

## UNIVERSITY OF CAPE TOWN CODE OF CONDUCT

*(Underlined terms are defined in the notes)*

1. The Contractor undertakes to pay a minimum wage before deductions of R5018.16 per month for its employees who work a full working week. This is the minimum wage rate with effect from 1 January 2015.
2. After that, the minimum wage rate will increase on 1 January each year by the year-on-year CPI published by Statistics South Africa for quintile two for June in the previous year.
3. The Contractor undertakes to
  - adopt a constructive and open attitude towards the activities of trade unions and their organizational activities;
  - adopt and have in place fair employment practices that are fully compliant with the law;
  - provide minimum benefits, including paid maternity leave for four months;
  - allow freedom of association and grant representation rights to sufficiently representative trade unions at the workplace;
  - allow worker representatives access to the workplace to carry out their representative functions
  - participate in the alternative dispute resolution process;
  - establish a consultative forum in which the contractor's management must engage monthly with representatives of employees employed at the workplace; and
  - provide every employee with a detailed written contract of employment and a monthly BCEA-compliant pay-slip.
4. The Contractor must disclose to UCT and each employee at the start of each year the estimated annual COE (cost of employment) for each employee including those paid at the minimum wage, as set out in annexure A.
5. Employees will not work more than 45 ordinary hours in a week, and overtime will be voluntary. A minimum equivalent to 4 hours pay must be paid in any one day

6. Employees who work night shift (hours worked between 18h00 to 0600) will be paid a night shift allowance of at least 10% of the ordinary wage rate.
7. Overtime and all other wage-related allowances will be calculated on the employee's ordinary wage rate.
8. Where any provision of any law or sectoral determination provides more favourable conditions than provided by this Code or the employee's contract, the more favourable conditions will apply.
9. The Contractor confirms that it has accepted adherence to the code as a material term of its contract with UCT, and records that its contract with UCT provides for penalties if it is found to be in breach of the code.
10. The Contractor undertakes
  - (a) to give full access to UCT's code compliance officer, in order to allow UCT to assess and report on the extent to which it is code-compliant;
  - (b) to allow UCT's code compliance officer access to its employees employed at the workplace, in order to allow UCT to assess and report on the extent to which it is code-compliant; and
  - (c) to respond in writing within ten working days to any alleged breach of the code brought to the Contractor's attention by UCT's code compliance officer.

Annexure A: Cost of employment structure

Annexure B: UCT Tuition Fee benefit

Annexure C: Definitions and explanatory notes

**Annexure A**

**Estimated cost-to-company per annum**

The Company estimates that the cost-to-company for an employee will be

(a) Salary” (the minimum wage, or a higher wage)	R_____
(b) Guaranteed 13 <sup>th</sup> cheque or annual bonus (if any)	R_____
(c) Employer contributions (if any) to	
• retirement funding	R_____
• medical aid	R_____
• insurance and/or burial schemes	R_____
• UIF	R_____
• other benefits required in terms of a sectoral determination (specify)	R_____
• any other benefits or payments in kind	R_____
Total	R_____ (B)

## Annexure B

### Access to reduced tuition rates at the staff tuition fee rate

Employees employed by a contractor who work on a full-time basis at UCT for the duration of the contract qualify for the equivalent staff tuition fee rates for study at UCT for themselves and their legally determined dependents, subject to their meeting the University's academic admission requirements for the field of study, and subject to the following conditions:

1. The staff fee rate will be applied on a *pro rata* basis from the date of appointment, for the balance of the calendar year in which the rate was first applied
2. The staff tuition fee rate will cease on the resignation of the employee;
3. In other circumstances the staff tuition rate will continue to the end of the calendar year currently approved for the student; even if
  - (a) the contractor's employee dies during that year while in the employ of the contractor; or
  - (b) the employee's service is terminated during that year for any *no-fault reason* (including but not limited to retirement or non-renewal of contract); or
  - (c) the employee is transferred from the UCT site, other than at the employee's request.
4. When a contractor's employee employed at UCT applies for this benefit, the contractor must provide the University with the following information:
  - (a) proof that the staff member is permanently<sup>1</sup> employed by the service provider;
  - (b) proof that the staff member is working on the University's premises;
  - (c) monthly reports to the University's code compliance officer of all terminations of employment; and
  - (d) a signed HR125 form for the employee and or the employer's dependent for whom this tuition fee rate is sought.

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<sup>1</sup> An Employee will be regarded as permanent for these purposes if he/she is a member on a provident fund, or has a fixed term until the end of the contract or is not employed for a contract period which is shorter than the contractor's contract with UCT

## Annexure C

### **Definitions and notes to the code of conduct for contractors**

#### *Definitions*

- A. Minimum benefits is as explained in note 8.
- B. Paid maternity leave is as explained in note 8.1
- C. Representation rights has the meaning assigned to it in the Labour Relations Act
- D. Sufficiently representative has the meaning assigned to it in the Labour Relations Act
- E. Workplace is as explained in note 14.
- F. Alternative Dispute Resolution process is as explained in notes 19 to 23.
- G. Detailed written contract of employment is as explained in note 10
- H. Cost of employment as defined in annexure A

#### **Purpose of the Code**

1. The Code sets minimum standards for pay and conditions that must be met by contractors who provide on campus services to the University. It is designed to ensure that a contractor's employees are adequately paid, and are treated fairly.

#### **Rights in law**

2. The Code both assumes and requires that a contractor's employees will enjoy the rights and protection available to them in law.
3. While
  - the University requires the Contractor to comply with the Code, and
  - the contractor accepts the Code as a term of its contract with the University,the parties record that the University has no employment relationship with the contractor's employees.

The contractor is and remains solely responsible for the management of its employees regarding all aspects of their employment, including grievance handling and dispute procedures, subject only to the further terms of the Code and the dispute resolution process provided for in the code.

### **The Code as a material term of the contract**

4. The Code is an integral part of the University's contract with each contractor. Each contractor will be required, as a condition of its contract with the University, to comply with the Code. The Contractor binds itself to bind any sub-contractor to its provisions.
5. A breach by a contractor of any term of this Code will constitute a material breach of the contract with the University, and in addition to any other consequences that this may have in law will give rise to the specific consequences and penalties provided for in this code.

### **Detailed notes**

6. The notes comprise sections dealing with:
  - Minimum standards in the employment relationship
  - Organizational and representation rights
  - Dispute resolution in the employment relationship
  - Transfer of employment at the end of the contract
  - Procedures for monitoring a contractor's compliance with the Code
  - The University's rights if a contractor does not comply with the Code

### **Minimum standards in the employment relationship**

#### Disclosure of information on pay

7. A contractor must set out in each employee's written contract and in addition each year disclose to each employee and to the University in the form provided for in Appendix A the estimated annual full *cost of employment* of an employee who earns the minimum wage, for the year ahead.

#### Minimum benefits

8. A contractor must
  - 8.1 provide each employee with four months paid maternity leave where
    - (a) the contractor must supplement any amount paid by the Unemployment Insurance Fund to an individual on maternity leave such that the employee will receive an amount equal to her monthly wage while on maternity leave
    - (b) the employee will receive salary-related benefits during this period; and
    - (c) maternity leave will not be regarded as a break in continuous service.
  - 8.2 Provide paid paternity leave of at least 7 (seven) calendar days to be granted by the Contractor for each child born or adopted;
  - 8.3 Provide minimum benefits established by the Basic Conditions of Employment Act and any applicable sectoral determination;
  - 8.4 Have and make available policies on sexual harassment and sexual offences equivalent to

UCT's;

8.5 Have and make available grievance procedures; and

8.6 Ensure a safe working environment and any necessary protective clothing.

9. Other minimum standards to which a contractor must adhere:

- minimum standards established by the Basic Conditions of Employment Act and any applicable sectoral determination;
- other applicable employment laws and collective agreements; and
- sector specific statutory health and safety standards and any additional health and safety standards provided for in the contractor's contract with the University.

The contract of employment

10. A contractor must

10.1 Provide each employee with a signed written contract of employment setting out the employee's

- Monthly wage, guaranteed 13<sup>th</sup> cheque/bonus and annual cost of employment (as defined in 8.1 to 8.3)
- benefits (as defined above plus any others provided by the contractor)
- terms of employment;

and must notify the University in writing in advance of any change it proposes to make to these terms.

10.2 include in its terms of employment at least the following terms:

- Working hours;
- terms for night work and overtime;
- provision for retirement funding and/or medical aid and/or any insured benefit (if any); and
- reference to its disciplinary and grievance procedures.

10.3 Provide on request to the University's code compliance officer a copy of any individual's contract of employment for any individual assigned to work at the University.

11. A contractor may only transfer an employee assigned to work at the University to another contract for a fair operational reason and following a fair procedure. In the event of a dispute, the onus shall be on the contractor to provide evidence of both to the independent panel provided for in paragraph 19 below.

12. The University will charge an employee assigned to work at the University by the contractor the same tuition rates as the University charges its staff, under the conditions set out in Appendix B, where the employee or his or her dependents register for a course of study at the University.

Organizational and representation rights

13. A contractor must provide

- (a) organizational rights; and
- (b) representation rights

to sufficiently representative trade unions ,

where “sufficiently representative” has the meaning assigned to it in the Labour Relations Act, and where the trade union or unions is/are sufficiently representative of the contractor’s workforce at this workplace (where the workplace is the set of sites at the University at which the contractor’s employees work under the contract).

- 14. A contractor must recognise the workplace as a single and distinct *workplace* of the contractor, and must give a sufficiently representative union collective bargaining rights.
- 15. If there is no other consultative forum established for the workplace by collective agreement, or otherwise, a contractor must establish a consultative forum for the workplace.
- 16. The form that this consultative forum takes shall be as agreed between the contractor and any sufficiently representative trade union or trade unions or, if there is no such trade union, the contractor’s employees, and unless otherwise agreed must consist of an equal number of management members appointed by the contractor and employee representatives elected by the employees of the contractor in the workplace, all of who must be employees of the contractor assigned to work at the workplace.
- 17. The purpose of this consultative forum must be, at least, to provide a forum for two-way communication on any issue relating to (a) the service the contractor provided and (b) employees’ work and employment conditions.
- 18. The consultative forum must meet monthly,

**Alternative dispute resolution**

- 19. A contractor must use good faith in attempting to resolve any dispute that arises in the employment relationship between the contractor and an employee of the contractor assigned to work at the University.
- 20. The University must establish an independent external dispute resolution panel (“the Panel”) with a view to resolving disputes, other than disputes arising out of dismissal for misconduct.
- 21. An employee, other than an employee who has been dismissed by the employer for misconduct following a disciplinary hearing, may refer a dispute to the Panel if –
  - 21.1 the employee has exhausted all available applicable internal dispute resolution mechanisms;
  - 21.2 the employee chooses to use, and agrees to be bound by the outcome of this alternative dispute resolution process;
- 22. A contractor must participate in this alternative dispute resolution process and must bind itself to the outcome of any such process.

23. If a contractor's employee refers a dispute the Panel a –
- 23.1 he/she must notify the contractor and UCT's code compliance officer,
  - 23.2 the code compliance officer must schedule a mediation of the dispute with a member of the Panel;
  - 23.3 if mediation fails to resolve the dispute, the code compliance officer must (a) report this to both parties; and (b) arrange for arbitration by a member of the Panel,
  - 23.4 the arbitrator's decision shall be final and binding upon both parties.
  - 23.5 the contractor will be liable for the costs of the Panel member except where the Panel member awards costs against a union or employee, which the panel member may do if he/she finds the reference to be frivolous or vexatious.

### **Transfer of employment at the end of the contract**

24. On or before 1 January each year the service provider must provide the University with a full list of employees assigned to work at the University.
25. On expiry or termination of the contract for any reason whatsoever, the service provider must –
- 25.1 provide the University with a full list of employees assigned to work at the University as at the last day of the contract;
  - 25.2 provide the University with a schedule showing, in respect of each such employee, the full value of the accumulated leave pay, severance pay (that would have been payable at that date in the event of a dismissal for operational requirements), and any other payments accrued but not yet paid as at the last day of the contract; and
  - 25.3 pay to the University all amounts referred to in 25.2.
26. If, after the contract ends, an employee
- (a) is employed by the next contractor, the University must pay the amounts received for him/her to the new contractor where the new contractor inherits these obligations in terms of its contract or S.197 of the LRA;
  - (b) is not employed by the next contractor, the University must pay the amounts received for him/her to him/her on acceptance by the employee that this is in full and final settlement of any obligations to him/her.
27. The service provider may not, without the prior written consent of the University, make any change to the number of employees assigned to work at the University, or to the personnel assigned to the University, during the period of 12 months before the expiry of any contract.

### **Procedures for monitoring a contractor's compliance with the Code**

28. The University will monitor a contractor's compliance with the Code in order to ensure that the purposes of the code are realised, and the contractor recognises its right to do so.
29. The contractor must give to the University a report at the end of each six-month period (i.e. by 31 August for the six months to 30 June, and by 28 February for the six months to 31 December) of its contract with the University, dealing with its compliance with the Code in a form prescribed by the University from time to time.
30. The contractor must allow the University reasonable access to documents and records, including but not limited to contracts of employment, copies of payslips, and evidence of payments to SARS,

the UIF, and to applicable retirement funds and benefit schemes, for the purposes of monitoring compliance with the provisions of the Code.

31. The University will appoint a code compliance officer whose role will be:
  - 31.1 to work with a contractor to ensure that the contractor has a full understanding of the contractor's obligations under the Code;
  - 31.2 to inspect the contractor's records for the purpose of monitoring compliance;
  - 31.3 to work with a contractor's employees or their representatives to ensure that they have a full understanding of the contractor's obligations under the Code;
  - 31.4 to brief the consultative forum on the Code and its application, and to receive allegations of non-compliance (where necessary on the basis that the allegation will be made in terms of the Protected Disclosures Act).
  - 31.5 to bring to the attention of the contractor any allegation or evidence of a breach of the Code, and to require a written response from the contractor to such allegation or evidence; and
  - 31.6 to carry out these tasks in such a way as to promote full compliance with the Code.
32. The University's code compliance officer will have a purely advisory role (i.e a staff and thus not a line role) both in relation to the contractor and to the University's Executive Directors (ED) who are responsible for procuring the third party contractors' services.
33. The code compliance officer must:
  - 33.1 report any allegation or evidence of a breach of the Code together with the contractor's written response to the accountable ED with an assessment and any recommendation he or she may wish to make;
  - 33.2 make a report at the end of each quarter to the ED detailing his or her assessment of code compliance by the contractor, together with such response(s) the contractor or members of the ERC may wish to make, and any recommendations he or she may wish to make;
  - 33.3 submit the contractor's six monthly assessment to the representatives of the contractor's employees employed at the workplace, prior to submitting this to the ED, and invite these representatives to comment within ten working days; and
  - 33.4 submit the contractor's six monthly assessment (see 29 above) and the employees' response if any, and the ED's response if any, by 30 September and 31 March each year to the UHRC, detailing his or her assessment of the contractor's compliance with the code, and his or her assessment of the effectiveness of such interventions as may have been made by the accountable ED.
34. The accountable ED holds the contractor to account for delivering on the contract; this includes responsibility to hold the contractor to account for failure to comply by –
  - 34.1 requiring the contractor to remedy any breach or failure to comply that he or she identifies;
  - 34.2 imposing the penalties provided for in the contract where the contractor fails to do so; or
  - 34.3 should this be necessary, invoking the other breach provisions of the contract.

**The University's rights if a contractor does not comply with the Code**

35. If a contractor is, in the opinion of the accountable ED, in breach of one or more provisions of the Code, the ED will require the service provider to remedy the breach within a period specified in writing.
36. If the contractor fails to remedy the breach to the satisfaction of the University within the period specified, or any agreed extension of that period,
  - (a) the ED may impose, and the contractor must then pay, damages to the University in the form of a penalty for the breach. (The penalty shall be in the amount stated in Appendix I, and the contractor must pay a further penalty for each additional whole week for which the breach continues. However, the total amount of penalties due under this clause for a particular breach may not exceed the maximum amount stated in Appendix I during each 12 month period of the contract); or
  - (b) the University may exercise its rights under the contract to cancel the contract.
37. These damages shall be the only damages payable to the University by the contractor for such breach, other than in the event that a breach results in the early termination of the contract. The payment of the penalties set out in Appendix I shall not relieve the contractor of its obligation to perform any of its obligations under this Code of Conduct, or from any other duties, obligations or responsibilities which it may have under its contract with University.
38. Any penalty imposed in terms of this section will be payable at the end of the month following written notice to the contractor by the Accountable ED that the penalty is due. The University shall be entitled to deduct the amount of any penalty due from any amounts due by the University to the contractor from time to time for services rendered in terms of the contract.
39. In the event of any dispute about the amount of penalties due by reason of this section, the matter may be referred to an Independent Expert applying the provisions of Appendix II.

Appendix I: Schedule of Penalties

Appendix II: Independent Expert

*Appendix I*

	<b>Amount of penalty</b>	<b>Additional penalty (for each week that breach persists)</b>
Breach of Administrative obligations <sup>2</sup>	R1,000	R1,000, to a maximum of R20,000
Breach of rights of workers <sup>3</sup>	R5,000	R5,000, to a maximum of R100,000

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<sup>2</sup> a separate penalty is payable for breach of each separate obligation

<sup>3</sup> a separate penalty is payable for breach of each separate obligation and in respect of each individual worker

*Appendix II*

**Determination by an independent expert of a dispute over penalties [clause 40]**

1. When a dispute or matter under this Code is required to be determined by an Independent Expert then, unless otherwise agreed by the Parties in writing, the further provisions set out below shall apply.
2. The Independent Expert may be any member of the Panel referred to in [clause x of the Explanatory Notes to the Code of Conduct] who is appointed for that purpose by agreement or failing agreement by [x].
3. Within five (5) days after a dispute has been referred to the Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments.
  - 3.1 The Independent Expert shall, in his or her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
  - 3.2 It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.
  - 3.3 The Independent Expert shall set the date for the hearing, choose the venue for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.
- 3.4 The Independent Expert must provide both Parties with his or her written decision on the dispute, within twenty (20) Days of the referral (or such other period as the Parties may agree after the referral).
- 3.5 The Independent Expert must give brief reasons for the decision, if so requested by either Party.
- 3.6 The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including any legal costs and the costs and expenses of any witnesses.
- 3.7 The Independent Expert must act impartially and may take the initiative in ascertaining the facts and the law.
- 3.8 The proceedings shall be confidential to the Parties (UCT and the Contractor) and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with her or his appointment as Independent Expert must be treated as confidential. Neither the Parties nor the Independent Expert shall, save as required for arguing or determining the dispute, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing,

and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.

- 3.9 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 3.10 Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:
- 3.10.1 give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the process; or
- 3.10.2 warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court of the High Court of South Africa.
- 3.11 The Independent Expert shall be deemed not to be an arbitrator but must render his or her decision as an expert and the provisions of the Arbitration Act, 1965 and any other law relating to arbitration do not apply to the Independent Expert or his or her determination or the procedure by which he or she reaches that determination.
- 3.12 The Independent Expert's decision shall be final and binding on the Parties, and shall be published to the Parties and be made available to the contractor's employees.

27 September 2014