CONSTITUTION

OF THE

BARGAINING COUNCIL

FOR THE

CIVIL ENGINEERING INDUSTRY

November 2012
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CONSTITUTION

of the

BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY

1. NAME

1.1 The name of the Bargaining Council shall be the "Bargaining Council for the Civil Engineering Industry" and is referred to in this Constitution as "the Council".

1.2 The founding parties have agreed to establish the Council by:

1.2.1 adopting this Constitution; and

1.2.2 seeking registration of the Council in terms of the Act.

1.3 Upon registration of the Council, the Council shall become a juristic person as prescribed by the Act and capable of doing any act which this Constitution or the Act requires or permits it to do.

2. DEFINITIONS

2.1 Unless inconsistent with the context:

2.1.1 any reference to any one gender shall include the other and vice versa;

2.1.2 the singular shall include the plural and vice versa;

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2.1.3 the reference to persons shall include both natural persons and juristic persons;

2.1.4 the following expressions shall bear the meanings ascribed to them below;

2.1.4.1 "the Act" means the Labour Relations Act, 66 of 1995, as amended;

2.1.4.2 "bargaining unit" means all employees employed in the Industry in TASK grades 1 to 9 as per the Schedule attached hereto, marked "A";

2.1.4.3 "Council" means the Bargaining Council for the Civil Engineering Industry;

2.1.4.4 "days" means calendar days;

2.1.4.5 "employee" means those employees employed in the Industry, inclusive of "Limited Duration Contract Employees", and who fall within the bargaining unit and includes the employees of temporary employment services who fall within the scope of the Industry;

2.1.4.6 "employer" means any person or entity who employs or provides work for any employee(s) as defined in 2.1.4.5 above within the Industry and includes the temporary employment services who fall within the scope of the Industry;
2.1.4.7 “employer party” means any employers’ association representing a sufficient number of employers in the Industry and which is a party to this Constitution and “employer parties” means those employers associations collectively;

2.1.4.8 “Industry” means the Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purposes of carrying out work of a civil engineering character relevant to the Industry.

2.1.4.9 “national negotiating forum” means the national collective bargaining forum established in terms of clause 16.1;

2.1.4.10 “party” means a party to this Constitution in terms of clause 6;

2.1.4.11 “representative” means a person appointed by any party to represent that party on the Council;

2.1.4.12 “small/medium enterprise” means an employer in the Industry who falls within the CIDB levels 1-3 excluded from the council. Accordingly agreements will not be extended to them. All disputes will be referred to the CCMA.

2.1.4.13 “trade union party” means any registered trade union which is party to the Council;

2.1.4.14 and “trade union parties” means those trade unions collectively.
2.2 All other expressions shall bear the meanings ascribed to them in the Act or where the Act is silent as determined in writing by the Council of the Bargaining Council provided that such meaning shall not conflict with the provisions of any applicable employment statute.

3. **SCOPE**

3.1 The scope and area of the Council shall be:-

3.1.1 the geographical area of the Republic of South Africa;

3.1.2 within the Civil Engineering Industry;

3.1.3 in respect of the employees employed in TASK grades 1 to 9 as per the schedule annexed hereto marked “A”.

4. **OBJECTIVES**

The objectives of the Council shall be:-

4.1 to promote a sound relationship between employers, employees and trade unions within the Industry so as to ensure that the Industry remains productive, efficient and competitive;

4.2 to maintain and enhance industrial peace;

4.3 to conclude collective agreements at a national level and ensure the administration of and compliance with all such agreements;

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4.4 to perform the duties, and exercise the powers and functions provided for in this Constitution and by the Act to the extent that the parties agree to the exercise of such powers and functions from time to time.

To accept the current Sectoral Determination 2 for Civil Engineering and all amendments thereto as the main agreement between the parties until such time the parties agree to negotiate conditions for all employers and employees working within the scope of civil engineering as defined.

5. **POWERS AND FUNCTIONS**

5.1 The Council has the powers and functions conferred upon it by section 28 of the Act and any other powers and functions which may be conferred upon it by law and includes the following:-

5.1.1 to conclude collective agreements;

5.1.2 to enforce those collective agreements;

5.1.3 to prevent and resolve labour disputes;

5.1.4 to perform or provide for and supervise the dispute resolution functions referred to in section 51 of the Act or to appoint a third party to establish, manage and administer a Dispute Resolution Centre on behalf of the Council;

5.1.5 to establish, in terms of the provisions of this Constitution, a fund to be used for resolving disputes within the Industry;

5.1.6 to establish, if agreed, or supervise retirement funds, medical aid funds or any similar schemes or funds for the
benefit of one or more of the parties to the Bargaining Council or their members;

5.1.7 to develop proposals and to submit to NEDLAC or any other appropriate forum on policy and legislation that may affect the Industry or Industry in general;

5.1.8 to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out in the Industry;

5.1.9 to confer on workplace forums, if they are established, additional matters for consultation;

5.1.10 to, with other stakeholders in the industry, establish Project Labour Agreements for major projects where appropriate, and

5.1.11 to consider and deal with any other matter that affects the interests of the parties.

5.2 The Council is only able to exercise these powers and perform these functions within its registered scope.

6. PARTIES TO THE COUNCIL

The founding parties to the Council, at the date of adoption of this Constitution are the following:-

6.1 South African Federation of Civil Engineering Contractors ("SAFCEC"); and
6.2 the National Union of Mine Workers ("NUM"); and

6.3 the Building, Construction and Allied Workers’ Union ("BCAWU").

7. ADMISSION AND WITHDRAWAL OF PARTIES

7.1 Any registered trade union or registered employers’ organisation that has members that fall within the registered scope of the Council may apply in writing to the secretary of the Council for admission as a party. Jointly the trade unions must hold 40% or more of the membership within the registered scope of the Council.

7.2 The application must be accompanied by:

7.2.1 a certified copy of the applicant’s registered Constitution;

7.2.2 a recent certified copy of the applicant’s certificate of registration;

7.2.3 details of the applicant’s membership within the registered scope of the Council, including-

(a) in the case of an employers’ organisation, the number of employees that its members employ within the Council’s registered scope

(b) in the case of a trade union(s), proof that it has more than 5000 members within the registered scope of the Council.
7.2.4 a statement of the reasons why the applicant ought to be admitted as a party to the Council; and

7.2.5 any other information on which the applicant relies in support of its application.

7.3 Subject to the provisions of the Act, the Council shall have the power at its Annual General Meeting, or if such meeting is not scheduled to take place within 90 days of receiving an application, at a special meeting convened within such 90 day period, to admit any registered trade union or registered employers’ organisation as a party to the Council provided that application shall be in writing and shall include:-

7.3.1 where the applicant is a trade union, details of the applicant’s membership within the registered scope of the Council, and, where the applicant is a registered employers’ organisation, the number of employees which its members employ within such registered scope;

7.3.2 any reasons or information on which the applicant relies in support of its application for admission; and

7.3.3 a certified copy of the applicant’s registered Constitution and certificate of registration.

7.4 The Council shall make a decision to grant or refuse an applicant admission to a meeting convened in terms of cause 7.3 and notify the applicant of its decision in writing.

7.5 If the Council refuses to admit an applicant, it shall furnish the applicant with the reason or reasons for the refusal within 30 days of the date of the refusal.
7.6 When considering an application for admission, the Council shall take into account:-

7.6.1 the representivity of the applicant within the Industry;

7.6.2 the strategic importance of the employees or employers represented by the applicant within the Industry;

7.6.3 whether the applicant has entered into a recognition agreement with a party or an employer represented by an employer party.

7.7 Any party may withdraw from the Council by giving 3 (three) calendar months' written notice with reasons to the Secretary of the Council.

8. **APPOINTMENT OF REPRESENTATIVES TO THE COUNCIL**

8.1 Founding members will have automatic recognition for two (2) years after which they will have to comply with the ordinary recognition criteria. Should the criteria not be met, then six (6) months will be afforded to rectify the Representivity position as is required in 7.2.3 above.

8.2 Every employer organisation(s) and trade union(s) party to the Council shall be represented by 1 (one) representative plus a number of representatives proportional to the percentage of all employees employed by employer parties.

8.3 The total number of employer party representatives shall not exceed the total number of trade union party representatives.

8.4 Every party may appoint one or more alternate representatives who may attend meetings of the Council in the absence of a representative.
8.4 Every party may appoint one or more alternate representatives who may attend meetings of the Council in the absence of a representative.

8.5 A representative or alternate representative of a trade union party shall be an official of a trade union party, or a trade union member who is also an employee in the Industry.

8.6 A representative or alternate representative of an employer party shall be a person appointed in terms of the rules and procedures of the employer party.

8.7 A representative party must be appointed in the manner prescribed by the Constitution of the party making the appointment but no appointment will be invalid because of any defect in the manner of the appointment.

8.8 A representative holds office until replaced by the party who made the appointment, or until the representative becomes ineligible to hold office in terms of this Constitution.

9. REPRESENTATION OF PARTIES

9.1 The Representivity of a party for the purposes of this Constitution shall be determined annually by the Secretary of the Council on the first working day in June each year;

9.1.1 Employers votes will be based on a member’s CIDB rating as follows;

- Cidb Level 8-9: one vote for every 500 employees
- Cidb Level 6-7: one vote for every 500 employees
• Cidb Level 4-5: one vote for every 500 employees.

9.1.2 Trade Union votes will be based on the signed and implemented stop order forms recorded from the employee records of the employer parties and shall be One vote for every 500 paid up members.

9.2 Before the end of June of each year the Secretary shall advise the parties to the Council of such representivity and the representatives to which each party is entitled for the forthcoming year.

9.3 Before the end of July of each year, each party shall provide the Secretary with a list of representatives and alternate representatives to represent such party at the Annual General Meeting of the Council.

9.4 The Secretary shall submit the information obtained in terms of this clause to the registrar for annual review as provided for by the Act.

10. VACATING OF SEATS BY REPRESENTATIVES AND PROCEDURE FOR REPLACING THEM

10.1 A representative or alternate must vacate his or her seat on the Council if he or she:

10.1.1 resigns, or is expelled, from the union or organisation which appointed him or her;

10.1.2 resigns from the Council;
10.1.4 is the representative of a party which has been wound up in terms of section 103 of the Act, or which has been sequestrated in terms of section 104 of the Act, or whose registration has been cancelled in terms of sections 105 or 106 of the Act;

10.1.5 is not in compliance with the provisions of any collective agreement binding on him or her in terms of sections 31 or 32 of the Act, and has remained out of compliance for a period of more than 90 (ninety) days;

10.1.6 wilfully refuses to comply with the provisions of any collective agreement binding on him or her in terms of sections 31 or 32 of the Act;

10.1.7 is disqualified in terms of any law from holding a position of trust;

10.1.8 has been convicted of any crime of which dishonesty is an element.

10.2 A representative or alternate who wishes to resign:

10.2.1 from the party which appointed him or her; or

10.2.2 his or her seat on the Council;

must give at least 1(one) month’s notice in writing to the Secretary of the Council and to the party which appointed him or her in order to allow the party time to appoint a replacement.

10.3 A party may at any time withdraw any of its representatives or alternates on the Council by giving at least 1 (one) month's notice
in writing to the Secretary but that party must thereupon appoint a replacement or replacements in accordance with Clause 8 of this Constitution.

10.4 If a seat on the forum becomes vacant by reason of the withdrawal, resignation, death or disqualification of a representative or an alternate, it must be filled by the party who appointed such representative or alternate. Any representative or alternate so appointed holds office for the unexpired portion for the period of office of his or her predecessor, and on the same conditions.

11. CHAIRPERSON AND DEPUTY CHAIRPERSON

11.1 At the Annual General Meeting the Council must elect a chairperson and a deputy chairperson.

11.2 If the chairperson is a representative of the employers then the deputy-chairperson shall be a representative of the unions and this requirement shall operate vice versa.

11.3 The chairperson and deputy-chairperson shall hold office for an uninterrupted period of 24 months subject to complying with the provisions of this Constitution, its Rules and Regulations and the Act.

11.4 Upon expiry of the 24 month period, their appointment shall automatically lapse and accordingly it will not be necessary to give written notice of termination to either of them.

11.5 Neither the chairperson nor the deputy-chairperson shall be entitled to be appointed to either office for an immediate subsequent term if they have been appointed in either office for 2 (two) consecutive terms including any part thereof. Accordingly this rule applies where a person acted as chairperson for one term and immediately preceding or following that appointment he/she acted as the deputy-chairperson.

11.6 Subject to sub-clauses 11.4 and 11.8, the serving chairperson of the Council at the time of the Annual General Meeting will be the
chairperson of the meeting and will preside over the election of the next chairperson.

11.7 The chairperson of the meeting must call for nominations for the office of chairperson. A person is nominated if proposed by one and seconded by another representative of the Council.

11.8 If the serving chairperson is nominated for another term, the Council, by a show of hands, must elect a representative of the Council to act as chairperson of the meeting during the election of the next chairperson.

11.9 If only one candidate is nominated, the candidate will be deemed to have been elected as the new chairperson unopposed, and must be declared by the chairperson of the meeting to have been so elected.

11.10 If two or more candidates are nominated, the chairperson of the meeting must conduct a vote by ballot, and must declare the candidate in whose favour the majority of the votes have been cast, to have been elected as the new chairperson.

11.11 If an equal number of votes are cast for two or more candidates, and no other candidate has drawn a higher number of votes than those candidates, the chairperson of the meeting will cause to be determined by a ballot which one of those candidates is to become the new chairperson.

11.12 Upon having been declared elected, the new chairperson must preside over the meeting and must call for nominations for the office of deputy chairperson.

11.13 If the newly elected chairperson is an employer representative, only employee representatives may be nominated for deputy chairperson, and vice versa.
11.14 The provisions of sub-clauses 11.3, 11.5, 11.7 and 11.8, read with the changes required by the context, apply in respect of the election of the deputy chairperson.

11.15 The chairperson and deputy chairperson will hold their respective offices until the next election of the chairperson or deputy chairperson (as the case may be) takes place, or, if the chairperson or deputy chairperson ceases to be a representative of the Council on any date before that election, until that date. Each of them will be eligible for re-election if they are still representatives when their respective terms as chairperson and deputy chairperson expire.

11.16 If the office of the chairperson or deputy chairperson becomes vacant before the next election of the chairperson or deputy chairperson (as the case may be) the Council must elect a person as a chairperson or deputy chairperson (as the case may be) to hold office until the next election.

11.17 An election contemplated in clause 11.16 must be held in accordance with sub-clauses 11.3, 11.5, 11.7 11.8 and 11.11, read with the changes required by the context.

11.18 The chairperson must preside over all meetings of the Council, and must:

11.18.1 sign the minutes of the Council’s meetings after those minutes have been confirmed;

11.18.2 authorise payments and/or sign cheques drawn on the Council’s bank account; and

11.18.3 perform any other functions and duties entrusted to the chairperson by this Constitution as well as those that are generally associated with the office of a chairperson.

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11.19 The deputy chairperson must preside over meetings of the Council and perform the duties and functions of the chairperson whenever the chairperson is absent or for any reason the chairperson is unable to act or to perform those functions and duties.

11.20 If both the chairperson and the deputy chairperson are absent or unable to act or to perform the functions and duties of the chairperson, the Council, by show of hands, must elect from the representatives a person to act as chairperson and to perform those functions and duties until the chairperson or deputy chairperson are able to perform their functions and duties.

11.21 A chairperson or a deputy chairperson who has not been elected from amongst the representatives of the Council is not entitled to vote on any matter before the Council or the executive committee.

11.22 A chairperson or a deputy chairperson may be removed from office by the Council for poor performance including serious neglect of duty, serious misconduct or due to incapacity.

11.23 A person that is not a representative of an employer or who is not an employee in the Industry may be appointed as the chairperson or vice-chairperson of the Council in terms of this Constitution.

12. OFFICIALS

12.1 The Council shall, at its first meeting, appoint a Selection Committee, which shall consist of such number of persons as may be determined by the Council from time to time, provided that one half of the members shall be representatives of the employer parties and one half shall be representatives of the trade union parties.
12.2 The function of the Selection Committee shall be to identify and recommend the appointment of a Secretary to the Council and such other Officials as the Council may consider necessary.

12.3 The officials of the Council may be employees of the institution which is appointed to provide services to the Council.

12.4 The Council forum shall, as soon as possible after its first meeting:

12.4.1 consider the recommendations made by the Selection Committee in terms of clause 11.2; and

12.4.2 adopt such recommendations; or

12.4.3 alternatively, and in the event of the rejection of any such recommendations; and

12.4.4 upon a motion duly moved and seconded, and voted upon in each case by ballot either appoint the Secretary or refer the matter back to the Selection Committee for further investigation.

12.5 The Council must prescribe the terms of employment applicable to the Secretary, Officials and other employees of the Council.

12.6 The Secretary is the chief executive official of the Council responsible for the executive, administrative and secretarial functions of the Council subject to the control of the Council.

12.7 The powers, duties and functions of the Secretary are:-
12.7.1 to ensure compliance with this Constitution;

12.7.2 to prepare, for submission to the Council, draft collective agreements;

12.7.3 to supervise the enforcement of those collective agreements;

12.7.4 to supervise the work of the dispute resolution mechanisms of the Council;

12.7.5 to administer, on the Council’s behalf, any fund to be used for resolving disputes;

12.7.6 to administer, on the Council’s behalf, any schemes or funds referred to in section 28(1)(g) of the Act;

12.7.7 to draft proposals for submission by the Council to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area for which the Council is registered;

12.7.8 to liaise with government departments and private and government agencies in connection with Council and education and training matters generally;

12.7.9 to handle the affairs of the Council in relation to its dealings with the Registrar and the Department of Labour;

12.7.10 on behalf of the Council, to draft revisions of collective agreements and schemes within the meaning of section 28(1)(g) of the Act;
12.7.11 to execute the decisions of the Council and the committees of the Council and to carry out the administrative and secretarial functions of the Council and the National Negotiating Forum and committees of the Council;

12.7.12 to distribute agendas and notices of meetings; to attend meetings; and to procure the recording of minutes of Council meetings;

12.7.13 to administer the finances of the Council in accordance with the Act, the provisions of this Constitution and the decisions of the Council.

12.8 To fulfil his or her functions, the Secretary:

12.8.1 may, with approval of the Council, appoint such staff as may be required to perform the executive, administrative and secretarial functions referred to;

12.8.2 may, with approval of the Council, establish compensation and allowances for the Council and committee members, and officers and officials on Council business;

12.8.3 must keep such books of account as the Council may direct;

12.8.4 must conduct all the correspondence of the Council, keep originals of letters received and copies of those despatched;
at each meeting of the Council, must summarise or read (as the Council may determine) correspondence which has taken place since the last meeting;

must bank all monies received on behalf of the Council as soon as is practicable after receipt thereof, must submit statements of the financial position of the Council to that body whenever required to do so, but not less than once every quarter, must countersign cheques on the Council’s banking account and must perform such other duties as the Council may direct;

must retain in safe custody in the office of the Council the annual financial statements and a copy of the confirmed minutes of every meeting of the Council duly signed by the person who presided at the meeting for the period prescribed by the Act.

The Secretary ceases to be eligible for office, and must vacate office:-

if he or she resigns as such;

if he or she becomes subject to a disqualification, or

if he or she is dismissed by the Council for any reason recognised by law.

13. COMMITTEES

The Council may appoint such committees, including an executive committee, as it may consider necessary:-
13.1.1 for the purposes of performing any function which may be delegated to the committee in terms of the Act; or

13.1.2 for the purposes of investigating and reporting on any matter referred to such committee by the Council; or

13.1.3 for the purpose of performing any function delegated to such committees by the Council.

13.2 Such committees shall comprise of such persons as may be designated by the Council provided that there shall be an equal number of representatives of the employer parties and the trade union parties.

13.3 Any decision of a committee, except a decision of a special committee appointed in terms of Clause 16.1, may be amended or set aside by the Council.

14. BARGAINING COUNCIL MEETINGS

14.1 The Council shall hold an Annual General Meeting in March of each year at the time and venue as decided on by the chairperson after consulting the parties.

14.2 The Council may hold meetings from time to time at the written request of any party or parties that jointly hold 50% or more of the votes allocated to either the employer parties or trade union parties.

14.3 Notice of every meeting to all representatives shall be given in writing, detailing the time, the date, the venue and the business to be transacted.
14.4 Notice shall be transmitted by the Secretary to the representatives by post, telefax or by electronic medium not less than 21 days prior to the meeting provided that the chairperson may authorise the giving of shortened notice.

14.5 A quorum shall comprise of at least 50% of the representatives of every employer party and at least 50% of the representatives of every trade union party.

14.6 If, within 30 minutes of the time and date fixed for any meeting of the Council, a quorum is not present, the meeting shall stand adjourned to a date to be fixed by the Chairperson, not less than 7 and not more than 10 days from the date of the meeting which stands adjourned. Notice in writing shall be given by the Secretary to each representative stating the date and time of the adjourned meeting. At such adjourned meeting, the representatives present shall constitute a quorum.

14.7 Minutes of Council meetings shall be kept by the Secretary, sufficient to identify:

14.7.1 the time, date and place of the meeting;

14.7.2 who presided at the meeting, and what office bearers, representatives and officials were present;

14.7.3 the names of representatives absent from the meeting and whether they were absent with written excuse or not;

14.7.4 salient features of the debate on each item of the agenda;

14.7.5 the decisions taken and the resolutions passed.

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14.8 The Secretary shall submit the Minutes of every meeting of the Council to all representatives, at least 7 days before the date of the next succeeding meeting. If in agreement with the Minutes, the Council shall confirm such Minutes by way of resolution at the next meeting and the chairperson shall sign the Minutes as confirmed.

14.9 The Council shall be entitled to enter into an agreement with another Bargaining Council in order to require it to provide the services referred to in this clause. For all intents and purposes the officials of the other Bargaining Council shall also serve as the officials of the Bargaining Council for the Civil Engineering Industry.

15. **MANNER IN WHICH DECISIONS ARE MADE**

15.1 All motions to be considered by the Council shall, unless otherwise permitted by the Chairperson, be submitted to the Chairperson in writing, and read by him to the meeting of the Council.

15.2 The Council shall attempt to make decision by way of consensus. In the absence of agreement by consensus and except as otherwise decided by the forum, all matters forming the subject matter of motions shall be decided by the vote of a 75% majority of representatives present. Voting shall take place by a show of hands.

15.3 No decision taken at a meeting of the Council shall be invalidated by the absence of any representatives, if they have been properly notified in terms of clause 14.

16. **NEGOTIATION PROCEDURE**
16.1 The Council shall establish a National Negotiating Forum at which negotiations on wages and conditions of employment shall be conducted for all employees in the bargaining unit in the Industry.

16.2 The National Negotiating Forum shall be the sole forum at which negotiations on wages and conditions of employment shall take place in the Industry.

16.2 The Council shall determine at each Annual General Meeting the number of representatives of each party to the National Negotiating Forum in accordance with the principles of proportionality and equal representation of trade union parties on the one hand and employer parties on the other.

16.3 The total number of employer party representatives to the National Negotiating Forum on the one hand, and the total of trade union party representatives to the National Negotiating Forum on the other hand, may not exceed 5 (five) of which at least one employer representative shall represent the interest of medium/small enterprises.

16.4 Before the end of February of a year in which national negotiations must be conducted, every trade union party shall provide to every other party to the National Negotiating Forum and to the Secretary of the Council, a written draft agenda and proposals in respect of the forthcoming negotiations at the National Negotiating Forum.

16.5 The first negotiating meeting of the National Negotiating Forum shall be held in the first week of April of each year under the Chairpersonship of the Chairperson of the general meeting, to:-

16.5.1 commence negotiations;

16.5.2 narrow down issues and agree on terms of reference of the future negotiating meetings;
16.5.3 agree on the dates of at least four further negotiating meetings before the end of April of each year; and

16.5.4 agree on the rules and procedures to be followed.

16.6 Any agreement reached between the parties shall take effect on a date to be agreed and shall remain in effect for a period to be agreed or, if no period is agreed upon, until amended, by way of the procedures set out in this clause.

16.7 No agreement between the parties shall be of any force or effect unless reduced to writing and signed by the parties.

16.8 If the parties fail to reach agreement, but not before the parties have met on at least five separate occasions (unless otherwise agreed in writing), either party may declare a dispute by written notice to the other party and the matter shall thereafter be dealt with in terms of the dispute settlement procedure provided for in clause 17.

16.9 Project Labour Agreements:-

16.9.1 Where the parties conclude a Project Labour Agreement, that agreement shall incorporate the provisions of the agreements of the Council.

16.9.2 The Project labour Agreement shall deal with those issues not dealt with in the agreements of the Council and which are essentially domestic in nature (site specific issues).

17. **DISPUTE SETTLEMENT PROCEDURE**

17.1 Any dispute:-
17.1.1 arising between the parties about the interpretation or application of the Council’s Constitution;

17.1.2 arising between the parties following deadlock during negotiations on wages and/or conditions of employment;

17.1.3 arising between a trade union party, or its members, or both, on the one hand, and a member or members of an employer party, on the other hand;

17.1.4 referred to the Council by any party to a dispute who is not a party of the Council but who falls within the registered scope of the Council;

shall be referred to the Dispute Resolution Centre of the Bargaining Council for conciliation and/or adjudication.

17.2 In each case the Commissioner appointed by the Dispute Resolution Centre shall determine whether the Council has jurisdiction to deal with the dispute.

17.3 The Council shall request either the Metal and Engineering Industries Bargaining Council ("the MEIBC") or another institution to establish, manage and administer a Dispute Resolution Centre for and on behalf of the Bargaining Council.

17.4 The BCCEI or another institution for and on behalf of the Council shall establish a fund in the name of the Council to which all employers and employees in the Industry shall pay a dispute levy.

17.5 The dispute levy shall cover the costs of the Dispute Resolution Centre.
17.6 The details in regard to the dispute levy and any review of the dispute levy shall be specifically dealt with in an agreement of the Council.

17.7 The Council shall supervise the Dispute Resolution Centre and shall ensure that it maintains the required efficiencies and that its costs fall within the budgetary constraints of the Council.

17.8 Subject to the provisions of the Act, all employees within the Industry shall be entitled to refer disputes to the Council and the Dispute Resolution Centre shall exercise jurisdiction over those disputes.

18. EXEMPTIONS

18.1 There shall be a single Exemptions Body to deal with all exemption applications.

18.2 The person appointed to consider an application must have the necessary knowledge of the Industry.

18.3 The Council shall, appoint an independent person(s) ("the Exemptions Body") to consider any application for exemption from the agreements of the Council.

The Exemptions Body shall operate on an ad hoc basis.

The Exemptions Body shall consist of

(a) A person nominated by the Council from a panel agreed to by the parties.

(b) If the person has been nominated in terms of paragraph (a) and is of the view that he/she needs assistance of a specialist/s, he/she must motivate such a request and ask the Council to assist with the appointment of such an assessor.
18.4 The Exemptions Body shall consider any application for exemption from such agreements with due consideration to:-

18.4.1 the size and financial standing of the business;

18.4.2 any special circumstances or other factors which distinguishes the applicant from other employers in the Industry;

18.4.3 any other factors which the committee deems to be relevant in relation to the possible granting of an exemption.

18.5 The Exemptions Body, to the extent necessary, shall publish rules or guidelines on the proper lodging of applications for exemption including the issues which should be dealt with when lodging an application.

18.4 If deemed necessary by the Exemptions Body, it may require the party to appear in person before it.

19. RULES

19.1 The Council shall be entitled to make rules in respect of:-

19.1.1 any matter permitted or prescribed by this Constitution;

19.1.2 any matter on which the Council considers it necessary to prescribe rules for the purpose of achieving the objectives of the Council.

19.2 The Council shall apply the rules prescribed in clauses 11 and 13 of this Constitution in order to establish or amend the rules.
20. **FINANCIAL MATTERS**

20.1 The expenditure of the Council shall be met from funds raised by levies upon employers and employees as determined by the Council annually and any donations received, provided that initial costs shall be borne by the parties on an equal basis.

20.2 The Secretary of the Council shall perform those functions in regard to the control of the financial matters of the Council, as may be specified in the Rules to this Constitution.

20.3 The funds received by the Council shall be applied to the payment of expenses arising from the administration of the affairs of the Council.

20.4 Any surplus funds, which are not required for the objectives and purposes referred to in clauses 4 and 5, may be invested in such a manner as the Council may decide, subject to the provisions of the Act.

20.5 The annual financial statements shall be prepared by the Secretary which shall be countersigned by the Chairperson and which shall be submitted for audit to an auditor as appointed from time to time by the Council.

The financial year of the council begins on the 1st July each year and ends on the following year on the 30th June of that year except for the first year when the financial year begins on the day the Council is registered and ends on the 30th June following.

20.6 The certified copies of the audited financial statements and of the auditor’s report in respect of such statements, shall be tabled at the following Annual General Meeting of the Council.

21. **AMENDMENTS**

Rev 2, Nov. 2012
21.1 This Constitution may be amended or amplified by a resolution adopted by a 60% majority of representatives present at a General Meeting.

21.2 No amendments or additions shall have any force or effect until approved as required by the Act.

22. DISSOLUTION AND WINDING UP

22.1 The Council may be dissolved at any time by its own resolution to that effect and/or in terms of S30(1)(q) of the LRA and S57(3).

22.2 Upon such dissolution, or upon a decision by the Labour Court that the Council is unable to continue to function, the Council shall be wound up and the following provisions shall apply:-

22.2.1 the Chairperson of the Council shall transmit to the Registrar, a statement signed by him, setting out:-

22.2.1.1 the resolution adopted for the Council’s dissolution;

or

22.2.1.2 the reason for the Council’s inability to continue to function as provided by the Labour Court; or

22.2.1.3 any recommendations or order relevant to the appointment of a Trustee who is to carry out the winding up.

22.2.2 The Trustee, upon confirmation of his appointment, shall call upon the last appointed Secretary of the Council to deliver to him the Council’s books of account and also to hand to him any unexpended funds of the Council.

Rev 2, Nov. 2012
22.2.3 The Trustee shall take the necessary steps to liquidate the debts of the Council from its unexpended funds and any other monies realised from any assets of the Council.

22.2.4 If, after all the liabilities of the Council had been discharged, any assets remain, the Trustee shall realise such assets and distribute the proceeds among parties pro rata to their representation in the Council.

22.2.5 Upon completion of the dissolution or winding up of the Council, all records of the Council shall be forwarded to the Inspector determined by regulation.

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Secretary of the Bargaining Council for the Civil Engineering Industry

12 January 2011

[Signatures]

Rev 2, Nov. 2012