be submitted for consideration by the Council at its next meeting after the meeting in question of the sub-committee.

23. **EXPENSES OF THE COUNCIL**

23.1. The expenses of the Council shall be met from a fund which shall be raised by levies on the Parties.

23.2. All moneys received shall be deposited within seven (7) days of receipt by the Council to the credit of the Council with a bank to be decided upon by the Council and any surplus funds which are not for the time being required for the purposes of the Council referred to in section 23.3 may be invested as provided for in section 53(5) of the Act.

23.3. The funds of the Council shall be applied to the payment of expenses arising from the administration of the affairs of the Council, and the exercise of any of its powers and/or functions in terms of this Constitution and the Act.

23.4. Monthly statements showing the income and expenditure and the financial position of the Council shall be submitted to the Council by the Secretary.

23.5. The Secretary shall, in respect of the twelve (12) months ending on 31 October, and not later than the 31 March of each succeeding year, prepare statements showing:

23.5.1. moneys received during the twelve (12) months ending 31 October indicating whether in terms of any Agreement or from any other source;

23.5.2. expenditure incurred during the twelve (12) months ending 31 October; and

23.5.3. a balance sheet as at 31 October showing the assets and liabilities of the Council.

- 23.6. Such statements shall be audited by the auditors and be available for inspection by Parties of the Council and otherwise be dealt with as required in terms of the Act.
- 23.7. A separate account shall be kept for each class of fund from a different source but the Council may transfer amounts from one fund to another by way of loan or grant as it may in its discretion consider advisable, provided however, that the funds of the pension fund shall be used only for the purposes of that fund.
- 23.8. The Council shall be entitled to utilize any cash amount or guarantee lodged by an employer with the Council to pay any amount which may be due to the Council by such employer in respect of wages, levies and contributions which may be due to anyone or more employees of such employer, where the Council is satisfied that such wages are due and payable to the employees concerned by the employer involved. The Council may only utilize such cash amount or a guarantee if there is a valid Arbitration Award or Settlement Agreement in respect of the wages, levies and contributions due to the employees of such an employer.
- 23.9. The Council shall bank at such bank or banks as the Council may from time to time determine.
- 23.10. Subject to clause 14.1, the Council may authorise the payment of any amount which the Council itself, a member of the Council, or an official or Representative of the Council is in law obliged to pay in consequence of any mis-application of the Council's funds or loss arising by negligence or mal-administration and may pay from the funds of the Council any amount becoming due by any other person where such person incurred such liability or loss when acting as a nominee of the Council or as a party to the Council in carrying out any duty in connection with the Industry.

24. **POWERS TO ACT**

- 24.1. All cheques drawn on or electronic bank transfers (EFT's) effected from an of the Council's banking account shall be signed by or authorised by two (2) persons out of a panel of persons appointed for this purpose by the Council from time to time, which shall be reviewed annually by the Council.
- 24.2. Payments that have to be made in cash or are ordinarily paid in cash may be made from petty cash kept in such form as the Council may determine from time to time.
- 24.3. Any documents relating to the investment or withdrawal of any funds of the Council shall be signed by any two (2) persons empowered to sign cheques on behalf of the Council.
- 24.4. The Chairperson, Vice-Chairperson and Secretary shall sign on behalf of the Employers' Organisations and Trade Unions any Agreement to which they are parties.
- 24.5. The Secretary or his delegate shall sign all correspondence of the Council.

25. **STRIKES AND LOCKOUTS**

- 25.1. No person subject to the provisions of any Collective Agreement entered into by the Parties from time to time shall engage in or participate in a strike or lockout or any conduct in furtherance of a strike or lockout in respect of any matter regulated by such Agreement for its duration, where such Agreement prohibits a strike or lockout in respect of those matters.
- 25.2. No strikes, lockout or industrial action of any nature relating to a matter not regulated in terms of a Collective Agreement shall take place within or amongst the Parties of the Council or their members during the currency of an Agreement and thereafter until the matter giving occasion thereto has been dealt with in accordance with the provisions of this Constitution and the Act.
- 25.3. The Council shall further be entitled to enter into Agreements from time to time, and in accordance with this Constitution, in respect of matters which may not form the subject of a strike or lockout in the Industry for the period prescribed in any such Agreement.

26. **DISPUTES**

For the purpose of this section, a dispute of rights shall include disputes relating to matters of law, or to the question of whether a party has a legal right to do, receive, give or refrain from doing something. It shall also include the interpretation of statutory provisions and terms of Agreements. All other disputes shall be regarded as disputes of interest.

DISPUTES BETWEEN THE PARTIES TO THE COUNCIL AND OTHER DISPUTES WITHIN THE REGISTERED SCOPE OF THE COUNCIL

- 26.1. Should a dispute arise between the Parties to the Council or their members (other than a dispute about the interpretation or application of this Constitution) or should a dispute involving any party who is not a party to a Council, but who falls within the registered scope of the Council be referred to the Council, the dispute shall be resolved as follows:-
- 26.1.1. If a dispute is one of right, it shall be referred in writing to the Council and the Council shall attempt to resolve the dispute, within thirty (30) days of referral or any extended period agreed by the parties, through conciliation by a Council conciliator. At the conclusion of the conciliation process the Council must serve a copy of a certificate on each party or the representatives of the parties of the dispute stating whether or not the dispute has been resolved.
- 26.1.2. if the Council fails to resolve the dispute or if any party is aggrieved by the Council's decision referred to in clause 26.1.1 above, it may within seven (7) days of the decision, request that the dispute be referred to arbitration;

- 26.1.3. should the dispute be referred to arbitration, the Secretary shall allocate an arbitrator from a panel of independent arbitrators approved of by the Council on an annual basis: Provided that -
- 26.1.3.1. in the event of the parties to the dispute agreeing on an arbitrator from the panel as referred to in subclause 26.1.3, the Secretary shall attempt to appoint the person chosen; and
- 26.1.3.2. the arbitrator shall have the power to decide upon the procedure to be followed at the hearing of the arbitration, and shall have the discretion, to make an award in respect of the costs of the arbitration in terms of sub-section 138(10) of the Act; and
- 26.1.3.3. the arbitrator's decision shall be final and binding.
- 26.2. If a dispute of interest is referred to the Council, the procedure shall be as follows:-
- 26.2.1. The issue in dispute shall be referred to the Council which shall attempt to resolve the dispute through conciliation within thirty (30) days of the date of receipt of the dispute. The parties may agree to extend the thirty day period.
- 26.2.2. at the end of the thirty day period, or any further period agreed between the parties, the Secretary of the Council must issue a certificate stating whether or not the dispute has been resolved.
- 26.3. If a certificate has been issued stating that any dispute referred to in sub-clause 26.2 remains unresolved, the Council shall appoint an arbitrator in terms of clause 26.1.3 who shall determine the dispute in terms of clause 26.1.3.2. The Arbitrator's decision shall be final and binding.
- 26.4. If the arbitrator makes an award in favour of a strike or lockout as the case may be provided that:
- 26.4.1. No trade union or member of such trade union shall call or take part in any strike unless the majority of the members of the trade union in good standing in the area and in the sector in which the strike is called have voted by ballot in favour of such action after a certificate has been issued stating that the dispute remains unresolved; and
- 26.4.2. In the case of a proposed strike, at least forty-eight (48) hours' notice of the commencement of the strike, in writing, has been given to the employers' organisation concerned; and
- 26.4.3. In the case of a proposed lockout, at least forty-eight (48) hours' notice of the commencement of the lockout, in writing, has been given to the registered trade union that is a party to the dispute.

27. **DISSOLUTION AND WINDING UP**

27.1. The Council may resolve by a two-thirds majority to wind up its affairs and dissolve, provided that dissolution shall not take place nor shall any of the Parties be released from the provisions of an Agreement during its currency. In the event of such a resolution being taken, the Council shall approach the Labour Court for an order in terms of section 59 of the Act as soon as is reasonably practicable after the expiration of all Agreements in place at the time of the resolution, unless all the Parties have decided, at a meeting where at least two thirds of the representatives have voted in favour of such a decision, that no parties will be bound to the Agreement due to the Minister not extending the Agreement to non-parties.

27.2. Subject to any order of the Labour Court in terms of section 59 of the Act, the following provisions shall apply in the event of the Council being wound up as a result of such dissolution, or at any other time if for any reason the Council is unable to continue to function:

27.2.1. the available Representatives shall appoint a liquidator, who shall not be a Representative on the Council, and shall be paid such fees as may be agreed upon between himself and the available Representatives on the Council or failing that as ordered by the Labour Court, to carry out the winding up, provided that if the Parties fail to so appoint a liquidator, the Labour Court shall appoint such a liquidator;

27.2.2. the liquidator so appointed shall take possession of the Council's books of account, documents, assets and funds;

27.2.3. the liquidator shall take the necessary steps to liquidate the debts and assets of the Council and, if the funds and proceeds are insufficient to pay all creditors after the liquidator's fees and the expenses of winding up have been met, the order in which creditors shall be paid shall be the same as that prescribed in any law for the time being in force in relation to the distribution of the assets of an insolvent estate and the liquidator's fees and expenses of winding up shall rank as a first charge against the assets of the Council;

27.2.4. after payment of all debts, the remaining funds, if any, shall be realised by the liquidator or the other person so appointed, and the proceeds thereof shall be paid to the Parties to the Council, in shares proportional to the Representatives of each party at the time of winding up;

27.2.5. on the completion of the winding up of the Council, all records of the Council shall be dealt with in accordance with the Act.

28. **NOTICES**

28.1. Any notice that has to or may be given in terms of this Constitution shall be given in writing and shall :

- 28.1.1. in the case of the Council, be addressed to it at the office of the Council for the attention of the Secretary; and
 - 28.1.2. in the case of a Party or Representative be addressed to it or him at the address as recorded in the records of the Council.
- 28.2. Such notice may be either sent by post, by facsimile, by email or delivered by hand, and in the case of any notice:
- 28.2.1. sent by post, it shall be deemed to have been received seven (7) days after posting; and
 - 28.2.2. delivered by hand shall be deemed to have been received, unless the contrary is proved, on the date of delivery thereof to, in the case of the Council, the Secretary, and in the case of any other person at the relevant address; and
 - 28.2.3. transmitted by facsimile, a transmission report of a facsimile transmission shall be deemed to be proof of receipt; and
 - 28.2.4. sent by email deemed to have been received upon transmission unless the contrary is proved by the person who disputes receipt.
- 28.3. In the event that the Council calls in correspondence for a response by a Party and the Party fails to respond within the period requested by the Council, any proposal or notice given by the Council to such Party in terms of the correspondence to which the Party has failed to respond timeously shall be deemed to have been accepted by that Party and the Council shall proceed to act accordingly.

29. **CONDUCT OF REPRESENTATIVES**

- 29.1. The Chairperson, the Vice-Chairperson and all Representatives and Alternatives shall sign a Code of Conduct as reviewed by Council from time to time and are bound by the provisions of the Code of Conduct.
- 29.2. Confidentiality and confidential information shall be respected at all times by all Representatives and Alternates, which confidentiality and confidential information shall be determined by the Council from time to time, all in accordance with clause 201 of the Act.
- 29.3. The conduct of persons employed by the Parties shall be deemed to be the conduct of the Representative of that Party and any complaints or allegations shall be dealt with in terms of Clause 29.4, provided that the proceedings will be instituted against the Representative of the Party.
- 29.4. If any complaint or allegation of misconduct is lodged against the Chairperson, the Vice-Chairperson, a Representative, an Alternate or a Party to the Council, the procedure shall be:

- 29.4.1. for the appointment of an independent person by resolution of the Council within fourteen (14) days of the complaint being received, to investigate the allegation or complaint and to make a finding and recommendation to the Council;
- 29.4.2. that reasonable notice of the complaint or allegation be given to the accused;
- 29.4.3. that the accused is given a proper opportunity to be heard;
- 29.4.4. that written reasons be given for any finding or recommendation of the independent person;
- 29.4.5. that the Council makes a decision regarding the allegation or complaint of misconduct after having considered the independent person's finding and recommendation;
- 29.4.6. that the misconduct includes:
 - 29.4.6.1. breach of the Council's Code of Conduct including section 201 of the Act;
 - 29.4.6.2. acting in an improper manner;
 - 29.4.6.3. a breach of this Constitution or any Clause of the Collective Agreement;
 - 29.4.6.4. conduct that impairs the perception of the accused's duties;
and
- 29.4.7. that the Council has the power to warn, remove or impose any other sanction upon the accused for misconduct.
- 29.4.8. If the affected party is aggrieved by the finding of the Council, it may within seven (7) days request that the dispute be referred to arbitration in terms of clause 3.1.3, failing which the decision of the Council shall be final and binding on that Party. The arbitrator's decision shall be final and binding on the Parties.
- 29.4.9. Notwithstanding the requirement for the appointment of an independent person referred to in clause 29.4.1 above, the Chairperson may decide in his discretion to attempt to deal with the complaint or allegation within the Council if he is of the view that this is a viable course of action. If the Chairperson so decides, nothing precludes the appointment of an independent person referred to in 29.4.1 if Council so resolves following an attempt to deal with the complaint or allegation internally and furthermore, any Party aggrieved by the decision of the Council following an internal process as envisaged in this clause still has the right to request that the matter be referred to arbitration in terms of clause 29.4.8.

29.4.10. The Council has the power to immediately suspend the Chairperson, the Vice-Chairperson, a Representative or an Alternate from Council activities and deny such person access to the Council's offices pending the outcome of an investigation and/or decision of Council and/or arbitration.

30. **NEGOTIATING PROCEDURE ON MATTERS OF MUTUAL INTEREST**

30.1. Parties shall submit a written proposal regarding a matter of mutual interest to the Secretary for consideration by the Council, subject to the following:

30.1.1. Employers' Organisations shall only be permitted to submit proposals that have been collectively agreed to by all Employers' Organisations that are Party to the Council prior to the submission.

30.1.2. Trade Unions shall only be permitted to submit proposals that have been collectively agreed to by all Trade Unions that are Party to the Council prior to the submission.

30.2. If it is decided that the Council will deal with a proposal, it must meet within 21 working days after receipt of a proposal submitted or any time thereafter, if the Party who made the proposal agrees thereto.

30.3. At the meeting referred to in clause 30.2, the Council must attempt to agree on a negotiation process which may include the following:

30.3.1. the submission of counter proposals;

30.3.2. the establishment of a negotiating committee; and

30.3.3. the time table for negotiation.

31. **GENERAL**

31.1. The previous Constitution of the Council, as amended, is hereby repealed.

31.2. Notwithstanding the aforesaid repeal, any authority constituted or person appointed or power conferred or anything done in pursuance of any powers conferred by or by virtue of the said repealed Constitution shall be deemed to have been constituted, appointed, conferred or done in pursuance of powers conferred by or by virtue of the corresponding provisions of this Constitution.

31.3. Any application, objection, enquiry, appeal, dispute or other proceeding commenced prior to the adoption of this Constitution which may not have been concluded before the adoption of this Constitution or which, having been so concluded is thereafter re-opened, shall be continued in all respects as if this Constitution had not been adopted, save if the parties thereto shall agree otherwise.

THE CONSTITUTION IS CONFIRMED AS CORRECT BY THE UNDERSIGNED ON THIS
11th DAY OF JANUARY 2022.



Secretary of the Building Industry Bargaining Council