

DRAFT RECOGNITION AND PROCEDURAL AGREEMENT

AGREEMENT ENTERED INTO BETWEEN

THE UNIVERSITY OF CAPE TOWN

(Hereinafter referred to as "The University")

AND

UNIVERSITY OF CAPE TOWN ACADEMICS' UNION

(Hereinafter referred to as "The Union")

B.W. MK JPC r
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1. INTERPRETATION

- 1.1 The headnotes to various clauses of this agreement, and the index, are inserted for reference purpose only, and do not govern or effect the interpretation of the agreement.
- 1.2 This document constitutes the sole record of the agreement between the parties relating to its subject matter.

2. DEFINITIONS

In this agreement, unless the context clearly indicates otherwise:

- 2.1 **"The LRA"** means the Labour Relations Act, No. 66 of 1995, as amended from time to time.
- 2.2 **"The CCMA"** means the Commission for Conciliation Mediation and Arbitration as defined in the LRA.
- 2.3 **"Bargaining Unit"** means the group defined in clause 5.2 below.
- 2.4 **"Day"** means, for the purposes of determining time periods in this agreement, any day except Saturdays, Sundays and statutory Public Holidays.
- 2.5 **"Dispute of interest"** means a dispute relating to the collective relationship between the University and the Union or the employment relationship between the University and its employees, in respect of which neither party has a clear right and in respect of which the claimant seeks to establish a clear right through negotiated agreement with the other party.
- 2.6 **"Dispute of right"** means a dispute relating to the interpretation and/or application of existing rights in the collective relationship between the parties, whether such arises through the employment relationship, collective agreement or by law, which would be justiciable through the CCMA, a court of law or any other forum established by agreement between the parties.

- 2.7 **"Employee"** means a person, excluding an independent contractor, who is employed by the University and who receives, or is entitled to receive, any remuneration.
- 2.8 **"Employed"** and **"Employment"** shall have meanings corresponding to that of "employee".
- 2.9 **"Employer"** means the University of Cape Town.
- 2.10 **"Strike Action"** means any activity by Union members, as a result of grievances or disputes, which involves the withdrawal of labour and/or disrupts the business of the University, and includes lockouts.
- 2.11 **"Management representative"** means a person, who will usually be an employee of the University, or any member of the University's Council, who is appointed to represent it in dealings with the Union.
- 2.12 **"Registered Trade Union"** means a Union that has been registered as contemplated in Section 95 to 106 of the LRA.
- 2.13 **"Trade Union Official"** means a person employed by the Union, or by UCT on UCT conditions of service as agent for the Union, whether or not that person is employed in a full-time capacity.
- 2.14 **"Trade Union Representative"** means a member of the Union's Executive Committee elected in accordance with the Union's Constitution.
- 2.15 **"Union Member"** means an employee of the University, who is a paid-up member of the Union in terms of its Constitution.
- 2.16 Any reference to a statutory provision includes a reference to that provision as modified, amended, replaced or re-enacted from time to time.
- 2.17 Words and phrases defined in the LRA will bear the same meaning when used in this agreement.

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3. OBJECTIVE OF THIS AGREEMENT

The purpose of this agreement is to regulate the relationship between the University and the Union and, in so doing, to strive to establish an effective and co-operative working relationship between them, in an environment that promotes fair labour practices, and productive employment.

4. DURATION OF THIS AGREEMENT

This agreement comes into operation when it has been signed by both parties, and remains in force indefinitely, provided that:

- 4.1 Either party may terminate this agreement on forty-five (45) days' notice to the other, on good cause.
- 4.2 If either party ("the defaulting party") commits a material breach of any term of this agreement, and fails to remedy that breach (if it is capable of being remedied) within fourteen (14) days after receipt of written notice from the other party ("the aggrieved party") calling on it to do so, the aggrieved party will be entitled to cancel this agreement summarily by notice in writing.
- 4.3 If the Union, for any reason, is removed from the register of trade Unions referred to in Section 96(3) of the LRA, this agreement will terminate automatically.
- 4.4 No relaxation or indulgence that the University or the Union may grant to the other party shall constitute a waiver by the former of any of its rights in terms of this agreement.
- 4.5 This agreement may be revised by agreement between the University and the Union, with the procedure for negotiating a revision governed by clause 9(2) through to 9(7).

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5. RECOGNITION

5.1. The University recognises the right of the Union to:

- (a) represent any Union member in any dispute of right (including but not limited to discipline or grievance);
- (b) be the sole collective bargaining agent for all permanent and T3 staff in the bargaining unit(s) defined in clauses 5.2 (excluding item f) and 5.3;
- (c) represent its members, and be consulted on, matters of interest affecting its members outside the bargaining unit, where the University has not recognised another body or union as the sole collective bargaining agent.

5.2 The University recognises the following groupings of academic staff:

- (a) lecturers;
- (b) senior lecturers;
- (c) associate professors;
- (d) professors;
- (e) research officers, senior research officers, chief research officers and principal research officers
- (f) clinical lecturers, senior lecturers, associate professors and professors on the joint staff on UCT conditions of service.

5.3 The bargaining unit is the set of those groupings listed in 5.2 (excluding item f) above which satisfies the following tests:-

- (a) For a grouping to be included the Union must:

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- (i) have as signed-up members of the Union at least 30% of the permanent staff in the grouping; and
 - (ii) be the majority union in the grouping (i.e. have more members in the grouping than any other union or representative staff body); and
- (b) For the set of these groupings taken as a whole, the Union must have as signed-up members at least 50% plus 1 of the permanent staff in the set.

5.4 If the inclusion in the set of a grouping (or more than one grouping) that meets, (or meet) the test in 5.3(a)(i), would reduce the Union's level of representivity to below 50% plus 1, the Union must choose:-

- (a) to drop that grouping (or more than one grouping) from the set, thereby retaining 50% plus 1 representivity for the set; and thereby retaining sole collective bargaining rights for the re-defined set; or
- (b) to surrender sole collective bargaining rights.

5.5 If the Union:

- (a) is the majority union in a grouping (in the sense that it has more of the staff in the grouping than any other union or staff representative body) and has at least 30% in the grouping, and loses one or both of these, the University must notify the Union of this as soon as possible and at least thirty (30) days before the commencement of substantive negotiations; and/or
- (b) is representative in a set (i.e. meets the test in 5.3 above) and loses this, the University must notify the Union of this as soon as possible and at least thirty (30) days before the commencement of substantive negotiations; or

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- (c) gains membership of a grouping that has not been included in the bargaining unit, such as that the inclusion of the grouping in the set meets the test in 5.3 above, the Union must notify the University as soon as possible of its intention to include the grouping in the bargaining unit, and do so at least thirty (30) days before the commencement of substantive negotiations.

- 5.6 The University recognises the Union's right to manage its own affairs and recognises that the protection of its members' employment rights and security of employment is a prime objective of the Union.
- 5.7 The Union recognises the University's right to manage its own affairs, supports the University's commitment to higher learning and the production and dissemination of knowledge, and commits itself and its members to the University's mission.

6. FREEDOM OF ASSOCIATION

- 6.1 The University and the Union recognise the constitutional right to freedom of association.
- 6.2 The University through its management and the Union through its Officials and Executive shall ensure, as far as is reasonably possible, that no employee is victimised or intimidated for exercising any rights conferred on him or her by the LRA, and/or for any reason related to his or her membership or non-membership of the Union.
- 6.3 The University and the Union recognise that employees who accept appointment to the position of Deputy Dean, Head of Department, or other management positions, or who serve on University governance structures retain the right to join or participate in the activities of any trade union.

7. UNION REPRESENTATIVES

- 7.1 The University will provide resources to the Union for the duration of this agreement to facilitate the work of the Union. The resources that the University will provide for the period to 31 December 2011 are detailed in Schedule A. The resources that the University will provide will carry over to subsequent years, unless either party gives notice of an intention to re-negotiate or review.
- 7.2 The members of the Union's Executive Committee are Trade Union Representatives for the purpose of this agreement.
- 7.3 The Union's Executive Committee must be nominated, elected and removed from office in terms of the Union's Constitution, of which updated or amended versions must be submitted to the University from time to time.
- 7.4 A Trade Union Representative has the right:
- 7.4.1 At the request of a member, to assist and represent the member in grievance and disciplinary proceedings.
 - 7.4.2 To monitor the University's compliance with the workplace-related provisions of the LRA and any law regulating the terms and conditions of employment of members, and the provisions of this agreement or any other collective agreement between the University and the Union.
 - 7.4.3 To report, in writing, any alleged contravention of the workplace-related provisions of the LRA, or any law regulating terms and conditions of employment of members, to:
 - (a) The University of Cape Town;
 - (b) The Union; and
 - (c) Any responsible authority or agency.
- 7.5 A Trade Union Representative may, subject to clause 7.6 below, take working-days off with full pay in a calendar year, as follows:

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- 7.5.1 Within two months of his or her first election, two (2) consecutive working days, for the purpose of attending a once-off basic training session to familiarise himself or herself with the contents of this agreement, Union policy and the general duties and responsibilities of a Trade Union Representative.
- 7.5.2 Attend regular training programmes totalling not more than five (5) working days per annum, provided that the sum of the days taken by the Union's Trade Union representatives does not exceed one hundred (100) days in a calendar year.
- 7.6 The Union must give to the University at least four (4) weeks' written notice setting out the names of Trade Union Representatives who will be participating in a training programme, and two (2) weeks' written notice of the agenda or training programme, indicating the broad purpose of the training programme, before a Trade Union Representative may take working-days off with full pay.
- 7.7 The University agrees to make facilities and members of its Human Resources Department available when requested by the Union, subject to the operational requirements of the University.
- 7.8 The University must grant up to 2 hours a month for the holding of Union Executive Committee meetings. These meetings may be held in working time and shall be held prior to the bi-monthly consultative meetings in terms of clause 8.1 below. Each Executive Committee member must advise his or her Head of Department timeously prior to attending such meetings.
- 7.9 In addition, the President and Vice President of the Union may spend up to one (1) working day per fortnight on Union business. The President may delegate/apportion this privilege to any member of the Executive on the proviso the Head of the Department concerned has been given prior notice.
- 7.10 The activities of the members of the Executive Committee of the Union who participate in the bi-monthly consultative meetings referred to in clause 8 below and substantive negotiations, including meeting with members to report back and obtain mandates, shall in consultation with the member's head of

department be recognised as meeting some or all of the university-wide administrative responsibilities required of members of the academic staff under RFJ criteria.

- 7.11 Members of the Union Executive Committee, Union Officials, Union Representatives who serve on University governance structures, shall declare their roles to such structures with a view to avoid potential conflict of interest.

8. BI-MONTHLY CONSULTATIVE MEETINGS

- 8.1 The University and the Union will meet every second month for the parties to consult and make representations on matters of mutual interest.
- 8.2 The University undertakes to consult with the Union Executive on all matters of mutual interest, impacting on the conditions of employment and quality of working life of members of the academic staff, before signing off on these matters in any of the following structural meetings of the university (Joint Consultative Forum for Employment Equity, the Institutional Forum (IF), the Senate Executive Committee (SEC), Senate and Council)
- 8.3 The University will convey all agreements reached at consultative meetings to the above structural meetings, if relevant to these meetings, or to relevant University staff for notice and/or implementation.
- 8.4 The consultative meeting shall be constituted by no more than six (6) Management representatives and six (6) Union representatives, one of which shall be the Union Official.
- 8.5 Draft minutes of meetings in terms of this clause 8 shall be recorded by a representative of the University, copies of which shall be distributed to the Union within seven (7) days of the meeting. Formal approval of the minutes will take place at the first subsequent meeting.

- 8.6 In urgent circumstances, special meetings between the University and the Union may be convened, subject to mutual consent, on not less than twenty-four (24) hours notice by either party, save that the parties may agree to waive the notice period.

9. NEGOTIATING PROCEDURE

- 9.1 The parties must negotiate at least annually, and/or at least three (3) months prior to the expiry of the substantive agreement in force at the time, with a view to reach an agreement on salaries and conditions of employment and any other matters of mutual interest.
- 9.2 Notice of negotiations will be given by either party referring a written demand or set of demands to the other party. Thereafter the parties will meet within thirty (30) days to clarify the demands and agree to a timetable for negotiations.
- 9.3 Unless otherwise agreed, negotiations shall be undertaken by the negotiating committee comprising no more than six (6) Management representatives appointed by the University and six (6) Union representatives appointed by the Union, one of whom may be the Union Official.
- 9.4 Meetings must take place as often as is necessary to conclude an agreement.
- 9.5 A brief summary of the closing positions at the end of each round of negotiations must be prepared by a representative of the Management team and copies thereof sent to the Union within forty eight (48) hours of the said meeting, or as soon thereafter as is practically possible. Approval of the correctness of the summary will take place as the first item of business at the first subsequent negotiation meeting.
- 9.6 Agreements reached shall be reduced to writing and signed by both parties.

- 9.7 If the negotiating parties do not reach agreement through the negotiations provided for in this clause 9, either party may invoke the dispute procedure provided for in clause 10 below.

10. DISPUTE PROCEDURE

- 10.1 The University and the Union must endeavour by negotiation and/or consultation in good faith to seek reasonable and satisfactory solutions to all disputes which may arise between them.
- 10.2 A dispute may concern any serious disagreement between the parties arising out of negotiations or consultations, conducted in terms of this agreement or any law or grievance, disciplinary, equity or health and safety issue, or any other matter of mutual interest which is not resolved through agreed procedures provided for such purpose.
- 10.3 Either party may declare a dispute by giving the other party written notice that must explain the issues in dispute.
- 10.4 The parties must convene a meeting of the negotiating committee within five (5) working days of receipt of a declaration of dispute in an attempt to resolve the dispute.
- 10.5 Should either party at a consultative meeting in terms of clause 8 be dissatisfied with the outcome of the consultations, either in terms of a decision made following the consultations or in terms of the implementation of a decision, the aggrieved party may declare a formal dispute, as provided for in clause 10 of this agreement.
- 10.6 The University and the Union may agree to refer an unresolved dispute to private mediation or arbitration. If the parties agree to private mediation or arbitration, they must agree who the mediator or arbitrator shall be, as well as his/her terms of reference.

- 10.7 If a dispute remains unresolved after the parties have attempted to have it resolved by private mediation, they may agree to proceed to arbitration if the issues in dispute relate to the parties' mutual interest, or take the appropriate action as is provided for either in terms of this agreement or law.
- 10.8 If the parties agree to private mediation or arbitration in terms of clause 10.5 above, each of the parties shall bear 50% of the costs of such a mediation or arbitration.
- 10.9 If the University and the Union do not agree to refer an unresolved dispute to private mediation or arbitration, either party may proceed to the CCMA or take the appropriate action as is provided for either in terms of this agreement or law.

11. STRIKES AND LOCK-OUTS

- 11.1 The University and the Union agree that employees have a right to strike and employers to lock-out employees in terms of the applicable legislation, i.e. the LRA. They further agree that it may be necessary for either party in furtherance of its objectives in disputes of mutual interest to exercise these rights as provided for in law.
- 11.2 The University undertakes not to dismiss, discipline or victimise an employee for participating in a protected strike.
- 11.3 The Union recognises that the University is not precluded from dismissing an employee in accordance with the University's procedures and/or relevant procedures of applicable law, even where this takes place at the time of, or subsequent to strike action.
- 11.4 The Union undertakes to conduct a strike ballot prior to strike action being taken, in accordance with applicable law and the Union's constitution.
- 11.5 If the Union exercises the option of conducting a strike ballot on the University premises, it must be conducted at a time and place agreed by the parties,

provided that no one Union member shall be away from his/her workstation for more than one (1) hour for the purpose of voting.

- 11.6 The Union must advise the University of the result of the ballot, and must give the University at least forty-eight (48) hours written notice of the commencement of the strike.
- 11.7 The Union undertakes not to support any strike in breach of any of the provisions of this agreement, and to exercise its best endeavours to ensure compliance with the provisions of this agreement.
- 11.8 The principle of "*no work, no pay*" shall apply to all forms of strike action.
- 11.9 The parties will work towards a protocol to specify the role and responsibilities of Deputy Deans, Heads of Department and other management positions in the case of strike action in order to avoid conflicts between their duties and their right to strike.

12. DISCLOSURE OF INFORMATION

- 12.1 The University must disclose to Trade Union Representatives all relevant information that will allow the Trade Union Representatives to perform effectively the functions referred to in clause 7.4 above.
- 12.2 The Union must disclose to the University, on a regular basis, all relevant information related to its membership lists and certificate of registration.
- 12.3 Whenever the University is consulting or bargaining with the Union, the University must disclose to the Union all relevant information that will allow the Union to engage effectively in consultation or collective bargaining.
- 12.4 The University must notify a Trade Union Representative or the Union in writing if any information disclosed in terms of this clause 12 is confidential. Such confidential information must not be disclosed to any third party except to the extent necessary to enable such Trade Union Representative or the Union

to exercise any rights conferred in terms of this agreement or under any applicable law.

12.5 The University is not required to disclose information:

12.5.1 that is legally privileged.

12.5.2 that the University cannot disclose without contravening a prohibition imposed by any law or order of any court.

12.5.3 that is confidential and, if disclosed, may cause substantial harm to an employee of the University.

12.5.4 that is private personal information relating to an employee of the University, unless that employee consents to the disclosure of that information.

12.6 Members of the Union Executive Committee, Union Officials, Union Representatives and Union members who acquire information, in their employment capacity, that the University is not required to disclose to the Union, must not disclose such information to the Union, and if necessary, must recuse him or herself from the Union discussions in which such information is relevant.

13. DEDUCTION OF UNION SUBSCRIPTIONS OR LEVIES

13.1 The University undertakes to deduct Union subscriptions from the salaries of each employee who authorises the University in writing to deduct subscriptions or levies payable to the Union, and to remit the amount deducted to the Union monthly.

13.2 The Union acknowledges that the University must, upon written notice from an employee revoking an authorization given in terms of clause 13.1 above, stop making the deduction at the expiry of the applicable notice period.

13.3 The University undertakes, with each monthly remittance, to give the Union:

13.3.1 a list of names of every member from whose salary the University has made the deductions that are included in the remittance;

13.3.2 details of the amounts deducted and remitted and the period to which the deductions relate; and

13.3.3 a copy of every notice of revocation in terms of clause 13.2 above.

14. GENERAL MEETINGS

14.1 The University must grant Union members two hours off work each year in order to attend the Annual General Meeting.

14.2 The University must grant Union members one hour off work should the Union call any special general meeting in terms of its constitution.

15. NOTICE

15.1 Any notice contemplated in this agreement may be sent by post, delivered by hand, or transmitted by fax or e-mail.

15.2 Notices may be sent to the University of Cape Town at:

15.2.1 Physical address: **Human Resources Department**

Bremner Building

Rondebosch

CAPE TOWN

15.2.2 Fax No: **(021) 650-4778**

15.2.3 E-mail address: **jonathan.cloete@uct.ac.za**

15.3 Notices may be sent to the University of Cape Town Academics' Union at:

15.3.1 Physical address: **Room 2.02.2**

Graduate School in Humanities Building

University Avenue

University of Cape Town

15.3.2 Fax No: **(021) 650-5206**

15.3.3 E-mail address: **Ulrike.Rivett@uct.ac.za**

15.4 Either party may amend the address and contact details set out above by notice in writing to the other party.


16. GENERAL

16.1 No amendment to this agreement will be of force or effect unless reduced to writing and signed by both parties.

16.2 No extension of time, latitude or other indulgence that may be given or allowed by either party to the other, will constitute a waiver or novation of this agreement, or affect that party's rights, or prevent that party from strictly enforcing compliance with each and every provision of this agreement.

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SIGNED on behalf of the **University** at RONDEBOSCH on this 16th day of JULY 2010.


 D P VISSER, DEPUTY VICE CHANCELLOR

for the **University**: He/she being duly authorised hereto

AS WITNESSES:

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SIGNED on behalf of the **UNION** at RONDEBOSCH on this 16th day of JULY 2010.

 ULRIKE RIVETT

for the **UNION**: He/she being duly authorised hereto

AS WITNESSES:

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Schedule A

Resourcing of Union

The University commits itself to providing the following resources for the period 1 January 2010 to 31 December 2011.

- (a) Funding equivalent to the cost of employment of payclass 7 employee at the top of the range, provided that the Union employs a full-time Union Official.
- (b) An office on the Upper Campus, with basic furniture (desk, desk chair, one (1) filing cabinet, and four (4) office chairs) with telephone and internet access points.
- (c) The continued use of a University owned entry level desktop computer and printer.
- (d) The right to use
 - Bookable venues, subject to operational requirements;
 - Internal mail and email;
 - Bookable audio-visual resources, subject to operational requirements;
 - Notice boards, as may be agreed by the relevant head / manager; and
 - University purchasing facilities

for *bona fide* Union activities.