

SCHEDULE

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

(Hereinafter referred to as the "Council")

AGENCY SHOP COLLECTIVE AGREEMENT

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

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA)

And

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION (IMATU)

And

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU)

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

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INDEX

1. SCOPE OF THE AGREEMENT
2. PERIOD OF OPERATION
3. DEFINITIONS
4. OBJECTIVES
5. AGENCY SHOP FEE
6. ENFORCEMENT OF THIS COLLECTIVE AGREEMENT
7. DISPUTES ABOUT THE APPLICATION OR INTERPRETATION OF THIS AGREEMENT.
8. EXEMPTION PROCESS
9. AMENDMENT TO THE AGREEMENT

1. SCOPE OF AGREEMENT

1.1 The terms of this agreement shall be observed-

- (a) In the Local Government Undertaking in the Republic of South Africa;
- (b) By all employers and employees who fall within the registered scope of the Council and
- (c) By all employers who are members of the employers' organisation which is a party to this Agreement and by all employees who are members of the trade unions and who are engaged or employed respectively in the said industry.

1.2 The terms of this Agreement shall not be binding on non-parties in respect of clauses 1(1)(c) and 2.

2 PERIOD OF OPERATION

2.1 Notwithstanding the date of signature hereof, this Agreement shall come into operation in respect of the *Parties* to the Agreement, on 1 July 2015 and shall remain in force until 30 June 2020. Thereafter the Agreement shall continue indefinitely in respect of the *Parties* to the Agreement;

2.2. This Agreement shall, in terms of section 32 of the Act, come into operation on such date as may be fixed by the Minister of Labour.

3. DEFINITIONS

Any expressions used in this agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act and any reference to an Act shall include any amendments to such Act and unless the contrary intention appears, words importing the masculine gender shall also include the feminine gender or vice versa.

“Act”	means the Labour Relations Act, No 66 of 1995 as amended
“Council”	means the South African Local Government Bargaining Council
“Day”	means Monday to Friday, excluding public holidays, unless indicated otherwise by the context;
“Employer or Employers”	means the employers within the registered scope of the Council;
“IMATU”	means the Independent Municipal and Allied Trade Union;
“Local Government Undertaking”	means the undertaking in which the employer and employees are associated for the institution, continuance or finalisation of any act, scheme or activity undertaken by a Municipality and by municipal entities as established in terms of the Local Government: Municipal Systems Act, 2000;
“Municipality”	means the undertaking in which the employer and employees are associated for the institution, continuance or finalisation of any act, scheme or activity undertaken by a Municipality and by municipal entities as established in terms of the Local Government Municipal Systems Act (32 of 2000);
“Party”	means an Employers' Organisation or Trade Unions admitted to the Council and who are party to this Agreement;
“Party or Parties”	means IMATU, SALGA and SAMWU;
“SALGA”	means the South African Local Government Association;
“SAMWU”	means the South African Municipal Workers' Union;
“Trade union”	means either IMATU or SAMWU and Trade Unions means IMATU and SAMWU;

4. OBJECTIVES

4.1 A separate Collective Bargaining Fee Agreement is hereby agreed to and the provisions of the Labour Relations Act, 1995 (Act 66 of 1995)(as amended)(hereinafter referred to as the Act), where applicable, shall apply to this Agreement. The object of this Agreement is to ensure that all employees in the

scope of the Council who receive the benefits of collective bargaining contribute towards its costs.

- 4.2 This Agreement shall be subject to the respective parties being representative, as required by section 25 of the Act, of employees and employers who are covered by the registered scope of the council as verified by the Department of Labour from time to time. Accordingly, the application of this agreement to the parties shall be subject to all parties being representative.

5. AGENCY SHOP FEE

- 5.1 An Agency Shop Fee is payable by an employee who is not a member of the representative trade unions known as IMATU and SAMWU, although such an employee is eligible for membership thereof but is not compelled to be a member thereof.
- 5.2 For the purposes of this agreement, "representative trade union" means a registered trade union or two or more registered trade unions acting jointly whose members are a majority of employees employed by the members of an employers' organization in a sector and area in respect of which the Agency shop agreement applies.
- 5.3 For the purposes of this agreement, "representative employers' organization" means a registered employers' organization or two or more registered employers' organizations acting jointly whose members are a majority in a sector and area in respect of which the Agency shop agreement applies.
- 5.4 This Agency Fee Agreement is binding on all employees who are not members of the representative trade unions, being the non-party employees in the local government undertaking as defined in the registered scope of the council as well as to all

employers who are not the members of the representative employers' organization being the non party employers in the said Industry.

- 5.5 The prescribed Agency Shop Fee shall be equivalent to or less than the amount of the prevailing membership fees payable by the employees who are members of IMATU or SAMWU to their respective trade unions.
- 5.6 The prescribed Agency Shop Fee payable by employees who are not members of the party trade unions, who are party to this Agreement, shall be 1% (one percent) or a maximum of R65 per month.
- 5.7 Every non-party employer shall together with the Agency Shop Fee also submit to the General Secretary of the Council, at the same time, a monthly return form reflecting the amount of the Agency Shop Fee due on the return form as specified by the Council from time to time.

The following information shall be remitted to the Council, on the prescribed Council form marked Annexure A, with the proof of payment in clause 5.6 above:

- 5.7.1 Total number of all employees;
 - 5.7.2 Total number of IMATU members indicated separately;
 - 5.7.3 Total number of SAMWU members indicated separately; and
 - 5.7.4 Total number of non-union members.
- 5.8 The General Secretary of the Council shall deposit all moneys received as Agency Shop Fee in terms of clause 5.6 into a bank account of the Council.
 - 5.9 The prescribed Agency Shop Fee must be paid by the employers as identified in clause 5.6 to the Council by the 7th day of each month following the month in which it became due.
 - 5.10 The General Secretary of the Council shall transfer all moneys received as Agency Shop Fees into a separate account administered by the party trade unions.

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- 5.11 The total agency shop fee deducted monthly in terms of clause 5.6, shall be divided by the Council between the trade unions parties in proportion to their members falling within the scope of the agreement, and paid over to the trade unions on a quarterly basis.
- 5.12 Despite sub-clause 5.9, a conscientious objector may request the Council in writing to pay his Agency Shop Fee into a fund administered by the Department of Labour.
- 5.13 No Agency Shop Fee may be:
- 5.13.1 paid to a political party as an affiliation fee; or
 - 5.13.2 contributed in cash or kind to a political party or a person standing for election to any political office; or
 - 5.13.3 used for any expenditure that does not advance or protect collective bargaining and the socio-economic interests of employees
- 5.14 The provisions of sections 98 and 100 (b) and (c) of the Act apply, read with the changes required by the context, to the separate account referred to in clause 5.10.
- 5.15 In the Registrar's Office, any person may inspect the auditor's report, in so far as it relates to an account referred to in sub-clause 5.10.
- 5.16 The Registrar must provide a certified copy of, or an extract from, any of the documents referred to in clause 5.14 to any person who has paid the prescribed fees.
- 5.17 If an employer or employee or trade union or any interested person or organisation alleges that the representative trade union is no longer a representative trade union as envisaged in sub-clause 5.2 it must give the trade union written notice of the allegation, and must allow the trade union 90 days from the date of the notice to prove that it is a representative trade union.

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5.18 If an employer or employee or trade union or any interested person or organization alleges that the representative employers organization is no longer a representative employers organization as envisaged in sub-clause 5.3 it must give the employers' organization written notice of the allegation, and must allow the employers' organization 90 days from the date of the notice to prove that it is a representative employers' organization.

5.19 If, within the 90-day period, the representative trade union or representative employers' organization fails to prove that it is a representative trade union or representative employers' organization, the employer, or employee or trade union or interested person or organization making the allegation, must give the trade union or employers' organization which claims to be representative notice of its intention to request the Minister of Labour to withdraw the extension of this agreement to non-parties.

5.20 If the extension of this agreement to non-parties is withdrawn by the Minister of Labour for any reason, the provisions of sub-clauses 5.8 and 5.9 shall apply until all the Agency Shop Fees due up until the date of the withdrawal of this Agreement have been received and paid out in accordance with sub-clauses 5.10, 5.13 and 5.14.

6 ENFORCEMENT OF THIS COLLECTIVE AGREEMENT

6.1 Despite any other provision in the Act, the Council shall monitor and enforce compliance of this collective agreement in terms of Section 33A of the Act.

6.2 The General Secretary or a designated agent appointed by the Council, may issue a compliance order which will stipulate the alleged breach and shall clearly indicate that such breach be rectified within ten (10) days of receipt of such compliance order.

6.3 The Council may refer any unresolved dispute concerning compliance with any

provision of this collective agreement to arbitration by an arbitrator appointed by the Council.

- 6.4 If a Party to arbitration in terms of Section 33A of the Act is not a Party to the Council, and objects to the appointment of an arbitrator in terms of clause 6.3, the Commission, on request by the Council, must appoint an arbitrator.
- 6.5 If an arbitrator is appointed in terms of clause 6.4 above-
 - 6.5.1 The Council remains liable for the payment of the arbitrator's fee; and
 - 6.5.2 The arbitration is not conducted under the auspices of the Commission.
- 6.6 An arbitrator conducting arbitration in terms of Section 33A of the Act has the powers of a commissioner in terms of section 142 of the Act, read with the changes required by the context.
- 6.7 Section 138 of the Act, read with the changes required by the context, applies to any arbitration conducted in terms of Section 33A of the Act.
- 6.8 An arbitrator acting in terms of Section 33A of the Act may determine any dispute concerning the interpretation or application of this collective agreement.
- 6.9 An arbitrator conducting an arbitration in terms of Section 33A of the Act may make an appropriate award, including-
 - 6.9.1 Ordering any person to pay any amount owing in terms of this collective agreement;
 - 6.9.2 Imposing a fine for a failure to comply with a collective agreement;
 - 6.9.3 Charging a Party an arbitration fee;
 - 6.9.4 Ordering a Party to pay the costs of the arbitration;
 - 6.9.5 Confirming, varying or setting aside a compliance order issued by the General Secretary, or his appointed designated agent in accordance with clause 6.2;
 - 6.9.6 Any award contemplated in section 139 (9).

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- 6.10 Interest on any amount that a person is obliged to pay in terms of this collective agreement accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), unless the arbitration award provides otherwise.
- 6.11 An arbitration award in an arbitration conducted in terms of Section 33A of the Act is final and binding and may be enforced in terms of section 143 of the Act.
- 6.12 If an employer upon whom a fine has been imposed in terms of this clause files an application to review and set aside an award made in terms of clause 6.9, any obligation to pay a fine is suspended pending the outcome of the application.

7. DISPUTES ABOUT THE APPLICATION OR INTERPRETATION OF THIS AGREEMENT

- 7.1 Any person or Party may refer a dispute about the application or interpretation of this collective agreement, to the General Secretary of the Council.
- 7.2 The General Secretary in the event of a dispute not being resolved-
- 7.2.1 must appoint a conciliator from either the national or divisional panel of conciliators, (doing so as far as possible on a rotational basis) or if the dispute remains unresolved;
- 7.2.2 refer the dispute to arbitration in terms of the Constitution of the Council.
- 7.3 If a conciliator is appointed, the General Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.
- 7.4 If the dispute is referred to arbitration, the General Secretary shall appoint an arbitrator from the national panel of arbitrators, doing so as far as possible on a rotational basis.

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- 7.5 The General Secretary, in consultation with the arbitrator, shall decide the date, time and venue of the arbitration hearing.
- 7.6 The arbitrator shall –
- 7.6.1 Endeavour to conciliate the dispute unless the parties to the dispute advise the arbitrator that the dispute has been properly conciliated; and
- 7.6.2 If the dispute remains unresolved, resolve the dispute through arbitration.
- 7.7 The arbitrator may make any appropriate arbitration award in terms of the *Act* that gives effect to the collective agreement.

8 APPLICATIONS FOR EXEMPTION

- 8.1 Any Party or person bound by a collective agreement concluded under the auspices of the Council or which binds the Parties to the Council shall be entitled to apply for exemption from any provision of the said collective agreement.
- 8.2 All applications for exemption shall be made in writing on the prescribed form, obtained from the *Council*, setting out relevant information, including:
- 8.2.1 The provisions of the *agreement* in respect of which exemption is sought;
- 8.2.2 The number of persons in respect of whom the exemption is sought;
- 8.2.3 The reasons why the exemption is sought;
- 8.2.4 The nature and size of the business in respect of which the exemption is sought;
- 8.2.5 The duration and timeframe for which the exemption sought;
- 8.2.6 The business strategy and plan of the applicant seeking the exemption;

- 8.2.7 The applicant's past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate;
 - 8.2.8 Confirmation that the trade union or workforce itself were advised of the exemption application at local level; and
 - 8.2.9 Any other relevant supporting data and financial information the *Council* may prescribe from time to time.
- 8.3 An application for exemption from any provision of the collective agreement shall be lodged in writing on the prescribed form with the General Secretary of the *Council* and the applicant shall serve a copy of the application as follows:
- 8.3.1 In the case of a Trade Union or employee applying for exemption from collective agreement, submit a copy of the exemption application to SALGA and the relevant municipality affected by the application.
 - 8.3.2 In the case of SALGA and/or a Municipality applying for exemption from a collective agreement, forward the exemption application to the national and local offices of IMATU and SAMWU.
- 8.4 The Parties referred to in clauses 8.3.1 and 8.3.2, as the case may be, shall be afforded ten (10) days to submit a response to the application for exemption to the General Secretary of the Council. The Party shall also be obliged to submit the response to the applicant for exemption.
- 8.5 The application for exemption shall be considered by the National Exemption Committee.
- 8.6 All applications considered by the National Exemption Committee shall, unless determined otherwise by the Senior Panellist, only be based on the written application and arguments in respect of the application, if any by the applicant

and any party or person opposing the application. The Panellist shall consider exemption applications in a manner that is fair and transparent and applications shall be determined as expeditiously as possible which may include the hearing of evidence and arguments.

- 8.7 In the event of applications being made that are frivolous and vexatious, such applications may be dismissed with costs.
- 8.8 Where a municipality applies for exemption it shall not implement any changes to existing provisions until the exemption is finalised, unless the National Exemption Committee decides otherwise.
- 8.9 The National Exemptions Committee must consider and make its decision within 30 days of the Council having received the exemption application.
- 8.10 The onus to prove the case for the granting of an exemption lies with the applicant.
- 8.11 Parties undertake to make every reasonable effort to assist their members to discharge such onus in a full and proper manner.
- 8.12 **National Exemption Committee**
 - 8.12.1 The Executive Committee of the SALGBC shall establish dedicated exemptions panel of arbitrators from the National Panel of conciliators and arbitrators of the Council.
 - 8.12.2 The General Secretary of the SALGBC shall appoint a Senior Panellist from the dedicated exemptions panel of arbitrators to hear and determine the application for exemption.
 - 8.12.3 The General Secretary of the Council or his nominee shall provide

secretarial services to the National Exemption Committee.

8.12.4 The National Exemption Committee shall undertake its duties in a fair and transparent manner and shall have the powers and functions to:-

8.12.4.1 Grant or reject an application for exemption; and

8.12.4.2 Approve interim adjustments in circumstances where this will not affect the final outcome.

8.12.5 The National Exemption Committee shall grant or reject an exemption application within 30 (thirty) days after a referral to the General Secretary.

8.12.6 The Senior Panellist shall have the power to condone any failure to comply with the time periods provided for in terms of this procedure based on good cause shown.

8.12.7 The decisions of the National Exemption Committee shall be final and binding subject to the applicant's right of appeal. In the event that the National Exemption Committee declines to grant an exemption, the applicant shall be notified that its application has been unsuccessful and that it has the right of appeal to the Exemption Appeal Tribunal. The National Exemptions Committee shall provide brief written reasons for its decision.

8.12.8 An exemption certificate which contains the following information shall be signed by the Senior Panellist of the National Exemption Committee and the General Secretary of the *Council*:

8.12.8.1 The full name of the applicant employer;

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- 8.12.8.2 The date of issue;
- 8.12.8.3 The details of the agreement for which exemption is granted;
- 8.12.8.4 The period for which exemption shall operate;
- 8.12.8.5 The terms and conditions, or remedial requirements of the exemption;
- 8.12.8.6 Any other matter the arbitrator deems relevant; and
- 8.12.8.7 The exemption certificate shall be sent directly to the applicant and to the relevant Regional Secretary, who shall inform the parties to the division of the final terms and conditions within five (5) working days after receipt of such certificate.

8.13 Criteria and Other Factors to be considered by Exemptions Committees and Exemptions Appeal Tribunal

- 8.13.1 When considering an application for exemption, including an appeal or an application for the withdrawal of a certificate of exemption by the *Council*, the following criteria shall be taken into account (the order not indicating any form of priority):
 - 8.13.1.1 Any written and/or verbal substantiation provided by the applicant or a party to the SALGBC;
 - 8.13.1.2 Fairness to the employer, its employees and other employers and the employees in the industry;
 - 8.13.1.3 Whether an exemption, if granted would undermine this

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agreement or the collective bargaining process;

8.13.1.4 The employer is unable to afford the costs of the whole or part of this agreement or;

8.13.1.5 The employer has short-term cash flow problems necessitating a limited exemption.

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

8.13.1.7 Whether a budgetary provision was made for implementation of the obligation arising out of the collective agreement;

8.13.1.8 The infringement of basic conditions of employment rights;

8.13.1.9 The fact that a competitive advantage might be created by exemption;

8.13.1.10 Comparable benefits or provisions where applicable;

8.13.1.11 The applicant's compliance with other statutory requirements such as the Compensation for Occupational Injuries and Diseases Act 130 of 1993, Basic Conditions of Employment Act 75 of 1997, Employment Equity Act 55 of 1998, Skills Development Act 97 of 1998, Skills Development Levies Act 9 of 1999, or Unemployment Insurance Act 63 of 2001; or

8.13.1.12 The applicant's past record of compliance with collective agreements;

- 8.13.1.13 The precedents for exemptions set since the introduction of this procedure and the effects of its proposal as a precedent in its own divisions or other divisions;
- 8.13.1.14 Any process or directives as may be agreed to by the Executive Committee from time to time; or
- 8.13.1.15 Any other factor which is considered appropriate.

8.14 Exemptions Appeal Tribunal (The Tribunal)

- 8.14.1 An appeal shall be considered by an external panellist other than the arbitrators from the national panel of conciliators and arbitrators. The external panellists shall be drawn from either the CCMA or any other suitable or equivalent agency.
- 8.14.2 The applicant wishing to appeal shall forward their appeal to the General Secretary within five (5) days of receipts of the Council decision rejecting the exemption application.
- 8.14.3 The General Secretary shall convene a meeting of the Exemptions appeal Tribunal not later than fourteen (14) days from having received the appeal. The Tribunal must finalize its decision within 30 days of the date of the appeal being lodged with the Council.
- 8.14.4 The Exemptions Appeal Tribunal:
 - 8.14.4.1 Shall consider the appeal fairly and quickly.
 - 8.14.4.2 May condone a late appeal.
 - 8.14.4.3 Decide whether the appeal is to be dealt with on the papers and/or by means of oral submissions.



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8.14.4.4 Deliver its determination to the General Secretary of the Council within the 30 day period as stated in 8.15.3 above, who will then in turn notify the appellant and the other parties coping same to the relevant Regional Secretary.

8.15 For the purposes of this section only, "Day" shall mean calendar day

9. AMENDMENT OF THIS AGREEMENT

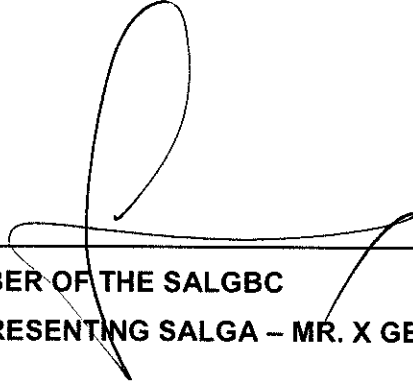
9.1 Any Party to this Agreement seeking a substantive amendment to this Agreement must submit the proposed amendment, in writing to the General Secretary of the Council.

9.2 The General Secretary shall table the proposed amendment to the Executive Committee of the Council which shall decide the appropriate forum for the proposed amendment to be negotiated. The other Parties shall submit in writing their acceptance or counter proposal to the proposed amendment.

9.3 Any failure to reach agreement on the proposed amendment shall entitle any Party to declare a dispute, in which event the disputing Party shall declare a dispute and follow the procedure in terms of the Act or read with the relevant provisions of the Constitution of the Council.

THIS AGREEMENT WAS CONSIDERED, ADOPTED AND APPROVED BY THE BARGAINING COMMITTEE OF THE CENTRAL COUNCIL IN TERMS OF CLAUSE 17.3 OF THE CONSTITUTION, ON 9 SEPTEMBER 2015.

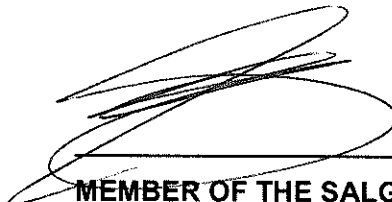
SIGNED BY THE PARTIES AT DURBAN ON THIS THE 9th DAY OF SEPTEMBER 2015.



**MEMBER OF THE SALGBC
(REPRESENTING SALGA – MR. X GEORGE)**



**MEMBER OF THE SALGBC
(REPRESENTING IMATU – MR.S KHOZA)**



**MEMBER OF THE SALGBC
(REPRESENTING SAMWU – MR. P. S
MOLALENYANE)**



**GENERAL SECRETARY OF THE SALGBC
MR SS GOVENDER**