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**PART 1 OF 2**



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**GOVERNMENT NOTICE**  
**GOEWERMENTSKENNISGEWING**

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**DEPARTMENT OF LABOUR**  
**DEPARTEMENT VAN ARBEID**

**No. R. 1154**

**15 December 2005**

**LABOUR RELATIONS ACT, 1995**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING  
MANUFACTURING INDUSTRY: EXTENSION TO NON-PARTIES  
OF NATIONAL MAIN COLLECTIVE AGREEMENT**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 19 December 2005 and for the period ending 31 August 2006.

**M M S MDLADLANA**  
**MINISTER OF LABOUR**

No. R. 1154

15 Desember 2005

**WET OP ARBEIDSVERHOUDINGE, 1995****NASIONALE BEDINGINGSRAAD VIR DIE KLERASIE  
VERVAARDIGINGSNYWERHEID: UITBREIDING NA NIE-PARTYE VAN  
NASIONALE HOOF KOLLEKTIEWE OOREENKOMS**

Ek, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die kollektiewe ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 19 Desember 2005, en vir die tydperk wat op 31 Augustus 2006 eindig.

M M S MDLADLANA  
MINISTER VAN ARBEID

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING**  
**MANUFACTURING INDUSTRY**

**NATIONAL MAIN COLLECTIVE AGREEMENT**

made and entered into by and between the

**Cape Clothing Association**

**Eastern Province Clothing Manufacturers' Association**

**Free State and Northern Cape Clothing Manufacturers' Association**

**Natal Clothing Manufacturers' Association**

**QwaQwa Clothing Manufacturers' Association**

**Transvaal Clothing Manufacturers' Association**

(hereinafter referred to as the "employers" or the "employer organisations") of  
the one part, and the

**Southern African Clothing and Textile Workers' Union**

(hereinafter referred to as the "trade union"),  
of the other part,  
being the parties to the National Bargaining Council for the Clothing  
Manufacturing Industry.

## **1. SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Clothing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A	Provisions for the Eastern Cape Region
Part B	Provisions for the Free State & Northern Cape Region
Part C	Provisions for the KwaZulu-Natal Region
Part D	Provisions for the Northern Region (Clothing)
Part E	Provisions for the Northern Region (Knitting)
Part F	Provisions for the Western Cape Region (Clothing)
Part G	Provisions for the Western Cape Region (Country Areas)
Part H	Provisions for the Western Cape Region (Knitting)
Part I	Provisions for the Non-Metro Areas



## 2. PERIOD OF OPERATION OF THIS AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of Section 32(2) of the Act, and shall remain in force until 31 August 2006. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

Signed at CAPE TOWN on behalf of the Parties this 14th day of SEPTEMBER 2005.

\_\_\_\_\_  
**P J BRAND**  
Chairperson

\_\_\_\_\_  
**C O JEFTHA**  
Vice-Chairperson

\_\_\_\_\_  
**W A ROBERTS**  
General Secretary

**PART A : PROVISIONS FOR THE EASTERN CAPE REGION****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
  - (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union and who are engaged or employed in the said Industry;
  - (b) within the Magisterial Districts of-
    - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
    - (ii) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall apply only in respect of employees for whom wages are specified in this part of the Agreement.
- (3) The terms of this part of the Agreement shall not apply to a designer, foreman, factory clerk and supervisor who are remunerated monthly at a rate in excess of the weekly wage specified in this part of the Agreement for such employees, multiplied by four and a third, and whose conditions of employment include the following provisions:
  - (a) That his contract of service may not be terminated without a month's notice;
  - (b) that his monthly remuneration may not be reduced as a result of short time working, unpaid public holidays or periods of absence through illness, not exceeding 10 working days in any one year of employment and subject to the production of a medical certificate, if required by the employer.
- (4) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (5) Clauses 1 (1) (a), 2, 11.1, 14.4.B and 14.6(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employer's organisation and trade union, respectively.

**2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

### 3. DEFINITIONS

- (1) Any expressions used in this part of the Agreement, which are defined in the Labour Relations Act, No. 66, 1995, shall have the same meaning as in that Act; any reference in this part of the Agreement to an Act shall include any amendments to such Act; and unless the contrary intention appears, words importing the masculine gender shall also include females, unless inconsistent with the context-

**"Act"** means the Labour Relations Act No. 66, 1995;

**"band-knife cutter"** means an employee, other than a cutter-out, engaged in cutting out garments or parts of garments from a 'lay' or 'layers' of material with a band-knife;

**"beader"** means an employee who is engaged in rolling the open end of dipped gloves to form a bead ring of rubber, and in assisting with coagulant dipping and oven drying or curing operations;

**"boiler attendant"** means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

**"checker in the knitting section"** means an employee in the knitting section engaged in checking garments during folding and bagging operations and/or checking unfinished garments or parts of knitted garments for faults;

**"chlorinator"** means an employee who is engaged in measuring and mixing ingredients for the chlorination (washing) process, and in loading, unloading and operating chlorination equipment in the manufacture of rubber gloves and in transferring gloves to rinse water;

**"cleaner"** means an employee engaged in dusting or sweeping inside the establishment;

**"cleaning"** means the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;

**"clerk"** means an employee who is engaged in writing, typing or filing or in any other form of clerical work, and includes a cashier, a telephone switchboard operator and an operator of a machine used for accounting and calculating purposes or of a punch card machine, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work;

**"clicker"** means an employee who sorts, selects, marks in and subsequently cuts leather garments by means of a clicking knife from leather supplied to him;

**"cloakroom attendant"** means an employee who is in charge of any change room and/or room in which employees eat and/or any rooms or lockers in which employees store their personal effects and who may in addition supervise the cleaning of such rooms and ablution facilities and shall include any person who is in charge of first-aid;

**"Clothing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear, nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear.

#### A. and includes -

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective

of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is/(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes -**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of



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Individual persons;

- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"compounder"** means an employee who is engaged in the measuring by volume and mass and the mixing of ingredients used in compounds in the manufacture of rubber gloves, and in operation and cleaning of mixing equipment and the drawing of chemicals and ingredients from stores;

**"Council"**, means the Cape Chamber (Eastern Cape sub-chamber) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"cutter-out"** means an employee engaged in cutting out garments or parts of garments from a "lay" or "layers" of material by electric hand knife or by shears;

**"designer"** means an employee engaged in designing and/or making patterns;

**"despatcher"** means an employee who under general supervision is engaged in the making up of orders;

**"despatcher, unqualified"**, means a despatcher who has had less than one year's experience;

**"dipper"** means an employee who is engaged in dipping formers into compounds in the manufacture of rubber gloves, and in preparing and cleaning equipment, topping up tanks, inspecting compounds, loading drip racks and ovens, loading dipping gantry, operating dipping machines, finger tip control leaching, if applicable, loading and unloading curing ovens, stripping, checking for quality on a dip gauge, checking the thickness and visual appearance of gloves, and filling in reduction figures on a board; and falls into the following categories:

Category A: Small plant/conveyor/nitrile/cut resist dipper;

Category B: Gauntlet tank dipper;

Category C: Electrician's glove dipper;

**"establishment"** means any place in which any operation in connection with the Clothing Industry is carried on;

**"examiner"** means an employee, other than a checker in the knitting section, who is engaged in the final examination for quality requirements of finished garments;

**"experience"** means the total length of all periods of employment in the Industry of an employee in respect of whom wages are specified in this part of the Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose services are terminated at the end of his employer's working year and who resumes work with his former employer within 14 days of the re-opening of the employer's factory shall be deemed to have worked continuously;

**"factory clerk"** means an employee who is engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) Calculating piece-work or bonus payments from production schedules;

- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a substore and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

**"fitter and/or trimmer"** means an employee engaged in fitting and/or trimming a part or parts of garments after they have been marked in by the marker-in, according to the pattern provided by the employer, and cut to shape by the cutter-out;

**"football jersey cutter"** means an employee who is engaged in marking-in and/or cutting material for football jerseys with any power-driven cutting machine, knife or shears;

**"foreman"** means an employee who is in charge of the employees including supervisors, in a factory and who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees, and who is responsible for the efficient performance by them of their duties;

**"general assistant"** means an employee engaged wholly or mainly in one or more of the following occupations:

- (a) Cleaning vehicles or machines;
- (b) loading or unloading goods;
- (c) carrying goods or stacking;
- (d) packing goods for despatch or delivery, nailing up packing cases or sewing up bales;
- (e) delivering letters, messages or goods on foot or by means of a foot or hand propelled vehicle;
- (f) making or maintaining fires or removing refuse or ashes;
- (g) mixing rubber solutions for rubberised garments;
- (h) fixing machine belts;
- (i) lubricating machines;

**"general worker"** means an employee engaged on one or more of the following operations:

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- (a) Applying adhesive solutions on seams, edges and other parts of clothing and rolling them over with a roller;
- (b) attaching of ornamental trimmings or fasteners by hand or press;
- (c) cutting of aprons;
- (d) fastening permanent turn-ups;
- (e) fastening catch in top of trousers and various odds and ends of sewing by hand;
- (f) fastening edge-stays;
- (g) fastening by hand facings inside already based into position;
- (h) feeding into and taking out of automatic roller or form presses;
- (i) felling bindings;
- (j) felling crutch linings in trousers;
- (k) hemming bottoms by hand;
- (l) folding of garments and/or inserting folded garments into containers;
- (m) ironing open seams during the course of production and ironing loose collars;
- (n) making and sewing on hangers by hand;
- (o) making covered buttons and/or buckles;
- (p) making of the positions for pockets, buttons, loops, fasteners, darts, turn-ups, buttonholes, hems and the like, preparatory to further operations;
- (q) marking and/or trimming of the shapes of the necks of shirts and underwear;
- (r) marking off and/or cutting by hand of any trimming (not being piecegoods) to a given length or shape;
- (s) marking by template and cutting to shape of materials previously cut out;
- (t) nipping by machine or hand;
- (u) pinning of finished garments;
- (v) putting on bridles by hand;
- (w) pulling out bastings;
- (x) sewing buttons by hand;
- (y) soaping;
- (z) sorting out of garments or parts of garments as required for various operations-
  - (aa) stamping of sizes, identity or mark numbers or other details on garments and/or the removal of threads;
  - (ab) tacking;
  - (ac) the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;
  - (ad) touching up of completed garments with a hand iron after they have been pressed by a presser in the infants' and children's section;
  - (ae) turning bonnet brims and pressing same;
  - (af) turning out or over of the edges of collar facings, belts, cuffs, tabs, pockets and/or flaps by hand or machine, and the turning of garments or parts thereof inside out;
  - (ag) turning sleeves or trousers inside out;
  - (ah) underpresser;

- (ai) welding plastic clothing;
- (aj) carrying or stacking completed garments which may be in containers or parts of uncompleted garments, the total mass of which shall not be more than 9 kg;
- (ak) packing goods for dispatch or delivery, excluding the making up of orders;
- (al) delivering of messages within the establishment;
- (am) sorting leather for the manufacture of gloves;
- (an) counting components and cut parts used in the manufacture of gloves;
- (ao) rounding out the fingers of gloves that have been turned;
- (ap) turning the cuffs of completed gloves;
- (aq) attaching press-studs;
- (ar) pneumatic wire stitching;
- (as) preparation of leather for the manufacture of gloves, including the pasting thereof;

**"glover turner"** means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

**"Grade A employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of materials;
- (b) **"machine knitter"** means an employee operating one or a set of knitting machines and capable of identifying faults, changing bad needles and making minor adjustments to such items as yarn tensions when necessary;
- (c) **"knitting machine mechanic"** means an employee who is engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of products of an establishment;

**"Grade B employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) assistant to handyman;
- (b) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (c) **"cook"** means an employee engaged in preparing meals and cooking;
- (d) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities:
  - (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
  - (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
  - (iii) stamping identification details such as size, style and season on cut out patterns;



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- (e) **"knitter's assistant"** means an employee who brings yarn to and from the machines, removes fabric from the machines, unloads and reloads yarn onto the machine and can stop and start a machine, all under the general supervision of a knitter;
- (f) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;
- (g) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (h) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (i) **"linker"** means an employee engaged in operating a linking machine;
- (d) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (e) **"NES (Knitting)"** means an employee employed at a Garment Knitting establishment, in a capacity not elsewhere specified in this part of the Agreement;

**"Grade C employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (b) draw-thread operator;
- (c) drawn-thread mender;
- (d) hand sewer;
- (e) **"label printer"** means an employee engaged in printing or writing labels;
- (f) **"line feeder"** means an employee engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (g) sock trimmer;
- (h) toe-closing by machine;
- (i) **"turner"** means an employee engaged in turning garments or parts of garments;
- (j) **"winder"** means an employee engaged in operating a yarn winding machine;
- (k) zip machine operator;
- (l) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;

**"grader"** means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

**"hourly wage"** means the total weekly wage divided by 42;

**"instructor"** means an employee who is responsible for training employees in any garment knitting establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

**"layer-up"** means an employee engaged in laying material preparatory to cutting, and/or dusting with powder through perforated patterns, and/or bundling parts of garments, and/or spraying of outlines on pre-laid patterns, and/or the placing of carbon sheets on a lay, and/or tracing patterns, and/or making carbon copies or machine duplicated copies of pre-marked lays;

**"learner"** means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), and employee who has had less than four and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f), (j) and (p), an employee who has had less than two and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (9) and (o), an employee who has had less than two years' experience; in the case of an employee referred to in subclause 6.1 (1) (m), an employee who has less than one and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has less than one year's experience and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had less than a half a year's experience;

**"machine serviceman"** means an employee engaged in adjusting and/or maintaining machines and boilers in good repair;

**"machinist"** means an employee who performs any operation by sewing and/or linking and/or cuff seaming machines and/or mechanical stapling machines and includes the operation of a mechanical and/or hydraulic cutting press in the glove making section and a tailor;

**"marking"** means the marking of the position of the pockets, buttons, button-holes, loops, fasteners, darts, hems, turn-ups and the like preparatory to further operations;

**"marker-in"** means an employee engaged in marking in or chalking around outlines of garments or lays of garments from patterns provided by the employer and who may cut out garments or lay-ups of garments by electric, hand or band-knife or by shears;

**"motor vehicle driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the motor vehicle or the load on all periods during which he is obliged to remain at his post in readiness to drive;

**"mouldmaker"** means an employee who is engaged in the making of mould by mixing ingredients and pouring resultant paste into or onto formers in the manufacture of gloves;

**"National Council"**, means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"NES (Clothing)"** means an employee employed at a Clothing establishment, in a capacity not elsewhere specified in this part of the Agreement;

**"night shift worker"** means an employee who is required to work his normal shift between the hours of 22h00 and 06h00 on any day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"occupier"** means the person having the general management and control of the workshop, and if there are two or more such persons, includes all such persons;

**"packer"** means an employee who is engaged in counting and packing finished products in the glove-making section of the Clothing Industry, and in checking beads, size, overall length, pinholes, thickness and appearance, affixing labels where applicable, and packing into plastic bags and/or containers;

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**"pattern grader"** means an employee at a garment knitting establishment who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee engaged in making master patterns for pleating process;

**"pattern maker"** means an employee at a garment knitting establishment engaged in designing and/or making master patterns;

**"part-time driver of a motor vehicle"** means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who on more than two days in any week is engaged in driving a motor vehicle for not more than three hours in total on any such day, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle or on work connected with the vehicle or the load;

**"paternity"** means any event connected to the birth or adoption of a child parented by an eligible employee.

**"piece-work"** means any system by which remuneration is calculated by quantity or output of work done;

**"plainsewer"** means an employee engaged in performing one or more of the following operations by hand:

- (a) Felling linings or seams already basted into position;
- (b) felling necks, shoulders or arm-holes;
- (c) felling waistband linings or parts thereof;

**"premiums"** means without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return of the training of an employee.

**"presser"** means an employee engaged in pressing completed garments by hand or machine;

**"progress examiner"** means an employee, other than a checker in the knitting section, engaged in examination for quality requirements of parts of or components of or uncompleted garments;

**"qualified"** means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), an employee who has had not less than four and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f) (j) and (p), an employee who has had not less than two and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (9) and (o), an employee who has had not less than two years' experience; in the case of an employee referred to in subclause 6.1 (1) (m), an employee who has not less than one and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has not less than one year's experience and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had not less than half a year's experience.

**"quality control inspector"** means an employee who is engaged in the final examination for quality requirements of finished rubber gloves, and in checking pH, temperature, specific gravity and viscosity, testing dip plate tensile strengths of compounds, conducting an electrical test on finished gloves and completing records;

**"quality product co-ordinator"** means an employee who is engaged in classifying, sorting, inspecting and packing products in the glove-making section of the Clothing Industry;

**"short-time"** means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of supplies, or a breakdown of plant or machinery or break-down or threatened breakdown of buildings;

**"specialised presser"** means an employee engaged in pressing all jackets being part of ladies' and gents' suits: Provided that where high grade overcoats are manufactured at any establishment, the Council may, after due consideration, require that any employees pressing such garments be included under this definition;

**"steam box pleater"** means an employee engaged on one or more of the following duties

- (a) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (b) putting prepared formers in steambox and taking them out again in hand or loom pleating process;
- (c) taking material out of looms in hand or loom pleating process;
- (d) guiding material with paper through automatic pleating machine;

**"supervisor"** means an employee who under general supervision is responsible for the efficient performance of the duties of the employees or a section of the employees in a factory;

**"tailor"** means an employee engaged in all hand or machine operations relating to the production of men's outerwear, excluding the operations referred to in the definition of "plain sewer";

**"tea maker"** means an employee engaged in making tea or similar beverages and who may wash cups, saucers and kitchen utensils and who may be responsible for cleaning the kitchen and/or rest rooms;

**"temporary employee"** means an employee who is employed for a fixed period of not exceeding six months to replace an employee on confinement leave;

**"traveller's driver"** means an employee at a garment knitting establishment accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying samples;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

**"underpresser"** means an employee, other than a presser, engaged in pressing processes during the course of manufacture;

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine, with an engine capacity exceeding 50 cm, the unladen mass shall be deemed not to exceed 453 kg;

**"wage"** means the amount payable in terms of subclause 6.1 of this part of the Agreement in respect of the ordinary hours laid down in terms of subclause 7.1: Provided that-

- (i) if an employer regularly pays an employee an amount higher than the basic wage as specified in subclause 6.1 in respect of such ordinary hours, it shall mean such higher amount;
- (ii) the first proviso shall not be construed so as to refer to or include any remuneration which an employee who is employed on any basis provided for in subclause 6.10 received over and above the amount which he would have received if he had not been employed on such a basis;

**"watchman"** means an employee engaged in guarding premises or property;

**"workshop"** means any premises in which one or more employees are engaged in operations in the Industry;



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- (2) For the purposes of this part of the Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged.

**4. REGISTRATION OF EMPLOYERS**

- (1) Every employer engaged in the Industry and to whom this part of the Agreement applies, shall ensure that he is registered with the Council within one month from the date of commencement of operations.
- (2) Where an employer is not yet registered under a previous Agreement, he shall do so within one month after this part of the Agreement comes into operation, or after he becomes engaged as an employer in the Industry.
- (3) The employer shall notify the Secretary of the Council, in writing, of the address of the premises, the names of the partners of the concern, or if a limited liability company, the names of the Secretary and directors.
- (4) The Secretary of the Council shall issue a signed registration certificate.

**5. EMPLOYEES****5.1 Prohibited employment**

No employer shall require or permit any person under the age of 15 years to work in the Industry.

**5.2 Proportion or ratio of employees**

- (1) One qualified employee shall be employed by an employer before a reamer may be employed by him and the number of learners employed by him shall not exceed three times the number of qualified employees employed by him.

For the purposes of this subclause, a learner receiving not less than the remuneration of a qualified employee may be deemed to be a qualified employee.

- (2) One qualified marker-in shall be employed by an employer before a layer-up may be employed. Whenever any vacancy for a marker-in occurs in any establishment, the employer shall fill the vacancy from among the cutters-out in his employ provided such employee is suitable.
- (3) One qualified presser shall be employed by an employer before an employee may be employed on-
- (a) the touching-up of completed garments with a hand iron; (b) underpressing.

**6. WAGES****6.1 Minimum wages**

- (4) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments, shall be as set out hereunder:

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	Wage per week
	R
(a) Foreman	894.29
(b) Designer:	
(i) Qualified: .....	1139.47
(ii) Learners:	
first six months of experience .....	389.26
second six months of experience .....	452.54
third six months of experience .....	542.28
fourth six months of experience .....	604.17
fifth six months of experience .....	671.67
sixth six months of experience .....	728.28
seventh six months of experience .....	792.62
eighth six months of experience .....	856.29
ninth six months of experience .....	907.98
Thereafter, the wage specified in (b)(i) i.e. ....	1139.47
(c) Grader:	
(i) Qualified: .....	818.39
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	419.28
third six months of experience .....	455.99
fourth six months of experience .....	477.80
fifth six months of experience .....	552.70
sixth six months of experience .....	591.70
seventh six months of experience .....	624.34
eighth six months of experience .....	656.05
ninth six months of experience .....	697.93
Thereafter, the wage specified in (c)(i) i.e. ....	818.39
(d) Marker-in:	
(i) Qualified: .....	624.34
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	412.98
third six months of experience .....	440.47
fourth six months of experience .....	469.83
fifth six months of experience .....	525.01
Thereafter, the wage specified in (d)(i) i.e. ....	624.34
(e) Band-knife cutter:	
Qualified: .....	624.34
Note: Subject to the availability of a band-knife, only a qualified cutter-out shall progress to this class of employee.	
(f) Cutter-out:	
(i) Qualified: .....	551.65
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	403.81
third six months of experience .....	416.99
fourth six months of experience .....	431.93
fifth six months of experience .....	450.37

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	Wage per week
	R
Thereafter, the wage specified in (f)(i) i.e. ....	551.65
(d) Layer-up:	
(i) Qualified: .....	432.56
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	394.07
third six months of experience .....	400.78
fourth six months of experience .....	407.33
Thereafter, the wage specified in (g)(i) i.e. ....	432.56
(h) Specialised presser:	
(i) Qualified: .....	601.88
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	401.60
third six months of experience .....	415.76
fourth six months of experience .....	431.93
fifth six months of experience .....	449.36
sixth six months of experience .....	464.48
seventh six months of experience .....	508.25
eighth six months of experience .....	526.26
ninth six months of experience .....	538.19
Thereafter, the wage specified in (h)(i) i.e. ....	601.88
(i) Examiner:	
(i) Qualified: .....	514.83
(ii) Learners:	
first six months of experience .....	431.93
Thereafter, the wage specified in (i)(i) i.e. ....	514.83
(j) Machinist, presser, trimmer, factory clerk, embroidery machinist, cloak room attendant and NES (Clothing):	
(i) Qualified: .....	505.28
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience .....	394.57
third six months of experience .....	406.13
fourth six months of experience .....	420.00
fifth six months of experience .....	430.68
Thereafter, the wage specified in (j)(i) i.e. ....	505.28
(k) Progress examiner:	
(i) Qualified: .....	510.56
(ii) Learners:	
first six months of experience .....	405.08
Thereafter, the wage specified in (k)(i) i.e. ....	510.56
(l) Despatcher:	
(i) Qualified: .....	483.32
(ii) Learners:	
first six months of experience .....	407.89

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	Wage per week
	R
Thereafter, the wage specified in (l)(i) i.e. ....	483.32
(m) Checker in the knitting section:	
(i) Qualified:.....	429.77
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience.....	394.07
third six months of experience .....	403.80
Thereafter, the wage specified in (m)(i) i.e. ....	429.77
(n) General Worker:	
(i) Qualified:.....	416.60
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience.....	394.07
Thereafter, the wage specified in (n)(i) i.e. ....	416.60
(o) Steambox pleater:	
(i) Qualified:.....	387.52
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience.....	403.09
third six months of experience .....	415.76
fourth six months of experience .....	431.38
Thereafter, the wage specified in (o)(i) i.e. ....	387.52
(p) Plain sewer:	
(i) Qualified:.....	431.38
(ii) Learners:	
first six months of experience .....	385.70
second six months of experience.....	390.05
third six months of experience .....	394.57
fourth six months of experience .....	400.78
fifth six months of experience .....	407.89
Thereafter, the wage specified in (p)(i) i.e. ....	431.38
(q) General assistant	471.61
(r) Cleaner	420.00
(s) Tea maker	420.00
(t) Watchman	510.57
(u) Motor vehicle driver	
(i) Driver of a motor vehicle the unladen mass of which-	
(aa)does not exceed 453 kg .....	508.81
(ab)exceeds 453 kg but does not exceed 2 722 kg .....	547.36
(ac)exceeds 2 722 kg but does not exceed 4 536 kg....	604.72
(ad)exceeds 4 536 kg .....	707.97
(ii)Part-time driver of a motor vehicle .....	472.36
(v) Clicker:	
(i) Qualified:.....	825.84
(ii) Learners:	
first six months of experience .....	385.67
second six months of experience.....	416.99
third six months of experience.....	451.16
fourth six months of experience .....	509.49

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	Wage per week
	R
fifth six months of experience.....	548.04
sixth six months of experience.....	577.80
seventh six months of experience.....	613.06
eighth six months of experience.....	645.36
ninth six months of experience.....	680.08
Thereafter, the wage specified in (v)(l) i.e.....	825.84
(w) Beader	514.83
(x) Chlorinator	463.56
(y) Compounder	548.06
(z) Dipper:	
(i) Qualified:	
Category A	548.06
Category B	560.60
Category C	578.45
(ii) Learners:	
first six months of experience to Category A.....	417.49
first six months of experience to Category B.....	548.06
first six months of experience to Category C.....	560.60
(aa) Glove turner	664.75
(ab) Mouldmaker	526.78
(ac) Packer	442.98
(ad) Quality product co-ordinator	695.12
(ae) A supervisor shall be paid the qualified rate applicable to the employees being supervised, plus 33 <sup>1</sup> / <sub>3</sub> per cent:	
- Provided that	
(i) a trainee supervisor shall serve a probationary period not exceeding six months and shall be paid the qualified rate applicable to the employees being supervised, plus 10 per cent;	
(ii) a trainee supervisor, who is not considered suitable for promotion after completion of the probationary period, shall return to his former position at his former wage.	

- (2) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:

	Wage per week
	R
<b>Part A - Cutting Department</b>	
<b>Pattern Maker:</b>	
(a) Qualified	1,016.00
(b) Learner	
First year	
First six months of experience	569.50
Second six months of experience	628.50
Second year	
First six months of experience	688.00
Second six months of experience	751.50
Third year	



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	Wage per week
	R
First six months of experience	819.00
Second six months of experience	884.50
Thereafter, the wage specified in (a), i.e.	1,016.00
<b>Pattern Grader</b>	
(a) Qualified	820.50
(b) Learner	
First year	
First six months of experience	536.00
Second six months of experience	569.50
Second year	
First six months of experience	603.50
Second six months of experience	646.00
Third year	
First six months of experience	688.00
Second six months of experience	732.50
Thereafter, the wage specified in (a), i.e.	820.50
<b>Football Jersey Cutter</b>	
(a) Qualified	570.50
(b) Learner	
First year	
First six months of experience	428.50
Second six months of experience	454.00
Second year	
First six months of experience	477.50
Second six months of experience	503.00
Third year	
First six months of experience	527.50
Thereafter, the wage specified in (a), i.e.	570.50
<b>Layer-up</b>	
(a) Qualified	492.00
(b) Learner	
First year	
First six months of experience	414.00
Second six months of experience	428.50
Second year	
First six months of experience	447.50
Thereafter, the wage specified in (a), i.e.	492.00
<b>Part B - Factory Operatives</b>	
<b>Grade A employee:</b>	
(a) Qualified	628.50
(b) Learner	
First year	
First six months of experience	442.50
Second six months of experience	476.50
Second year	
First six months of experience	509.50
Second six months of experience	536.00



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	Wage per week
	R
Third year	
First six months of experience	570.50
Thereafter, the wage specified in (a), i.e.	628.50
Grade B employee:	
(a) Qualified	537.00
(b) Learner	
First year	
First six months of experience	436.00
Second six months of experience	458.50
Second year	
First six months of experience	482.00
Thereafter, the wage specified in (a), i.e.	537.00
(c) If advanced to Grade A employee:	
First six months from date of advancement	537.00
Second six months from date of advancement	553.50
Third six months from date of advancement	570.50
Thereafter, the wage specified for a qualified Grade A employee, i.e.	628.50
Grade C employee:	
(a) Qualified	476.50
(b) Learner	
First year	
First six months of experience	427.50
Second six months of experience	439.50
Thereafter, the wage specified in (a), i.e.	476.50
(c) If advanced to Grade B employee:	
First six months from date of advancement	476.50
Second six months from date of advancement	482.00
Thereafter, the wage specified for a qualified Grade B employee, i.e.	537.00
<b>Part C - Clerical employees</b>	
Clerk	
(a) Qualified	692.50
(b) Learner	
First year	510.50
Second year	555.00
Third year	
First six months of experience	607.00
Thereafter, the wage specified in (a), i.e.	692.50
Factory Clerk	
(a) Qualified	520.00
(b) Learner	
First year	414.00
Second year	441.00
Third year	
First six months of experience	476.50
Thereafter, the wage specified in (a), i.e.	520.00

	Wage per week
	R
<b>Part D - General</b>	
Boiler attendant	493.50
Despatcher	509.50
General Assistant	476.50
Labourer	482.00
Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle -	
(a) does not exceed 1 360 kg	509.50
(b) exceeds 1 360 but not 2 720 kg	529.00
(c) exceeds 2 720 kg	603.50
Supervisor, quality control inspector and instructor	646.00
Traveller's driver	529.00
Watchman or caretaker, whose ordinary hours of work are -	
(a) less than 60 hours per week	550.00
(b) 60 hours per week	577.00

- 6.1 (a): Transitional provision following the 2005 negotiations. In addition to the wage that an Employee is entitled to in terms of this part of the Agreement, he shall be entitled to receive, by no later than six weeks from the date from which the Minister declares the Agreement binding by publication in the Government Gazette (hereinafter referred to as "implementation date") and in equal weekly instalments, an amount equal to the difference between the remuneration paid to him calculated from 1 July 2005 until the implementation date and the remuneration based on his wage, as being paid to him on 30 June 2005, calculated from 1 July 2005 until the implementation date.

- (2) Notwithstanding the definition of "experience" in clause 3-

- (a) an employer engaged in one of the following sections of the Industry:

Rainwear section; men's outerwear section; women's outerwear section; men's or women's underwear section; infants' and children's clothing section; workwear section; may when engaged in a qualified machinist whose previous experience was gained in one or more of the other sections specified, pay such machinist for a maximum period of four weeks a commencing wage of one notch below that to which he is entitled and thereafter to progress him according to the learnership scale applicable to machinists: Provided that such machinist shall be paid the wage of a qualified machinist as soon as such machinist is again engaged in the section in which the previous experience was gained.

For the purposes of this subparagraph "workwear section" means that section of the Industry in which boiler-quits, overalls, dustcoats, waiters' jackets and office jackets are manufactured;

- (b) when an employee transfer an employee in any category to another category for which a higher wage is specified, he shall pay such employee for the first 26 weeks not less than the wage he was receiving or was entitled to receive in such first-named category and shall thereafter pay him in accordance with the scale of wages for employees in the category to which such employee was transferred commencing at the next highest notch.

## 6.2 Off-set period

Notwithstanding the wage increases specified in subclause 6.1, an employer may grant to an employee such increases in advance of the specified incremental dates: Provided that if such an increase is granted within three months of the specified incremental date, the employee shall not qualify for a further increase in terms of subclause 6.3 (2).

## 6.3 Incremental dates

- (1) An employer shall pay increases due to his employees during each calendar year on the following basis:
  - (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay-week in which 15 February of such year falls.

When an employee is not in employment during the said pay-week he shall become entitled to the increase with effect from the date he is employed.
  - (b) Likewise and in the same manner all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year, shall be granted to employees with effect from the pay week in which 15 May, 15 August and 15 November fall within respective periods.
  - (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be regarded as employment except any absence without pay for a continuous period in excess of four consecutive pay-weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Council within 14 days of the employee resuming work.
- (2) Notwithstanding anything to the contrary herein, the wage of an employee, who immediately prior to the date on which this part of the Agreement comes into operation, is in respect of a wage higher than that specified for the class of work on which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount equal to the difference between the wage as agreed by the parties as at 1 July 2005 and the wage specified in this part of the Agreement for the class of work on which he is engaged.
- (3) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid to the employee at any time prior to or at the date of coming into operation of this part of the Agreement.
- (4) Notwithstanding the fact that the ordinary hours of work in any establishment are less than 42 in any week, the full minimum weekly remuneration shall, save for any deductions permitted under subclauses 6.8 (3) and 7.4 (3) of this part of the Agreement, be paid to each employee.

## 6.4 Night shift

An employee who is required to work his normal shift between the hours of 22:00 and 06:00 on any day shall be deemed to be on night work, and shall be paid not less than his ordinary wage in respect of the total period so worked plus 10 per cent.

## 6.5 Long service award

An employee who has not less than three years unbroken service with an employer, shall receive a service award of not less than R2 per week, in addition to the wage payable to an employee in terms of subclause 6.1, irrespective of whether such an employee is, in respect of his ordinary hours of work, in receipt of a wage higher than

that specified for an employee of his class.

Notwithstanding anything to the contrary contained in this part of the Agreement, the periods referred to in subclause 8.1 (5), except in the case of confinement or illness, shall, for the purposes of this subclause, be deemed to be unbroken service: Provided that such an employee immediately after such periods of absence, returns to his place of employment: Provided further that, where an employee is absent from employment for maternity reasons or illness, such absence shall be regarded as unbroken service for the purpose of this subclause on condition that such an employee returns to the place of employment within 12 calendar months without having been employed elsewhere. An employer may require such an employee to furnish satisfactory proof of absence from work owing to illness or for maternity reasons prior to the payment of the service award.

#### **6.6 First-aid**

Any employee who is in charge of first aid shall, in addition to the wage payable to such employee in terms of subclause 6.1 (1), be paid an additional amount of not less than R6,50.

#### **6.7 Payment of wages**

- (4) Wages and all other amounts due to an employee shall be paid in cash weekly on Friday: Provided that where an employee's service does not terminate on the ordinary pay-day of the establishment concerned, any amounts due to him shall be paid immediately upon such termination.
- (5) In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.
- (6) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (7) Wages and all other amounts due shall be placed in a sealed envelope on which shall be reflected, or shall be accompanied by, a clip or statement showing the name or number of the employee, the date of payment, total deductions made and the net amount of earnings contained therein. Entries on the said envelope or slip shall be made in ink or indelible pencil or shall be a clear carbon copy.

#### **6.8 Deductions**

- (1) No deductions of any description shall be made from the amount due to an employee: Provided that-
  - (a) except where otherwise provided in this part of the Agreement whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof;
  - (b) where the employer supplies the employees with tea, he may deduct from the wages of his employees the cost of such tea;
  - (c) with the written consent of an employee, deductions may be made by an employer for contributions to a pension or sick fund or medical scheme;
  - (d) contributions to Council funds shall be deducted in terms of subclause 14.1 of this part of the Agreement;



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- (e) contributions to the Council's Supplementary Benefits Fund and Provident Fund may be deducted;
  - (f) with the written consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union;
  - (g) the cost of scissors supplied to employees may be deducted in terms of subclause 13.2 (2) of this part of the Agreement;
  - (h) if owing to the stoppage of machinery, no work is available for an employee, a pro rata deduction may be made by the employer from the wages of such employee, only for the time lost which is in excess of two hours;
  - (i) any amount paid by an employer, compelled by a statutory law, ordinance or legal process to make payment on behalf of an employee, may be deducted;
  - (j) subject to the provisions of subclause 7.4 (3), a deduction proportionate to the amount of short time worked may be made;
  - (k) deductions in terms of subclause 8.2 (4) (b) may be made;
  - (l) with the written consent of the employee, deductions may be made by the employer, up to a maximum of one-sixth of the employee's wage for that week for purchases made from the employer and loans advanced by the employer; Provided that the employee shall not be indebted to the employer for an amount exceeding seven working days' wages at any one time.
- (2) In any establishment where work is performed by employees organised in sets or teams, each employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.

#### 6.9 Overtime rates

- (1) (a) Payment for overtime shall be not less than one and a half times the hourly wage for each hour or part of an hour so worked or, in the case of piece work, not less than one and a half times the ordinary rate of wage for all work done during each hour: Provided that-
- (i) an employee who works overtime for less than four hours on a Saturday shall be paid as if he had on that day worked four hours' overtime;
  - (ii) an employee who works overtime for more than four and a quarter hours or after 12:00 on a Saturday shall be paid at the rate of two times the hourly wage for each hour or part of an hour so worked;
- (b) for the purpose of calculating overtime, the hourly wage shall mean the weekly wage divided by 42.
- (2) (a) If an employee works on a Sunday, his employer shall either pay the employee-
- (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a week-day; or
  - (ii) if he so works for a period exceeding four hours, wages in respect of the total period worked on such Sunday or wages which is not less than double his ordinary wage payable in respect of the period ordinary worked by him on a weekday, whichever is the greater; or
- (b) at not less than one and a half times his ordinary rate of wage in respect of the total period worked on such Sunday and the employer shall in addition grant the employee within seven days of such Sunday, one day's leave and pay him in respect thereof, wages at a rate of not less than his ordinary rate

of wage as if he had on such holiday worked his average ordinary working hours for that day of the week.

- (3) If overtime calculated on a daily basis differs from that calculated on the weekly basis, the basis more favourable to the employee shall be adopted.
- (4) Subject to the provisions of subclause 7.1 (4), the provisions of this clause shall not apply to a watchman.

#### **6.10 Incentive bonus scheme and/or conveyor belt system**

- (1) An incentive bonus scheme and/or conveyor belt system may be introduced in any establishment by mutual agreement between the management, representatives of the trade union and the employees concerned and may be altered only by mutual agreement between these parties. Such schemes may be terminated by either the employer or the trade union giving not less than one week's notice.
- (2) Any dispute concerning the introduction or working of any scheme which cannot be settled in the factory by negotiation between the employer, the employees and the trade union official shall be referred to the Council.
- (3) An incentive bonus scheme may be introduced in respect of some of the employees employed in a particular section of an establishment: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged in the production of the particular garment in respect of which the scheme has been introduced.
- (4) Subject to the provisions of subclauses 6.8 (1) and 7.4 (3), such incentive bonus scheme and/or conveyor belt system shall enable an employee to earn at least 10 per cent in excess of the specified wage.
- (5) A copy of the incentive bonus rates and subsequent alterations thereto, agreed upon and duly signed by the employer and the Secretary of the trade union, shall be filed with the Secretary of the Council and the employer shall keep a copy thereof posted in a conspicuous place readily accessible to his employees.
- (6) When an employee is remunerated on an incentive bonus and/or conveyor belt basis, his ordinary rate of wage shall, for the purpose of overtime in terms of clause 8, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total earnings, excluding overtime, during the three months immediately preceding that date or during the total period of his employment on an incentive bonus basis by the employer concerned, whichever is the shorter, by the number of hours worked, excluding overtime, during the period in respect of which such earnings were paid.

#### **6.11 Annual bonus**

Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2% of an employee's annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December and earned with the employer by whom he is employed.

A pro rata share thereof shall be paid to an employee who leaves employment before the 31st of December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer. A shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer, in attending to union business.



## 7. HOURS OF WORK

### 7.1 Ordinary hours of work

- (1) No employer shall require or permit an employee-
  - (a) to work for more than 42 hours, excluding meal times, in any one week, which may however be comprised of either a five or six-day working week; or
  - (b) to work on a Saturday, unless his establishment is working a six-day week;
  - (c) in establishments working a six-day week, to work later than 12:30 on Saturday: Provided that the working hours performed from Monday to 12:30 Saturday (inclusive) do not exceed 42 in all; or
  - (d) to work on a Sunday without the permission of the Council;
  - (e) to work in a five-day week for more than eight and a half hours on any one day: Provided that the working hours performed from Monday to Friday, inclusive, do not exceed 42 in all; or
  - (f) to work in a six-day week for more than-
    - (i) eight hours on any one day during the period Monday to Friday, inclusive;
    - (ii) two and a half hours or beyond the hours of 12:30 on a Saturday; or
  - (g) to work before 07:45 or after 18:00 during the period Monday to Friday, inclusive, or before 07:45 on Saturdays.
- (2) For the purposes of subclause 7.1 (1) (a), an employee who does not work on any holiday referred to in subclause 8.1 (2) or who on such holiday works less than his average ordinary working hours for that day of the week in which such holiday falls, shall be deemed to have worked his average ordinary working hours on that day.
- (3) Notwithstanding the provisions of subclause 7.1 (1) (g), an employee engaged on shift work on embroidering or pleating machines may be permitted to commence work earlier than 07:45 but not earlier than 06:00, and the second shift worked on any one day may extend beyond 18:00: Provided that an employee on such shift work shall not be required or permitted to work after 22:00.
- (4) The provisions of this clause shall not apply to a watchman whose hours of work do not in total exceed 72 hours per week and whose employer grants him a day off of 24 consecutive hours in respect of every week of employment: Provided that-
  - (i) he makes no deductions from the watchman's wage in respect thereof;
  - (ii) the employer may, in lieu of granting his watchman any such day off, pay such watchman the wage which he would have received if he had not worked on such day, plus an amount of not less than double his daily wage in respect of such day not granted.

### 7.2 Overtime hours

- (1) Notwithstanding the provisions of subclause 7.1 (1) (a), (b) and (c) of this part of the Agreement, no employer shall require or permit an employee to work overtime-
  - (i) for more than two hours on any day, except that an employee who works a five day week may work up to four hours on a Saturday: Provided that 10 hours are not exceeded in such week;

- (ii) on more than three consecutive days;
  - (iii) on more than 60 days in any year;
  - (iv) after completion of his ordinary working hours, for more than one hour on any day unless he has-
    - (a) provided such employee with an adequate meal before he has to commence overtime; or (b) paid such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence: Provided that-
      - (aa) an employee shall not be required to work overtime without his consent nor shall he be dismissed or adversely affected in his employment by reason of his refusal to work overtime;
      - (ab) the requirements of paragraph (iv) shall not apply to an employee who works on a Saturday or Sunday.
- (2) Notwithstanding the provisions of the first and second provisos to subclause 7.2 (1), where an employer requires an employee to work overtime for more than one and a half hours on any day, such an employer shall provide such employee with an adequate meal before he has to commence overtime, or pay such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (4) Notwithstanding the provisions of sub-clause 7.1 (1) (g), an employee may be required or permitted to work overtime before the normal commencement of an establishment: Provided that such overtime shall not commence earlier than 06:45.
- (4) **Twilight Shift**
- (a) **General provisions:** Subject to the provisions contained in this Agreement this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
    - (iv) Only unemployed people may be recruited for working this shift.
    - (v) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
    - (vi) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
  - (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
    - (iv) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
    - (v) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
    - (vi) A twilight shift worker shall not be entitled to the payment of a shift allowance.

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(c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:

- (iv) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
- (v) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

**(5) Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 7.1 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (d) time not worked as a result of protected industrial/protest action;
  - (iv) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (v) time not worked as a result of the employer having declared short time;
  - (vi) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (vii) time not worked as a result of any authorised absenteeism.
- (6) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

**7.3 Meal and other rest intervals**

- (1) No employer shall require or permit an employee-
  - (a) to work for a continuous period of more than five hours without an uninterrupted interval of-
    - (i) in the Magisterial District of Port Elizabeth, an interval of 45 minutes;
    - (ii) in all other areas, an interval of one hour;
 Provided that for the purpose of this paragraph, periods of work interrupted by shorter intervals than those specified in sub-paragraphs (i) and (ii) shall be deemed to be continuous.
- (2) A rest interval of not less than 15 minutes during which no work shall be performed, shall be allowed to each employee as nearly as practicable to the middle of each morning work period, and a rest interval of 10 minutes shall be allowed to each employee as nearly as practicable to the middle of each afternoon work period. Such intervals shall be reckoned as time worked. Utensils and boiling water for making tea shall be provided by the employer and be available for the employees at the commencement of each rest and lunch interval.

#### 7.4 Short-time

- (1) The employer shall notify and consult with the union at least five days in advance of the intention to work short-time, except where the employer shows that it was impractical to give such notice.
- (2) Where short-time is being worked in any establishment, the work shall be distributed as evenly as possible amongst the employees in each of the sections or departments concerned.
- (3) Where short-time is being or has been introduced in any establishment, employees who are not informed and are present for work on a particular day, shall be employed for at least half a day or be paid a day's wage in lieu thereof. For the purposes of this subclause "day's wage" shall mean the wage usually paid in respect of the hours constituting a fully day's work (i.e. other than the usual short days in the establishment).

### 8. LEAVE

#### 8.1 Annual leave

- (1) (a) Every employer shall grant to his employees during December in each year:
  - (i) in the case of an employee with less than 12 completed months' service with the same employer, two consecutive weeks and four days' leave;
  - (iv) in the case of an employee with more than 12 completed months' service with the same employer, three consecutive weeks' leave;
  - (iii) An employee who at the end of a leave cycle or at the date of termination of service, has worked less than 12 completed months during that specific leave cycle, shall be paid a pro rated value of the amount specified in either paragraph 1 (a) (i) or 1 (a) (ii), depending on which is applicable.

Every employee shall be paid not later than the last working day before the commencement of such leave.
- (b) Every employer shall grant to a watchman paid leave of not less than three consecutive weeks to commence during December in each year, and shall be paid not later than the last working day before the commencement of such leave. A watchman who at the end of a leave cycle or at the date of termination of service has worked less than 12 completed months during that specific leave cycle shall be paid an amount on a pro rate basis, depending on the months worked; Provided that-
  - (i) The period of such leave shall not be concurrent with any period during which the employee is under notice of termination of employment.
  - (ii) If any public holiday referred to in subclause 8.2 (1) falls within the period of such leave, such public holiday shall be added to the said period as a further period of leave and the employee shall be paid in respect of such public holiday not later than the first pay-day following resumption of work or on the date of termination of services, whichever is the earlier, an amount equal to the wage would have earned had he on such public holiday worked his daily average ordinary working hours.
- (c) An employer may by agreement with his employees allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period of December and January each year with the balance to be taken before the end of June of the following year.

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Every employee shall be paid the total wage owed for the periods specified in paragraphs 1 (a) and 1 (b), not later than the last working day before the commencement of such periods of leave.

The terms of any such agreement reached by an employer with his employees shall be referred, for the purposes of the record, to the Council.

- (2) On termination of employment, the employer shall pay the employee the amount of leave allowance due as at the date of such termination, calculated as provided in subclause 8.1 (1): Provided that where an employee is required to forfeit a week's wages in lieu of notice to an employer in terms of the provisions of subclause 9.1 (4) of this part of the Agreement, the leave pay due to such an employee may be used to offset the difference between the wages accrued to the employee and the wage to be forfeited, provided the accrued wages are less than the amount of the wage to be forfeited: Provided further that the amount so forfeited shall not exceed one week's wages.
- (3) Employment for half a month or over shall be reckoned as employment for a full month for the purposes of calculating the leave allowance payable in terms of subclause 8.1 (1) and 8.1 (2). "Half a month" shall mean any period of 15 consecutive calendar days (irrespective of working days).
- (4) The amount of the leave allowance payable in terms of subclauses 8.1 (1) and 8.1 (2) shall be calculated at the rate of remuneration which the employee was receiving immediately prior to the date from which his holiday is granted or on which his employment is terminated, as the case may be, and the provisions of subclause 6.10 (6) shall also apply where work is being done on a piece work basis of remuneration.
- (5) Any period during which an employee-
  - (a) is on leave in terms of subclause 8.1 (1); or
  - (b) is absent from work on the instructions or at the request of his employer; or
  - (c) is absent from work owing to illness or confinement; shall be deemed to be employment for the purposes of subclauses 8.1 (1) and (2): Provided that the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee fails, after a request for such a certificate by the employer, to submit to the employer, a certificate from a medical practitioner that he was prevented by illness from doing his work or in respect of that portion of any total period of absence during any 12 months of employment which is in excess of 30 days.
- (6) In this clause the expression "employer" includes-
  - (a) in the case of the death of an employer, the executor of his estate or his heir or legatee; and
  - (b) in the insolvency of an employer or the liquidation of his estate, or the transfer or sale of his business, the trustee or liquidator or the new owner of the business;

If such executor, heir legatee, trustee, liquidator or new owner continues to employ that employee.

## 8.2 Public holidays

- (1) Public holidays shall be granted in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);



- (a) New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill and any other day declared to be a public holiday under section 2A of the Public Holidays Act, 1994.
  - (b) All public holidays are on full pay: Provided that-
    - (i) whenever an employee works on any of these days, his employer shall pay him remuneration at a rate of not less than his ordinary remuneration in respect of the total period worked on such day, in addition to the remuneration to which he would have been entitled had he not so worked;
    - (ii) any public holiday shall be exchangeable for any other day which is fixed by agreement or agreed to between an employer and an employee.
    - (iii) Whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday.
  - (c) In the event of any of the public holidays referred to in paragraph (a) of this subclause falling on a Saturday, the employer shall pay to each of his employees, not less than their ordinary wage payable in respect of the period ordinarily worked by his employees on a week day.
- (2) No work shall be performed after 13:00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off and shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons: Provided that where work is performed on such afternoon the employees shall in addition to their ordinary wages be paid at overtime rates for all time worked after 13:00 on that day: Provided further that the provisions of this subclause shall not apply in respect of an employee who is absent from work during the morning work period of the day immediately preceding Good Friday.
- (3) (a) Notwithstanding anything contained in this part of the Agreement, any establishment may be closed for any reason other than short time during any period of work specified for the establishment in terms of subclause 7.1 (1) of this part of the Agreement by mutual arrangement between the employer and not less than 75 per cent of the employees affected by such closing.
- (b) Whenever an employee is not required to work resultant on the closing of an establishment by mutual arrangement, in terms of paragraph (a), a deduction pro rata to the hours not worked may be made from the amounts payable in terms of this part of the Agreement.
- (4) For the purposes of this subclause, employment shall be deemed to commence from-
- (a) the date on which the employee entered the employer's service; or
  - (b) the date on which the employee last became entitled to annual leave or absence; whichever may be the later.

### 8.3 Maternity leave

- (1) Notwithstanding anything to the contrary contained in this part of the Agreement, the provisions of this subclause shall apply only to female employees proceeding on and returning from maternity leave.
- (2) Female employees with not less than one year's service with the same employer shall be entitled to maternity leave for a maximum of sixth months, subject to the following conditions:

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- (a) The period of absence for maternity leave shall be regarded as unpaid leave;
  - (b) to qualify for such leave an employee shall be required to provide her employer with a proper medical certificate from a medical practitioner at least three months prior to the expected date of confinement, reflecting the expected date of confinement;
  - (c) if an employee intends to work on or before the completion of her maternity leave, she must notify her employer in writing at least two weeks beforehand of such intention.
- (3) The period of absence on maternity leave shall be deemed to be continuous for the purpose of accruing annual leave.
  - (4) An employer shall be entitled to replace the service of any employee who is away from work on maternity leave with a temporary employee.
  - (5) Where an employee is absent or proceeds on maternity leave during the annual shutdown, such employee shall be entitled to the holiday pay accrued in terms of subclause 8.1 up to the date the maternity leave commenced: Provided that, on re-employment, the employee is paid the difference between the full leave allowance due as prescribed in subclause 8.1 and the accrued holiday pay paid.

#### **8.4 Compassionate/paternity leave**

- (1) Compassionate/paternity leave amounting to three days per year shall be granted to an employee as follows:
  - (a) In the event of the death of a close relative. In this regard, "close relative" shall mean spouse, child of an employee, and mother and father of an employee or his spouse;
  - (b) male employees, regardless of marital status, shall be entitled to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity: Provided that no employee shall be entitled to more than three days' compassionate and/or paternity leave per annum.
- (2) Payment for such leave shall not be made by the employer, but from the Supplementary Benefits Fund.

#### **8.5 Sick leave**

- (1) Subject to the provisions of subclause 8.5 (2), an employer shall grant to an employee who is absent from work through incapacity, sick leave on full pay amounting to-
  - (a) 20 working days in the case of an employee who works a five-day week;
  - (b) 24 working days in the case of an employee who works a six-day week;in the aggregate during any one year of employment: Provided that the employer may require the employee to provide him with a certificate signed by a registered medical practitioner showing the nature and duration of each period of absence covering more than two consecutive days for which payment is claimed.

- (2) The provisions of subclause 8.5 (1) shall not apply where the employer and his employees participate in a sick or other fund which entitles the employees to receive sick pay, which in the opinion of the Council, amount in the aggregate to not less than that provided in subclause 8.5 (1).
- (3) For the purpose of this subclause, the term "employment" shall have the same meaning as in subclause 8 1 (5).
- (5) "Incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any such inability to work caused by an accident for which compensation is payable under the Compensation for Occupational Injuries and Disease Act, No. 130 of 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.

## 9. TERMINATION OF EMPLOYMENT

### 9.1 Notice period

- (1) Whenever an employer or an employee intends terminating a contract of employment, he shall give the other party one week's notice in writing, and such notice shall take effect from the first day of the usual working week of the employee: Provided that this provision shall not apply in the case of an employee engaged on trial for a period of not less than and not exceeding 15 consecutive working days, in which case notice may be given on any working day: Provided further that if any written contract of employment provides for a period of notice of equal duration for both parties which is longer than one week, notice shall in accordance with such contract be given over such longer period.
- (2) Notwithstanding the provisions of subclause 9.1 (1) and provided such a termination of the employment contract takes effect from the first day of the usual working week-
  - (a) an employer may terminate the contract of employment without giving notice to the employee provided, he pays to the employee an amount which is not less than the appropriate wage which he would otherwise have been required to pay the employee had he terminated the contract with the proper notice; and
  - (b) an employee may terminate the contract of employment without giving notice to the employer, provided he pays to the employer an amount which is not less than the appropriate wage which the employer would otherwise have been required to pay him had he terminated the contract with the required notice.
- (3) The provisions of this subclause shall not-
  - (a) affect the right of an employee who is working short-time to terminate the contract of employment without notice;
  - (b) apply during the first four hours of employment of a new employee;
  - (c) affect the right of an employer or employee to terminate the contract of service without notice for any good cause recognised by law as sufficient.
- (5) Notwithstanding anything to the contrary contained in this part of the Agreement-

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- (a) the employment of any employee who absents himself from work for a period of six consecutive working days, without notifying his employer, in writing, of the reason may be terminated after an enquiry has been held on the seventh day, notification of which enquiry shall be given at least 24 hours in advance, and such an employee shall forfeit the employer the equivalent of one week's wages in respect of the week in which he so leaves the services of his employer; and
- (b) any employee who leaves the service of his employer without notice in terms of subclause 9.1 (1) shall forfeit one week's wages in respect of the week in which he so leaves the service of his employer;

Provided that if the accrued wages due to any such employee is less than the amount of the wages to be forfeited, the difference between the amount of the accrued wages and the wage to be forfeited may be offset against the holiday pay due to such an employee in terms of the provisions of subclause 8.1 (2) of this part of the Agreement.

- (5) No employer shall dismiss any employee by reasons of such employee's absence from work-
  - (a) through illness for a period not more than 60 consecutive days, if the employee has furnished or caused to be furnished to the employer within six consecutive working days after absents himself from work a medical certificate, certifying that such employee is unable to work due to illness;
  - (b) on leave, the permission of the employer having been obtained.
- (6) An employer employing less than 50 employees may after a period of four weeks temporarily replace the services of an employee who is absent from work in terms of subclause 5 (a) or (b): Provided that the employee on notifying his employer of his intention to resume work shall be re-engaged after a maximum of one week from the date of such notification.

## 9.2 Certificates of service

- (1) Every employer shall issue a certificate of service free of charge to each of this employees at the time when he leaves such employer's service. The certificate shall show the employee's full name, address, age, occupation, sex, rate of pay per week at the time of engagement, rate of pay per week at the time of leaving, date of entering service, date of leaving service, date of last increase, and number of certificates which was produced by the employee in terms of subclause 9.2 (3) when entering his employment. All certificates issued by each employer shall be numbered consecutively signed by the employer or his representative, and a duplicate of each certificate shall be retained by him.
- (2) A duplicate copy of each certificate issued in terms of this section shall be forwarded to the Secretary of the Council, P.O. Box 3220, North End, 6056.
- (3) An employer shall before engaging any applicant for work require such applicant to produce a certificate of service issued in accordance with the provisions of subclause 9.2 (1) or a certificate issued by the Secretary of the Council, specifying the experience the applicant has had, which certificate shall be issued by the Secretary of the Council on request. The employer shall forward to the Secretary of the Council such certificate with the specified engagement form containing the undermentioned particulars not later than one week after the applicant has commenced work. The engagement form shall show the full name of the employee, name of factory, address of employee, occupation, age, sex and rate of pay per week, and shall be signed by the employer.

## 10. OUTWORK

No employer shall give outwork to be done except in a workshop registered in terms of clause 4 of this part of the Agreement, nor shall he require or permit an employee to perform work in the Industry other than in an establishment which is equipped, maintained and controlled by the employer.

## 11. ORGANISATIONAL RIGHTS

### 11.1 Closed Shop

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
  - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
  - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Eastern Cape Regional Chamber of the Council, P O Box 3220, North End, 6056, not later than the seventh day of the month following that to which it refers. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers
- (3) For this part of the Agreement no union membership subscriptions may be -
  - (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will also not be applicable to:
  - (a) clerks; or
  - (b) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

### 11.2 Organisation of employees

Every employer shall, provided that 24 hours' notice has been given to the employer or his representative, in writing, permit any person or persons authorised by the trade union and by the Council to enter his establishment during the lunch interval for the purpose of-



- (a) interviewing employees on trade union matters;
- (b) enrolling new members;
- (c) posting and distributing notices issued by the trade union;
- (d) collecting members' contributions to the trade union.

### **11.3 Shop stewards**

- (1) Provided that an outline of each such training course has been lodged with the Bargaining Council, and is available on request to any employer, shop stewards shall be entitled to three days' paid leave per annum per shop steward to attend shop stewards' training courses, if such attendance falls within normal working hours.
- (2) In addition to the leave granted in subclause 11.3 (1) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at seven days per annum per shop steward. At each establishment, this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.

### **11.4 Negotiated plant level procedures**

Every employer shall negotiate at plant level with the union procedures relating to grievances, discipline, retrenchment and the functioning and training of shop stewards.

### **11.5 Balloting**

In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

## **12. EMPLOYEE BENEFITS**

### **12.1 Supplementary Benefits Fund**

- (1) The Fund established in terms of the Agreement published under Government Notice No. 1724, dated 21 September 1956, known as the Clothing Industry Welfare Fund (in this clause referred to as the "Fund"), is hereby continued.
- (2) The objects of the Fund shall be the provision of financial assistance to employees who-
  - (a) lose earnings as a result of being on short-time in terms of subclause 7.4;
  - (b) lose earnings through being certified unfit for work on account of tuberculosis;
  - (c) require spectacles;
  - (d) are entitled to a grant when proceeding on maternity leave in terms of subclause 8.3;
  - (e) lose earnings as a result of proceeding on compassionate leave/paternity leave in terms of subclause 8.4.
- (3) The employer shall deduct an amount of 60c per week from the wages of each employee and shall contribute the same amount in respect of each employee.

The employer shall forward the total amount to the Secretary of the Council, P.O. Box 3220, North End, 6056, not later than the seventh day of the month, following that to which it refers, together with a statement in such form as the Council may from time to time specify.

- (4) An employee who has been employed in the Industry for not less than 13 weeks and who has been absent from work on account of short-time, shall be entitled to 50% of his actual daily wage: Provided that no benefits shall be paid to an employee who earns the equivalent of four days' wages in any week, irrespective of the number of days such an employee may work during that week: Provided further that the amount paid to an employee shall not be in excess of 10 days in any period of 12 consecutive calendar months.
- (5) An employee who has been a member of the Fund for 13 weeks, shall be entitled to financial assistance by way of tuberculosis pay at the rate of 50% of his actual wage for a consecutive period of not more than eight weeks commencing on the day the employee, certified to be suffering from tuberculosis by a medical practitioner, ceased work on the instructions of such medical practitioner, or for such lesser period as the medical practitioner may deem it necessary for the employee to remain absent from his place of work due to his contraction of tuberculosis: Provided that-
  - (i) an employee who during any week is absent for a period of less than a full calendar week shall be paid one fifth of the weekly benefit in respect of each day of such absence,
- (6) An employee who has been a member of the Fund for 13 weeks and who satisfies the Council that because of defective eyesight, he has had to obtain spectacles, shall be paid an amount of R20 towards the cost thereof: Provided that not more than one such payment shall be made during each cycle of 24 months.
- (7) An employee proceeding on maternity leave in terms of subclause 8.3 shall be entitled to a grant of R500: Provided that-
  - (i) only one such grant shall be payable to such employee every three years;
  - (ii) the maximum number of grants payable to such employee shall be three.
- (8) An employee who has been a member of the Fund for 13 weeks and who proceeds on compassionate/ paternity leave in terms of subclause 8.4 shall be entitled to claim leave pay.
- (9) All moneys paid into the Fund shall be deposited in a special account to be opened in the name of the Fund at a bank and/or institution approved by the Council. All payments from the Fund shall be by cheque on the Fund's accounts and such cheques shall be signed by two persons duly authorised thereto by the Council.
- (10) Any moneys regarded by the Council as being surplus to its requirements may be placed on deposit with a bank or registered building society: Provided that sufficient money is kept in such liquid form as will enable the Council to meet its liabilities immediately it is called upon to do so.
- (11) A public accountant shall be appointed by the Council to audit the accounts of the Fund annually and not later than 31 March in each year, and to prepare a statement showing-

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- (d) all moneys received-
  - (i) in terms of subclause 12.1 (3) thereof;
  - (ii) from any other source; and
- (b) expenditure incurred under all headings during the 12 months ended 31 December preceding, together with a statement showing the assets and liabilities of the Fund.

The audited statements, shall thereafter lie for inspection at the office of the Council and copies thereof shall be sent to the Registrar of Labour Relations, Pretoria, within three months after the closure of the period covered thereby.

- (12) In the event of the expiry of this part of the Agreement through effluxion of time or cessation or through any other cause, the Fund shall continue to be administered by the Council until the Fund is liquidated or transferred to a fund duly constituted for the same purpose for which the original Fund was created: Provided that the Fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within one year of the date of expiry of this part of the Agreement.
- (13) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 61 (5) of the Act, the Fund shall continue to be administered by a committee consisting of the members of the Council at the date on which the Council ceases to function or is dissolved: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar of Labour Relations, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purposes.

If there is no Council in existence upon the expiry of this part of the Agreement, the Fund shall be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause 12.1 (12) and if upon such expiry the affairs of the Council have already been wound up, and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

- (14) Upon liquidation of the Fund in terms of subclause 12.1 (12), the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council.
- (15) All costs of administration and liquidation of the Fund shall be charge upon the Fund.

## 12.2 SACTWU Education Bursary Scheme

Every employer to whom this part of the Agreement applies shall pay 20c per week for each trade union party member in his employ to the SACTWU Education Bursary Scheme. The total amount per month shall be paid to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, by not later than the 1 5th day of the following month.

### **12.3 Retrenchment benefit**

An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay, equal to at least one week's remuneration for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of section 196 (1) of the Act by the Minister.

### **12.4 SACTWU's HIV/AIDS Project**

Every employer to whom this part of the Agreement applies shall contribute an amount of 10 cents per week in respect of each of his employees for whom wages have been specified in this part of the Agreement. The total amount shall be forwarded by the employer to the Secretary of the Council, P.O. Box 3220, North End, 6056, not later than the seventh day of the month following that to which it refers.

## **13. GENERAL EMPLOYER OBLIGATIONS**

### **13.1 Insurance of wages**

Every employer shall within four weeks of the date of publication of this part of the Agreement take out a policy of insurance with a registered insurance company which shall provide for payment to be made to all employees of the employer who are deprived of work, through fire, for the amount of two week's wages: Provided that, should the stoppage of work be for a period of less than two weeks, a pro rata payment may be made. Should it not be possible for the employer to obtain such a policy of insurance, he shall deposit with the Council, an amount equal to two weeks' wages of all employees in the establishment at the date of coming into operation of this part of the Agreement which the Council shall retain in a special trust investments account until required for a like payment to employees. Any adjustment to the amount held by the Council shall be made within two weeks from the date of an increase or decrease, as the case may be, in the total number of employees employed by the employer.

### **13.2 Tools**

- (1) Every employer may supply scissors to his employees at the price paid therefor by him.
- (2) Where the cost of scissors supplied to an employee does not exceed R1, the employer may deduct the cost thereof from the wages of the employee in instalments of not more than 10c per week. Where the cost of scissors exceeds R1, the deductions shall be at a rate mutually agreed upon between the employer and his employee. The scissors shall be kept sharpened and otherwise in good order by the employer without cost to the employee.

### **13.3 Premiums**

No premiums shall be charged or accepted by an employer for the training of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

## 14. AGREEMENT

### 14.1 Council funds

- (1) The funds of the Council, which shall be vested in and administered by the Council, shall be provided in the following manner:
  - (i) R1,00 shall be deducted every week by each employer from the wages of each of his employees for whom wages have been specified in this part of the Agreement. The total amount to be deducted together with an equal amount which shall be contributed by the employer shall be forwarded by the latter to the Secretary of the Council, P.O. Box 3220, North End, 6056, not later than the seventh day of the month following that to which it refers together with a statement in such form as the Council may from time to time specify.

### 14.2 Exhibition of Agreement

Every employer on whom the Main Collective Agreement is binding must-

- (a) keep a legible copy of the Main Collective Agreement in two official languages available in the workplace at all times;
- (b) keep the copy available for inspection by any employee;
- (c) give a copy of the Main Collective Agreement-
  - (i) to an employee who has paid the specified fee; and
  - (i) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

### 14.3 Agents

- (1) The Council may request the Minister of Labour to appoint one or more specified persons to be designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) A designated agent may-
  - (a) secure compliance with the Council's collective agreements by:
    - (i) publicising the contents of the agreements;
    - (ii) conducting inspections;
    - (iii) investigating complaints;
    - (iv) investigating means of conciliation;
    - (v) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period; or
  - (b) perform any other function that are conferred or imposed on the agent by the Council.
- (3) A designated agent shall report all disputes concerning compliance with any provision of this part of the Agreement to the General Secretary of the Council and to designated official at the relevant Regional Chamber of the Council.
- (4) Within the registered scope of the Council, a designated agent of the bargaining council shall have all the following powers-



- (a) A designated agent may, without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps employment records that is not a home, in order to monitor or enforce compliance with a collective agreement concluded in the Council.
- (b) A designated agent may only enter a home or any place other than a place referred to in subclause (1):
  - (i) with the consent of the owner or occupier; or
  - (ii) if authorised to do so by the Labour Court in terms of subclause (3).
- (c) The Labour Court may issue an authorisation contemplated in subclause (2) (b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with a collective agreement concluded in the Council.
- (d) If it is practicable to do so, the employer and a trade union representative shall be notified that the designated agent is present at a workplace and of the reason for the designated agent's presence.
- (e) In order to monitor or enforce compliance with a collective agreement a designated agent may:
  - (i) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure to be under oath or affirmation;
  - (ii) inspect and question a person about any record or document to which a collective agreement relates;
  - (iii) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
  - (iv) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
  - (v) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in subclauses (1) and (2);
  - (vi) question a person about any work performed; and
  - (vii) perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
- (f) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
- (g) A designated agent shall:
  - (i) produce on request a copy of the authorisation referred to in subclause (2) (b);
  - (ii) provide a receipt for any record or document removed in terms of subclause (5) (e); and

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- (iii) return any removed record, document or item within a reasonable time.
- (d) Any person who is questioned by a designated agent in terms of subclause (4) (e) shall answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (i) An answer by any person to a question by a designated agent in terms of this clause may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (j) Every employer and every employee shall provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (k) The Council may apply to the Labour Court for an appropriate order against any person who:
  - (i) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
  - (ii) refuses or fails to comply with any requirement of the designated agent in terms of this clause; or
  - (iii) hinders the designated agent in the performance of the agent's functions in terms of this clause.
- (l) For the purposes of this clause, a collective agreement shall be deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of section 49 (1) of the Basic Conditions of Employment Act.

#### 14.4. Exemptions

**A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
  - (a) the period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;

- (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been refused.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
  - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) the conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.

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- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
  - (i) the cost incurred for the hearing of the appeal;
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of cost incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
  - (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.

- (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.



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- (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement shall be granted in the following circumstances:
- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards set out in this part of the Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
    - (iv) Wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:

- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
- (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
- (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### **14.5 Existing contracts**

Any contract of service in operation at the date of commencement of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

#### **14.6 Dispute procedure**

- (1) Unless otherwise provided in the Council's Constitution or in this part of the Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
  - (c) When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation:**
  - (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions as appropriate.
  - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

#### **(3) Panel of conciliators, arbitrators and senior arbitrators-**

- (a) The Council shall appoint:
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;

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- (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
  - (aa) the nature of the questions of law raised by the dispute;
  - (bb) the complexity of the dispute;
  - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
  - (dd) the public interest, requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall be filled by appointing the nominees most preferred by the shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.
  - (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subdause (3) (c) above.
- (e) Notwithstanding subdause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or

- (iii) If at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panels of conciliators or arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators; Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

#### **(4) Disputes involving non-parties to the Council**

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council shall be resolved by the Council in accordance with the following procedure-

##### **(a) Referral and conciliation of disputes:**

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought;
- (ii) the party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute;
- (v) the General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute;
- (vi) the conciliator may, during conciliation proceedings:
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.

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- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) Adjudication of disputes referred to the Council for arbitration:**

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4)(b)(v) above has been granted by the arbitrator, shall have the right to:
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.



- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representations at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, the arbitrator shall have this power if:
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.

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- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to the proviso in subclause (5) (d) below.
  - (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.
- (6) Compliance procedure and enforcement of collective agreements by Council:**
- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
  - (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
  - (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
    - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
    - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by:
      - (aa) publicising the contents of the agreement;
      - (bb) conducting inspections;
      - (cc) investigating complaints;
      - (dd) endeavouring to secure compliance with the agreement through conciliation; or
      - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.

- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclauses (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138 (9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

#### 15. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2006: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2005.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

#### 16. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

#### 17. TRADE UNION AGENCY SHOP

- (4) Scope- Agency fees will apply to employees who –
  - (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (5) **Union membership:** Employees are not compelled to become members of the trade union party.
- (6) **Agency fee deductions:** Every employer to whom this clause applies shall:
  - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and

- (d) shall pay such monies to the Regional Secretary of the Eastern Cape Regional Chamber of the Council, P O Box 3220, North End, 6056, not later than the seventh day of the month of having made such deductions.
- (c) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
  - (d) paid to a political party as an affiliate fee;
  - (e) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (f) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### 18. PRODUCTIVITY

- (4) An employer shall be entitled to initiate plant level discussions with the union for the introduction of a productivity scheme.
- (5) Should such discussions lead to an agreement between the parties, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (6) Should such discussions not lead to an agreement between the parties, the matter shall be so concluded.
- (7) Discussions referred to in sub-clauses (1) to (3) shall not be subject to the declaration of disputes from either party, and neither party shall be entitled to pursue industrial action in support or in consequence of such discussions.
- (8) The provisions of this clause shall not detract from the union's right to table productivity demands at the level of the Council and to negotiate concerning these in terms of the normal negotiating procedure of the Council.



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**PART B : PROVISIONS FOR THE FREE STATE & NORTHERN CAPE REGION****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
  - (b) in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort.
- (2) Clauses 1 (1) (a), 2, 19B, 23A(1) to 23A(3), 23A(5) and 34(5) of this Collective Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.

**2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

**3. DEFINITIONS**

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act. and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa: further, unless inconsistent with the context-

**"Act"** means the Labour Relations Act, 1995;

**"boiler attendant"** means an employee who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in a workplace and who may stoke, rake, slice and draw the fire in such boiler and who removes ashes;

**"checker/examiner/passers"** means an employee who is responsible for checking and/or examining finished and unfinished garments for faults or defects during production, excluding the final passing of garments which shall be the responsibility of the quality controller;

**"chopper-out"** means an employee who is engaged in cutting out garments or portions of garments by hand or machine from one or more layers of materials that have already been marked;

**"cleaning"** means the removal of spots, marks or foreign matter from materials and garments and/or the removal and nip ping off of threads;

**"cloakroom supervisor"** means an employee who is in charge of a change room in which an employee may change or store his clothing or of lockers in which an employee may store his effects. and who may supervise the cleaning of the change rooms, toilets and/or kitchen premises;

**"clothing industry" or "industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassiers, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

**A. and includes -**

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or person undertaking work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such

packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes -**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurements of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurements of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council for the Clothing Manufacturing Industry, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"continuous service"** means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer Provided that any periods of employment with the same employer, interrupted by a period of unemployment of less than one year, shall be deemed continuous;

**"Council"** means the Northern Chamber (Free State and Northern Cape Region) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"despatch clerk"** means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass measuring, packing, marking, addressing or despatching of such goods or packages;

**"despatch packer"** means an employee who is wholly or mainly engaged in the making up of orders and/or parcels and/or bales, and folds and/or packs garments in readiness for despatch;

**"driver of a light motor vehicle"** means an employee who has a light motor vehicle licence (previously referred to as 'Code 8') and who drives a vehicle with a gross vehicle mass of less than 2 000 kg;

**"driver of a medium motor vehicle"** means an employee who has a medium motor vehicle licence (previously referred to as 'Code 10') and who drives a vehicle with a gross vehicle mass of more than 2 000 kg;

**"employee"** means, subject to the definition in section 213 of the Act, those employees falling within the jurisdiction of the scope of the Bargaining Council;

**"employer"** means any person who employs or provides work for any person within the Industry;

**"experience"** means the total period or periods of employment of an employee in the Clothing Industry and/or Bespoke Tailoring Industry and/or private dressmaking and/or knitting industry in any capacity or capacities: Provided that, for the purpose of computing an employee's experience, employment for 16 weeks in any half-year shall be deemed to have been employment for the whole half-year: Provided further that a trainee in his first half-year of employment, although having less than 16 weeks, but more than 13 weeks' experience on the last day of the half-year, shall be deemed to have been in employment for the whole half-year: Provided further that the trial period of an employee in terms of clause 14 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed:

**"factory clerk"** means an employee who is employed in the production area of the factory and who is wholly or mainly employed in the recording of attendance and/or production data or the checking of work in and out;

**"finisher"** means an employee who is engaged in putting in pads or wadding into shoulders of coats, fastening or sewing sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand or felling sleevehead linings by hand;

**"fitter-up"** means an employee who tacks the outside of garments together with the cut-out linings (called trimmings) and adjusts the outside and the inside together accurately so that the parts may go forward to the machine to be put together correctly;

**"fixed-term contract employee"** means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

**"foreman"** means an employee who is in charge of the employees in a factory, and who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees, and who is responsible for the efficient performance by them of their duties;

**"former scribe"** means an employee who scribes and breaks a paper template or former in accordance with a master pattern supplied to him;

**"general worker"** means an employee who is engaged in one or more of the following operations:

- (a) Fixing machine belts; oiling machines, filling oil cans or similar work;
- (b) oiling and/or greasing motor vehicles;
- (c) issuing cottons;
- (d) winding bobbins;
- (e) folding garments;
- (f) turning coat facings out after machining;
- (g) marking and/or soaping the position of pockets, buttons, buttonholes, loops, fasteners, darts, hems or turn-ups;
- (h) packing garments into boxes or into other suitable wrappings or into bundles prior to their being sent to the despatch department;
- (i) turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps, whether by hand or machine, other than a power-driven machine;
- (j) pinning shirts or other garments or pinning together parts of garments in preparation for machining;
- (k) shaping by template the lapels or collars of jackets or overcoats preparatory to underbasting, but excluding the operations performed by a shaper;
- (l) marking or trimming the shape of the necks of shirts, underwear or nightwear;
- (m) sorting or snipping off threads or removing spots or marks from materials or garments;
- (n) sorting out garments or parts of garments;
- (o) stamping the sizes or identity work numbers on garments or parts of garments;
- (p) delivering letters, messages or goods on foot or by means of a foot or hand propelled vehicle;
- (q) cutting by hand any trimming (not being piece goods) to a given length or shape;
- (r) making belts, buckles, button and shank moulds by machines operated by hand, excluding making belts by sewing machine;
- (s) making up bundles;
- (t) marking positions of button-holes, buttons, pockets, flaps, etc.;
- (u) pulling bastings;
- (v) sloping;



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- (w) soaping;
- (x) turning sleeves or trousers inside out;
- (y) tying off threads;
- (z) pressing parts of unfinished garments;
- (aa) making tea or similar beverages;
- (ab) sorting buttons according to size or colour;
- (ac) carrying messages or garments or parts of garments from one place to another within the workplace, excluding distributing work among the employees;
- (ad) fusing;
- (ae) winding;

**"half-year"** means the six-monthly periods commencing on the first day of January and/or July;

**"hourly wage"** means the weekly wage, divided by the number of hours prescribed by clause 9 of this part of the Agreement;

**"invisible mender"** means an employee who is engaged in mending or repairing a garment or other article composed of woven or knitted material, by hand or machine, using the stoating, fine drawing or reentering processes according to the kind of tear or damage to the material and includes the mending of silk by drawing through the broken threads;

**"invoice clerk"** means an employee who writes out an invoice from an order form, extends and casts totals and thereafter prepares summaries or other statistical records or maintains stock records;

**"knitting machine operator"** means an employee who is engaged in all of the following duties:

- (a) Changing needles and jack;
- (b) straightening tricks;
- (c) running on after press-off;
- (d) tying in yarn and keeping the machine running;
- (e) checking widths and lengths and sizes;
- (f) checking the production ticket to ensure that the correct colour, size, yarn and dye lot are being used/knitted;
- (g) checking the quality of fabric for faults and separating blanks;

**"labourer"** means an employee who is engaged in one or more of the following activities:

- (a) Cleaning premises, plant, machines, vehicles, tools or other articles;
- (b) loading or unloading goods;
- (c) carrying, moving or stacking goods;
- (d) opening or closing or strapping cartons or other containers; nailing packing cases or sewing up or strapping bales or, under the supervision of a despatch packer or clerk, parcelling goods;
- (e) making or maintaining fires, or removing refuse or ashes;
- (f) oiling or greasing vehicles, other than motor vehicles;
- (g) gardening, i.e. planting or digging, mowing, weeding, raking or watering or mixing or spreading garden soil or material or cutting or trimming edges or trees and plants;

**"layer-up"** means an employee who is engaged in the laying of material in one or more thickness or layers preparatory to cutting;

**"maintenance hand"** means an employee who performs one or more of the following operations:

- (a) Making minor adjustments or repairs to machinery or installations, or assisting a mechanic;
- (b) making minor renovations or repairs to buildings;



**"marker-in"** means an employee who marks out the pattern on a layer or layers of material, preparatory to cutting out;

**"marking of trimmings"** means the marking of the position of pockets, buttons, button-holes, loops, fasteners, darts, hems, turn-ups and the like, preparatory to further operations;

**"mechanic"** means an employee who is engaged in work normally performed by a skilled artisan (other than minor repairs or adjustments to machinery or installations or minor repairs or renovations to buildings), and for the purposes of this definition, the expression "skilled artisan" means a person who has served his apprenticeship in a trade designated or deemed to have been designated under the repealed Manpower Training Act, 1981, or who holds a certificate of proficiency under section 6 or a trade diploma under section 7 of the said Act or any applicable certificates or diplomas in terms of the skills, Development Act, 1998.

**"mechanic, unqualified"** means an employee who performs duties similar to those of a mechanic but who does not have a certificate of proficiency or a diploma;

**"medical practitioner"** means a person entitled to practice as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Profession Act, 1974 (Act No. 56 of 1974);

**"motor vehicle driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression "driving a motor vehicle" includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

**"National Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"night work"** means work performed after 18:00 and before 06:00 the next day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"old age"** means 55 years of age;

**"operational requirements"** means requirements based on the economic, technological, structural or similar needs of an employer;

**"ordinary hours of work"** means a 42-hour week of five days, or 45 hours in any one week in respect of a watchman;

**"overtime"** means the time that an employee works during a day or a week in excess of ordinary hours of work;

**"part-time driver of a motor vehicle"** means an employee who is engaged in driving a motor vehicle for not more than three hours in the aggregate on any day, and for the purposes of this definition, "driving a motor vehicle" includes all periods of driving and any time spent by the driver while in charge of the vehicle or on work connected with the vehicle or the load;

**"passer or checker or examiner"** means an employee who is responsible for passing or checking completed or uncompleted garments for faults but is not responsible for the final quality control of the garment;

**"pattern grader"** means an employee who grades patterns from any material to various sizes according to requirements or directions given to him;

**"plain sewing"** means the performing by hand of one or more of the following operations:

Tacking permanent turn-ups, tacking and waistband linings, sewing on hooks and eyes, tickets or press studs, fastening catch in top of trousers, sewing on buttons, making and sewing on hangers, felling crutch linings in trousers, felling buttons or waistband linings, felling necks of vests, fastening edge stays, felling bottoms of linings or seams of linings already basted into position, felling binding, fastening facings inside that have already been basted into position;

**"pleater"** means an employee who places cloth which has been cut to a pattern in a prepared former in readiness for processing in an autoclave or similar machine and who may remove the pleated cloth from the former after the pleating process;

**"presser"** means an employee who is engaged in pressing finished garments by hand or machine;

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**"qualified employee"** means an employee whose period or periods of experience entitle him to be paid the highest wage prescribed by clause 4 (1) for an employee of his class;

**"quality controller"** means an employee who has ultimate responsibility for the quality of a garments sent to customers;

**"sample machinist"** means an employee who completely machines prototype garments, other than patent machining;

**"screen printer"** means an employee engaged in-

- (a) operating a screen printing machine;
- (b) setting up screens in sequence of colour to be printed on fabric;
- (c) squaring off and testing that screens fit according to master feeler;
- (d) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (e) positioning colours in correct sequence to ensure that colour combination matches the master feeler and colour card;
- (f) checking the base fabrics to ensure correct face and quality;
- (g) supervising the operations of the colour thrower;
- (h) supervising the handling of screens to and from wash bays;
- (i) examining screens from wash bays to ensure that they are in a satisfactory condition;
- (j) carrying out checks for faults;

**"set leader"** or **"team leader"** means an employee in a set or team who is generally responsible for the work executed by the employees comprising such set or team;

**"sewing machinist"** means an employee who is engaged in operating a sewing machine using needle and thread, excluding an employee who is engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats;

**"shaper"** means an employee who is engaged in shaping by hand the designs of lapels and the collars of coats preparatory to underbasting, but excluding trimming by hand;

**"short time"** means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of supplies, a general breakdown of plant or machinery or an actual breakdown or threatened breakdown of buildings;

**"stores clerk"** means an employee who is employed in the store or warehouse of the workplace performing clerical duties;

**"supervisor"** means an employee who, under the supervision of a foreman, is in charge of a group of employees in a workplace or a department thereof and who is responsible for the efficient performance by them of their duties, and who may supervise set leaders or team leaders, but who does not have the power to engage or dismiss employees;

**"task-work"** means the task set by the employer or his representative to an employee of a definite number of garments or parts of garments to be made up by such employee in a specified time;

**"trade union representative"** means a member of a trade union who is elected to represent employees in a workplace;

**"trimmer"** means an employee who is engaged in marking-in or cutting linings or interlinings; or re-cutting single pieces of a garment;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"wage" means the amount payable to an employee in terms of clause 4 (1) in respect of ordinary hours of work as specified in clause 9: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1) it means such higher amount;

"watchman" means an employee who is engaged in guarding premises or other property;

"winding" means the winding of yarn on a yarn-winding machine;

"working day" means any day on which work is usually performed in the Clothing Industry;

"workplace" means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation.

#### 4. REMUNERATION

- (1) Subject to subclauses (2), (3) and (4), the minimum weekly wage to be paid by an employer to each employee of the undermentioned classes shall be as set out below: Provided that if an employee performs work in more than one category, he shall be classified in the grade for which the highest wage is prescribed.

DESCRIPTION OF OCCUPATION			Wage per week
			R
<b>A. ALL AREAS</b>			
(i)	(a) Foreman:		1 485.00
	(b) Supervisor/Quality Controller:		
	(i) Qualified:		607.50
	(ii) Learners:		
	first six months of experience		417.00
	second six months of experience		498.00
	Thereafter, the wage specified in (b)(i) i.e.		607.50
	(c) Cloakroom Supervisor/Watchman:		423.00
	(d) Mechanic:		1 394.00
	(e) Unqualified Mechanic:		519.50
	(f) Watchman:		423.00
	(g) Labourer:		331.00
	(h) Boiler attendant:		364.00
(ii)	Pattern Grader:		
	(i) Qualified:		787.00
	(ii) Learners:		
	first six months of experience		304.50
	second six months of experience		364.50
	third six months of experience		424.50
	fourth six months of experience		486.00
	fifth six months of experience		545.00
	sixth six months of experience		605.00

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DESCRIPTION OF OCCUPATION		Wage per week
		<i>R</i>
	seventh six months of experience	665.50
	eighth six months of experience	725.00
	Thereafter, the wage specified in (ii)(i) i.e.	787.00
<b>(iii)</b>	<b>Marker-In:</b>	
	(i) Qualified:	607.50
	(ii) Learners:	
	first six months of experience	304.50
	second six months of experience	341.50
	third six months of experience	381.00
	fourth six months of experience	418.00
	fifth six months of experience	456.00
	sixth six months of experience	493.50
	seventh six months of experience	532.00
	eighth six months of experience	568.50
	Thereafter, the wage specified in (iii)(i) i.e.	607.50
<b>(iv)</b>	<b>Shaper &amp; Chopper-out, other than an interlining and/or trimming chopper-out</b>	
	(i) Qualified:	487.00
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	322.50
	third six months of experience	355.50
	fourth six months of experience	388.00
	fifth six months of experience	421.00
	sixth six months of experience	454.50
	Thereafter, the wage specified in (iv)(i) i.e.	487.00
<b>(v)</b>	<b>Checker, Examiner and/or Passer:</b>	
	(i) Qualified:	423.00
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	322.50
	third six months of experience	356.00
	fourth six months of experience	388.50
	Thereafter, the wage specified in (v)(i) i.e.	423.00
<b>(vi)</b>	<b>(a) Invoice Clerk:</b>	
	(i) Qualified:	607.50
	(ii) Learners:	
	first six months of experience	437.50
	Thereafter, the wage specified in (vi)(a)(i) i.e.	607.50
	<b>(b) Despatch Clerk, Factory Clerk and/or Stores Clerk:</b>	
	(i) Qualified:	445.00
	(ii) Learners:	
	first six months of experience	319.50
	second six months of experience	382.00
	Thereafter, the wage specified in (vi)(b)(i) i.e.	445.00
<b>(vii)</b>	<b>Sewing Machinist engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats:</b>	
	(i) Qualified:	479.50
	(ii) Learners:	



DESCRIPTION OF OCCUPATION		Wage per week
		<b>R</b>
	first six months of experience	289.50
	second six months of experience	321.00
	third six months of experience	351.50
	fourth six months of experience	384.00
	fifth six months of experience	415.00
	sixth six months of experience	447.50
	Thereafter, the wage specified in (vii)(i) i.e.	479.50
(viii)	<b>Driver of a Motor Vehicle, the unladen mass of which together with the unladen mass of any trailer/trailers drawn by such vehicle—:</b>	
	(a) Does not exceed 2 722 kg	524.50
	(b) Exceeds 2 722 kg	609.00
(ix)	<b>Part-time Driver of a Motor Vehicle:</b>	477.00
(x)	<b>Knitting Machine Operator:</b>	
	(i) Qualified:	624.50
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	345.50
	third six months of experience	401.00
	fourth six months of experience	456.50
	fifth six months of experience	512.50
	sixth six months of experience	569.00
	Thereafter, the wage specified in (x)(i) i.e.	624.50
(xi)	<b>Maintenance Hand:</b>	
	(i) Qualified:	358.00
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	303.00
	third six months of experience	315.50
	fourth six months of experience	329.50
	fifth six months of experience	345.00
	Thereafter, the wage specified in (xi)(i) i.e.	357.50
<b>B. IN THE MAGISTERIAL DISTRICTS OF BLOEMFONTEIN, KIMBERLEY AND KROONSTAD</b>		
(i)	<b>Sewing Machinist, Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer:</b>	
	(i) Qualified:	423.00
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	311.50
	third six months of experience	333.50
	fourth six months of experience	356.00
	fifth six months of experience	378.00
	sixth six months of experience	400.50
	Thereafter, the wage specified in (i)(i) i.e.	423.00
	<b>Set Leader and/or Team Leader:</b>	450.00



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DESCRIPTION OF OCCUPATION		Wage per week
		<i>R</i>
(ii)	<b>General Worker/Pleater:</b>	
	(i) Qualified:	319.50
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	304.00
	Thereafter, the wage specified in (ii)(i) i.e.	319.50
(iii)	<b>Despatch Packer and Layer-up:</b>	
	(i) Qualified:	330.50
	(ii) Learners:	
	first six months of experience	289.50
	second six months of experience	309.50
	Thereafter, the wage specified in (iii)(i) i.e.	330.50
(iv)	<b>Plain Sewer:</b>	
	(i) Qualified:	345.50
	(ii) Learners:	
	first six months of experience	289.50
	Thereafter, the wage specified in (iv)(i) i.e.	345.50
(v)	<b>Sample Machinist :</b>	481.00
<b>C. IN THE MAGISTERIAL DISTRICTS OF FRANKFORT. PARYS AND VREDEFORT</b>		
(i)	<b>Sewing Machinist, Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer:</b>	
	(i) Qualified:	381.00
	(ii) Learners:	
	first six months of experience	263.50
	second six months of experience	283.00
	third six months of experience	303.00
	fourth six months of experience	322.50
	fifth six months of experience	341.50
	sixth six months of experience	361.00
	Thereafter, the wage specified in (i)(i) i.e.	381.00
	<b>Set Leader and/or Team Leader:</b>	405.50
(ii)	<b>General Worker/Pleater:</b>	
	(i) Qualified:	296.00
	(ii) Learners:	
	first six months of experience	263.50
	second six months of experience	280.50
	Thereafter, the wage specified in (ii)(i) i.e.	296.00
(iii)	<b>Despatch Packer:</b>	
	(i) Qualified:	311.50
	(ii) Learners:	
	first six months of experience	263.50
	second six months of experience	287.00
	Thereafter, the wage specified in (iii)(i) i.e.	311.50

DESCRIPTION OF OCCUPATION		Wage per week
(iv)	<b>Layer-Up:</b>	<i>R</i>
	(i) Qualified:	
	(ii) Learners:	305.00
	first six months of experience	263.50
	second six months of experience	284.50
	Thereafter, the wage specified in (iv)(i) i.e.	305.00
(v)	<b>Plain Sewer:</b>	
	(i) Qualified:	
	(ii) Learners:	314.50
	first six months of experience	263.50
	Thereafter, the wage specified in (v)(i) i.e.	314.50
(vi)	<b>Sample Machinist :</b>	
		433.50

- (2) Notwithstanding the definition of "experience", an employee who is transferred from any occupation to an occupation for which a higher qualified wage is prescribed shall dealt with as follows:
- An employee transferred to the machinist occupation shall, if such employee has already completed six months' experience or more, be credited with six months' experience and, irrespective of the wage previously paid to him, he shall be paid a wage in accordance with his credited plus his actual experience as a machinist.
  - If an employee who is a chopper-out is transferred to the class of marker-in, he shall be credited with actual experience as a chopper-out, but with only four half-years. If his experience as a chopper-out exceeds four half-years, he shall continue to receive the wage paid as a chopper-out or the wage according to his credited plus his actual experience as a marker-in, whichever is the higher.
  - In every other case of a transfer, not dealt with in (a) and (b) above, the employee shall be regarded as having no experience but shall continue to receive the wage he received prior to the transfer, until such time as he is entitled to receive an increase according to the experience gained in his new occupation.
  - Should an employee be transferred back to his previous occupation, he shall revert back to the wage paid or due to him in that occupation, according to his experience.
  - A qualified sewing machine operator who is transferred to supervisor category shall be credited with six months' experience as a supervisor and shall be entitled to a wage in accordance with his credited plus his actual experience in that category.
- (3) Reduction in wages not permitted: Nothing in this Collective Agreement shall operate to reduce the wage of an employee who, at any time prior or subsequent to the date of coming into operation of this part of the Agreement, was or may be paid wages in the Industry at a higher rate than the minimum provided in this clause, and such employee shall continue to be paid and be entitled to receive wages at such higher rate as if such higher rates were the minimum in respect of that employee, except where otherwise stated in this part of the Agreement.
- (4) An employee who immediately prior to the date of coming into operation of this Collective Agreement was in receipt of a higher wage than that prescribed for an employee of his class, shall receive an increment equal to the difference between the wage prescribed for an employee of his class in the Agreement and the prescribed wage applicable to such employee.
- (5) Person in charge of a first-aid box: The employee in charge of a first-aid box shall receive R3 per week in addition to his weekly wage.

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- (6) Transitional provision following the 2005 negotiations: In addition to the wage that an employee is entitled to in terms of this part of the Agreement, he shall be entitled to receive, by no later than six weeks from the date from which the Minister declares this part of the Agreement binding by publication in the Gazette (hereinafter referred to as the implementation date) and in equal weekly instalments, an amount equal to the difference between the remuneration paid to him calculated from 1 July 2005 until the implementation date and the remuneration based on his wage, as specified in this part of the Agreement, calculated from 1 July 2005 until the implementation date.

**5. INCENTIVE BONUS SCHEME**

- (1) A wage incentive scheme may be worked in any workplace by mutual agreement between the management, representatives of the trade union and the employees concerned, and may be altered only by mutual agreement between these parties. Such scheme may be terminated by either the employer or the trade union giving not less than one week's notice.
- (2) An incentive scheme may be introduced in respect of such employees employed in a particular section of a workplace: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged on the production of a particular garment, in respect of which the scheme has been introduced.
- (3) Subject to the provisions of clauses 6 (1) and 7 (3), such incentive wage scheme shall enable an employee to earn at least 10 per cent in excess of his ordinary rate of pay for any additional output.
- (4) A copy of the incentive bonus rates and subsequent alterations thereto, agreed on and duly signed by the employer and the secretary of the trade union, shall be filed with the Secretary of the Council, and the employer shall retain a copy thereof and display it in a prominent place easily accessible to his employees.

**6. SHORT TIME**

- (1) Where short time has been or is being introduced in any workplace, an employee who is not required to work on any day shall be given notice of that fact not later than closing time of the working day prior to the day of which his services are not required.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) of this clause that his services will not be required on such day, be employed for at least four hours or be paid wages in lieu thereof.
- (3) Where full-time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.
- (4) Where short time has been introduced in any workplace, the employer shall inform the Secretary of the Council by completing a copy of Annexure B and posting it to P.O. Box 4866, Johannesburg, 2000, within seven days of the commencement of such short time.

**7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES**

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes, showing the name and occupation of the employee, number of hours worked on ordinary time and/or overtime and/or Sunday time, rate of pay and any deductions made. Such payments shall be made weekly, in cash, or may be deposited into the employee's account with a financial institution, or by bank transfer, or by cheque, during working hours, on the nominated pay day of a workplace:

Provided that where an employee's service is terminated other than on the usual pay day of the workplace, any amounts due to him shall be paid immediately on termination. Where a paid public holiday falls on a Friday, such payments shall be made on the last working day immediately preceding such holiday.

- (b) Monthly paid employees shall be paid not later than the last pay day of the month, or on termination of employment if this should not take place on the ordinary pay day of the employee.
  - (c) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (2) An employer shall pay to an employee who, during any part of any one week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the maximum of such different weekly wages for the whole of that week.
- (3) No deductions whatsoever shall be made from the amounts due to an employee, except as provided hereunder, and each amount and the purposes for which it is deducted shall be shown separately on the pay envelope:
- (a) Except where otherwise provided in this part of the Agreement, whenever a weekly paid employee is absent from work. Other than on the instructions or at the request of his employer, a pro rata amount for the actual time lost may be deducted;
  - (b) subject to the provisions of clause 6 of this part of the Agreement, where short time has been introduced a deduction may be made for the actual time not worked;
  - (c) with the written consent of the employee, deductions may be made for insurance or pension funds;
  - (d) contributions to the Council in terms of clause 20 of this part of the Agreement may be deducted;
  - (e) contributions to the Medical Benefit Society in terms of clause 21 of this part of the Agreement may be deducted;
  - (f) with the written consent of the employee, contributions to the funds of the trade union may be deducted;
  - (g) the actual cost of scissors supplied by the employer may be deducted;
  - (h) any amount which an employer is legally or by order of any competent court required or permitted to make may be deducted;
  - (i) contributions to the Provident Fund in terms of clause 29 of this part of the Agreement and/or deductions for housing loan repayments in terms of a housing loan scheme approved by this Council may be deducted;
  - (j) deductions for overalls in terms of clause 27 (3) (a) or (b) may be made;
  - (k) where an employer supplies an employee with tea, he may deduct 20c per week from the employee's wages.
- (4) If, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may only be made from the wage of such employee for the actual time lost in excess of two hours.
- (5) (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2,5% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.



- (c) For the purposes of calculating this bonus, absences of any nature may not be taken into consideration.

## 8. PROPORTION OF RATIO OF EMPLOYEES

An employer shall not employ an unqualified employee unless he has in his employ a qualified employee of the same class, and for each such qualified employee not more than three unqualified employees shall be employed: Provided that for purposes of this clause, an unqualified employee receiving not less than the total wage of a qualified employee of his class, shall be reckoned as a qualified employee.

## 9. HOURS OF WORK

- (1) No employer shall require or permit an employee, other than an employee referred to in subclause (5)-
- (a) to work for more than 42 hours per week;
  - (b) to work for more than five days in any one week;
  - (c) to work on Saturdays and Sundays;
  - (d) to work for more than nine hours, excluding meal intervals in any one day;
  - (e)
    - (i) to work before 07:00 or later than 17:30: Provided that this subclause shall not apply to employees engaged as boiler attendants;
    - (ii) to work during the rest intervals provided for in this clause or during the lunch hour on any day from Monday to Friday, inclusive.
  - (f) to work for more than five hours without a meal interval of at least an hour.
- (2) Notwithstanding the provisions of subclause (1) of this clause, an employer may require or permit an employee to work overtime subject to the provisions of clause 10: Provided that no employer shall require or permit an employee to work more than 13 hours per week overtime in the Magisterial Districts of Bloemfontein, Kimberley and Kroonstad and 12 hours per week in the Magisterial Districts of Parys and Frankfort: Provided further that no employer shall require or permit an employee to work overtime, after completion of his ordinary working hours, for more than one-and-a-half hours on any day, unless he has-
- (a) given notice thereof to such employee before midday;
  - (b) provided such employee with an adequate meal before commencing overtime; or
  - (c) paid such an employee an allowance of R5,00.
- (3) Rest intervals of not less than 10 minutes, during which no work shall be performed, shall be allowed to each employee not later than two-and-a-half hours after the commencement of the morning work period, and as nearly as practicable in the middle of the afternoon work period, and such intervals shall be regarded as time worked.
- Utensils and boiling water for making tea shall be provided by the employer and be made available for the employees at the commencement of each rest interval, and also at 12:30 every day from Monday to Friday, inclusive.
- (4) In addition to the rest intervals stipulated in subclause (3) of this clause, the employees engaged on work on a conveyor belt system shall be given a rest interval of five minutes, which shall be regarded as time worked, after completion of each hour's work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work for more than-
- (i) 45 hours per week; or



- (ii) six days in any one week:

Provided further that the employer may require his watchman to work on the seventh day of the week and shall pay the watchman in addition to his weekly wage an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

**(6) Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:

- (i) Only unemployed people may be recruited for working this shift.
- (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.

- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:

- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
- (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.

- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:

- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
- (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

**10. OVERTIME AND SUNDAY WORK**

- (1) Overtime, that is, time worked in excess of the hours specified in clause 9 (1) of this part of the Agreement, may not be worked without the written permission of the Council.
- (2) Payment for overtime shall be made at the rate of one-and-a-half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (3) An employer shall pay an employee who works on a Sunday-
  - (a) for less than four hours, an ordinary days' wage;
  - (b) for more than four hours, the greater of-
    - (i) double the employee's rate of pay for the number of hours worked; or double an ordinary day's wage; or

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- (ii) pay the employee remuneration at a rate of not less than one-and-a-half times his ordinary rate of remuneration in respect of the total period worked on such Sunday and grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate of not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.

(6) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (ii) time not worked as a result of protected industrial/protest action;
  - (iii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (iv) time not worked as a result of the employer having declared short time;
  - (v) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (vi) the three days family responsibility leave provided for in clause 9 of this part of the Agreement.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

## 11. OUTWORK

No employer in the Industry shall give outwork to be manufactured other than in a workplace registered in terms of clause 12 of this Collective Agreement, nor shall he require or permit any employee to perform any work in the Clothing Industry other than in a workplace provided, equipped, maintained and controlled by the employer.

## 12. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall, within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Secretary of the Council the particulars set out in Annexure H to this part of the Agreement.
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars set out in Annexure H to this part of the Agreement shall be provided in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Secretary of the council, a notice of the change in writing setting out full particulars of such change within seven days of its taking place:
  - (a) Change of name;
  - (b) change of address;

- (c) changes in the composition of its members or partners or directors;
- (d) the sequestration or liquidation of the business;
- (e) the transfer or abandonment of the business;
- (f) the acquisition of another business which is covered by this part of the Agreement;
- (g) the commencement of any other business covered by this part of the Agreement.

### 13. PAID HOLIDAYS AND ANNUAL LEAVE

- (1) (a) An employer shall grant to each of his employees, during the month of December or January of each year, annual leave on the following basis:
  - (i) In the case of an employee (other than a watchman) who was, prior to the commencement of the annual leave, in the firm's employ on or before 1 February of any year, and who remained in such employ until 1 December of that year, 15 working days on full pay.
  - (ii) In the case of a watchman the same provisions as contained in (a) (i) above shall apply, except that 23 working days' leave shall be granted: Provided that an employee who was absent from work for a continuous period in excess of 12 weeks shall be paid holiday pay in terms of subclause (2) of this clause.
- (b) The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave.
- (2) (a) An employee who was employed from 1 February for less than one year from the date of commencement of the previous annual leave period or whose employment terminated before commencement of the annual leave period, provided his employment with the employer endured for a period of not less than four weeks, shall be paid holiday pay calculated on the basis of 1,25 times the daily wage in respect of each completed month of service, inclusive of the leave period.
- (b) The holiday pay due in terms of paragraph (a) shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave, or if the employee's employment terminates before that date, on the day he leaves the employer's service.
- (3) In determining the period of employment in respect of which holiday pay is to be calculated in terms of subclause (2), the expression "employment" shall be deemed to include any period during which an employee-
  - (a) is absent from work on the instruction or at the request of the employer;
  - (b) is on sick leave, provided a medical certificate for the period or periods of absence has been produced;
  - (c) is on maternity leave, provided a medical certificate to this effect has been produced.
- (4) (a) Every employer shall grant to each of his employees New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill as paid holidays and no employer shall employ an employee and no employee shall work on these 12 days.
- (b) An employer shall grant to all of his employees who have worked the whole morning period of the Thursday preceding Good Friday, time off from the commencement of the normal interval until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.

Provided further that if an employee has to work on any public holiday, such employee shall be remunerated at time and a half the ordinary hourly rate for the time so worked, in

addition to the entitlement of the day's pay.

- (5) In the event of an employer granting to his employees in terms of subclause (1) of this clause a leave period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill or New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the commencement of the leave, and to each employee whose contract of service is terminated within the 14 days prior to the commencement of the leave period. Provided that the employee concerned was in the continuous employment of his employer for a period of not less than six months immediately prior to the leave period; Provided further that the contract was not terminated by the employee concerned, or that he was not summarily dismissed for any good cause recognised by law as sufficient.
- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause or, alternatively, shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the "weekly wage" divided by five, and "full pay" means the "wage" paid immediately prior to the commencement of the holiday leave prescribed by subclause (1).
- (8) Notwithstanding the provisions of subclause (2) an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days: Provided that he shall afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay should the majority of his employees so agree: Provided further that an employer shall notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Council be notified thereof in writing.
- (9) (a) An employee shall be entitled to six consecutive months' maternity leave, of which five months shall be unpaid and one month paid in terms of clause 32 (1).
- (b) An employee may commence maternity leave-
- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- (ii) on the date which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave of six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (e) An employee shall give an employer notice in writing, unless the employee is unable to do so, of the date on which the employee intends to
- (i) commence maternity leave; and
- (ii) return to work after maternity leave;
- (f) Notification in terms of subclause (e) shall be given-
- (i) at least four weeks before the employee intends to commence maternity leave; or
- (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.



- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
  - (i) the employee is required to perform night work or work that poses danger to her health or safety or that of her child; and
  - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employ for longer than four months and who works for at least four days a week for that employer, three days' unpaid family responsibility leave, which the employee shall be entitled to take-
  - (i) when the employee's child is born;
  - (ii) when the employee's child is sick; or
  - (iii) in the event of the death of-
    - (aa) the employee's spouse or life partner; or
    - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling;
- (b) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (c) Before granting an employee family responsibility leave, in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (1) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (e) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months, employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two-and-one-fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first pay day after the last 12 months' period in respect of which he was granted four weeks' holiday leave, as specified in this subclause. For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

#### 14. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of subclause (1) (b) (ii), (iii) and (iv) of this clause! written notice, in the form of Annexure J to this part of the Agreement, of not less than five working days, which for the purposes of this clause shall include paid holidays, to take effect from the working day following that on which it is given shall be given by an employer or an employee to terminate a contract of service:
  - (a) Provided that this shall not effect-
    - (i) the right of an employer or an employee to terminate the contract of service without notice for any good cause recognised by law as sufficient;
    - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week.
  - (b) Provided further that-
    - (i) an employer may pay an employee wages for and in lieu of the specified period of notice;



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- (ii) an employee who is working short time may terminate his employment without giving notice;
  - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 working days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall be deemed to be a trial period (unless otherwise stated in a written agreement), and such employment may be terminated either by the employer or the employee at any time within such trial period by giving 24 hours' notice;
  - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first pay day of the month following that in which notice is given.
- (2) An employee laid off during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay for the unexpired part of such notice period.
- (3) No employer shall terminate the services of any employee by reason of such employee's
- (a) approaching confinement: Provided that the employee returns not later than six months after the date of confinement leave;
  - (b) absence from work through illness:  
Provided that-
    - (i) the employer is notified within 5 working days of the commencement of such illness; and
    - (ii) a medical certificate for the period of absence is provided on the employee's return to work;
  - (c) absence on leave, the written permission of the employer having been obtained;
  - (d) partial disablement through injury on duty.
- (4) (a) In the event of an employer failing to give notice or permit the employee to work the required notice period, or an employee failing to give and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b) of this subclause, an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.
- (b) Subject to the provisions of subclause (5), the employment of an employee who absents himself from work for a period of five consecutive working days without notifying his employer may be terminated by the employer without notice: Provided that-
- (i) the employer attempts to contact the employee in writing at the last known address supplied by the employee;
  - (ii) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (c) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Bargaining Council not earlier than the sixth nor later than the 11 th day of such absence, together with any wages due in terms of this part of the Agreement, and a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a) hereof.
- (5) Subject to the provisions of subclause (4) (a) and (b), an employee who is discharged or leaves without notice during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay or shall forfeit such wages for the unexpired period of such notice.

- (6) The period of notice shall not run concurrently with nor shall notice be given during an employee's absence on leave granted in terms of clause 13.
- (7) Subject to the provisions of subclause (3) (b), no notice shall be given during absence on sick leave or confinement leave as provided for in clause 13 (9);
- (8) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

#### 15. PREMIUMS

No premiums shall be charged or accepted by an employer for the training of an employee: Provided that this clause shall not apply in respect of a training scheme to which the employee is legally required to contribute.

#### 16. TOOLS

- (1) Every employer may, at the request of his employees, supply scissors for the purpose of their employment at the price paid therefor by the employer.
- (2) The cost of the scissors may be deducted from the employee's wages in weekly instalments, as mutually agreed upon between the employer and employee.
- (3) The employer shall keep the scissors sharpened and in good order, free of charge.

#### 17. CONTRACTS

(1) **Existing contracts:**

Any contracts of service in operation at the date of coming into operation of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

(2) **Fixed-term contracts:**

- (a) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (b) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this Collective Agreement for other employees of the same class/job category.
- (c) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (d) Copies of all fixed-term contracts (as well as accompanying exemption application where applicable) concluded in the Industry shall be forwarded to the Secretary of the Council, PO Box 4866, Johannesburg. 2000, for registration and processing by no later than seven days after commencement of duty of the employee.

#### 18. ENGAGEMENT, TRANSFER AND TERMINATION FORMS

- (1) An employer shall on engaging an applicant for work, require such applicant to produce a service card issued by the Council, which shall be in the form of Annexure C. In the case of an employee who does not possess a service card, the employer shall complete an application for service card form as per Annexure D.

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- (2) If during or on completion of the trial period in terms of clause 14 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter on the service card or application form, the name of his factory, the occupation of the employee, and the date of commencement of employment, and send the card to the Secretary of the Council, within seven days of engagement as provided for in subclause (1) of this clause.
- (3) The Council shall extract such information as may be required from the service card, and return it to the employer with the least possible delay. In the case of an application form, the Council shall issue a service card in respect of the new entrant to the Industry and forward it to the employer. The employer shall retain the service card until the employee leaves his employ.
- (4) Whenever an employer transfers his employee to another grade, in terms of clause 4 (2), he shall, within 14 days from the date of transfer, complete a transfer form as per Annexure A and forward it to the Council. The Council shall, with the least possible delay, acknowledge such transfer notice to the employer.
- (5) On the termination of services of an employee, except in terms of clause 14 (1) (b) (iii), an employer shall supply the employee with his service card, duly completed by the employer, stating the grade or grades in which the employee was employed by the firm, the total weekly wage paid prior to termination and the date of termination.

## 19. EXEMPTIONS

### A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation, and in addition, shall set out the following information:
  - (a) The period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this part of the Agreement from which the exemption is requested.
  - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought and the response resulting from such consultations. Such consultations shall include a registered trade union where such union has members employed at the workplace.
  - (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.

- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, and in form the applicant of its decision within 45 days from the date of lodgement of the application with the General Secretary. If notification of the decision is not received within this period, the application shall be deemed to have been refused.
  - (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions of this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
  - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred to appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.



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- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the amount thereof: Provided that such a fee shall be consistent with-
    - (i) the cost incurred for the hearing of the appeal; and
    - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
  - (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6)
- (a) The Exemptions Board shall consist of a single independent umpire appointed by the
  - (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
  - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
  - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levy, or, if so, an agreed payment plan exists in respect of any such outstanding monies. Arrears, for this purpose, shall mean any payment of Bargaining Council levies or employer or employee or trade union subscriptions that remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the Industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of employees affected at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.



- (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transfer-ability, administration, management, costs, growth and stability. The alternative proposed shall, in all material respects, offer benefits at least equal to, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period for which exemption is sought
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act. Any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.
- B. For any employer that is a party or a member of a party to the Council and its employees represented by a trade union representative**
- (1) Exemption from the provisions of this part of the Agreement will be granted in the following circumstances:

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- (a) Where an employer that is a party or a member of a party to the Council and its employees, represented by a trade union representative, as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
- (i) the collective agreement does not contravene the minimum employment standards in this part of the Agreement and in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
  - (ii) wage rates and contributions to social funds, including the Council's fund, may not be amended without the Council's approval.
- (2) An employer that is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

## 20. COUNCIL FUNDS

The funds of the Council, which shall be vested in and administered by the Council, shall be provided in the following manner:

- (1) (a) Every employer shall, on every pay day of each week and from the first pay day of coming into operation of this part of the Agreement, deduct R1,00 from the wages of each of his employees for whom minimum wages are prescribed in this Agreement: Provided that no deduction shall be made from the wages of an employee who has worked for less than 20 hours in the week in which the deductions fall due: Provided further that no deductions shall be made from the holiday pay paid to each employee when the workplace closes in terms of clause 13 (1) of this part of the Agreement.
  - (b) An employer shall, in respect to each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of R1,10 per week.
- (2) (a) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Secretary of the Council, PO Box 4866, Johannesburg, 2000, within seven days from the end of the month in which the deductions fall due and such payment shall be accompanied by a completed copy of Annexures E and F, in the case of employers in the Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Kimberley, Parys and Vredefort.

- (b) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.
- (c) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum:

Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general funds of the Council.

#### 21. MEDICAL BENEFIT SOCIETY

- (1) The Free State and Northern Cape Clothing Industry Medical Benefit Society, (hereinafter referred to as the "Society"), originally established on 23 March 1967 in terms of Government Notice No. R 379, is hereby continued.
- (2) Every employer in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort shall. On the pay day of each week, deduct R4,30 from the wage of each of his employees for whom minimum wages are prescribed in this part of the Agreement.
- (3) The employer shall pay the total amount so deducted, together with an amount of R6,50 to be contributed by him, and a statement in the form of Annexures E and F to this part of the Agreement, to the Secretary of the Council, P.O. Box 4866, Johannesburg, 2000.
- (4) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.
- (5) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council the interest may accrue to the general funds of the Council.
- (6) On expiry of this part of the Agreement by effluxion of time of cessation for any other cause, the Society shall continue to be administered by the Management Committee, and in the event of a subsequent agreement providing for the continuation of the Society not being negotiated within one year from the date of expiry of this part of the Agreement, or the Society not being transferred within such period to a society constituted for the same or a similar purpose, the Society shall be liquidated by the Management Committee.

#### 22. EXTRACT FROM WAGE REGISTERS

Every employer shall forward to the Secretary of the Council, P.O. Box 4866, Johannesburg, 2000, copies, in triplicate, of his wage register as per Annexure G, not later than one week after the first pay day in every quarter.

#### 23. TRADE UNION LABOUR

##### A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
  - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or

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- (b) who does not become a member of the trade union within a period of 90 days from such date.
  - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Regional Chamber, P O Box 4866, Johannesburg, 2000, within seven days from the end of the month in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this agreement this part of the Agreement no union membership subscriptions may be -
- (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will not be applicable to:
- (a) clerks; or
  - (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or
  - (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or
  - (d) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

**B. RIGHTS AND ACCESS TO PREMISES**

- (1) Any office bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.



- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
  - (a) Such facilities shall be available during the normal working hours of the business and, while normal output is maintained, including lunch and tea breaks.
  - (b) The granting of facilities shall be subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council from time to time.
  - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

#### **C. TRADE UNION REPRESENTATIVES-TIME OFF**

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:

Nine days per annum per trade union representative, pooled for each workplace and to be divided between various trade union representatives at the discretion of the Union: Provided that

  - (a) all such leave shall be subject to the operational requirements of the workplace;
  - (b) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
  - (c) in the case of employers not referred to in paragraph (b), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
  - (d) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

#### **D. SACTWU EDUCATION BURSARY SCHEME**

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 20 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount so contributed per month shall be submitted to the Secretary of the Council, PO Box 4866, Johannesburg, 2000, within 10 days of the month in which the contributions fall due. The Secretary of the Council shall within 15 days of receipt forward such contributions to the General Secretary of the trade union, together with an analysis of the amounts received from employers, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.

#### **E. SACTWU HIV/AIDS PROJECT**

- (1) There is hereby established an HIV/AIDS Project, known as the SACTWU HIV/AIDS Project.
- (2) Every employer to whom this part of the Agreement applies shall each week for each employee in his employ contribute an amount of 10 cents to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Secretary of the Council, PO. Box 4866, Johannesburg, 2000, within



seven days of the end of the week in which the contribution fall due.

- (3) The total amount so collected by the Council shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

#### **F. TRADE UNION AGENCY SHOP**

- (1) **Scope-** Agency fees will apply to employees who –
- (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this Agreement this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
- (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (b) shall pay such monies to the Regional Secretary of the Regional Chamber, P O Box 4866, Johannesburg, 2000, within 14 days of having made such deductions.
  - (c) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be –
- (a) paid to a political party as an affiliate fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### **24. POWERS OF DESIGNATED AGENTS**

- (1) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this part of the Agreement in terms of clause 33 of this part of the Agreement or the Disputes Procedure in terms of clause 34 of this part of the Agreement may
- (a) subpoena for questioning any person who maybe able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the designated agent or to be questioned or to produce that book, document or object;
  - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
  - (d) at any reasonable time, but only after obtaining the necessary written authorisation

- (i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds to be there;
  - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
  - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;
- (e) inspect and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.
- (2) A subpoena issued for any purpose referred to in subclause (1) shall be signed by the Secretary of the Council and shall
  - (a) specifically require the person named in it to appear before the designated agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (3) The written authorisation referred to in subclause (1) (d)-
  - (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on the application of the designated agent setting out under oath or affirmation the following information-
    - (i) the nature of the dispute;
    - (ii) the relevance of any book, document or object to the resolution of the dispute;
    - (iii) the presence of any book, document or object on the premises; and
    - (iv) the need to enter, inspect or seize the book, document or object;
  - (b) in all other cases, may be given by the Secretary of the Council.
- (4) The owner or occupier of any premises that the designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide the facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.
- (8) A person commits contempt of the designated agent
  - (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend the time and place stated in the subpoena;

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- (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
  - (c) by refusing to take the oath or to make an affirmation as a witness when the designated agent so requires;
  - (d) by refusing to answer any questions fully and to the best of that person's knowledge and belief subject to subclause (6);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
  - (f) if the person wilfully hinders the designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults, disparages or belittles the designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.
- (9) The designated agent may, on, recommendation of the Council, refer any contempt to the Labour Court for an appropriate order.

**25. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR**

- (1) No person shall employ a child
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, providing this is 15 years of older.
- (2) No person shall employ a child in employment
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk a child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour is prohibited.
- (4) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who employs a child in contravention of subclauses (1) to (4) commits an offence.

**26. EXHIBITION OF AGREEMENT**

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this Collective Agreement in one official language.

**27. OVERALLS**

- (1) An employer shall issue within four weeks of the commencement of employment of an employee, two new overalls to such employee and shall issue to each and every employee in his employment two new overalls every 18 months on or before 1 January or 1 July, as the case may be.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and

laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

- (2) Ownership of any overall issued to any employee shall be ceded to such employee 12 months after the date of issue of such overall.
- (3) The employer shall be entitled to deduct the following amounts in respect of overalls from an employee on termination of employment:
  - (a) R7,50 per overall if such termination occurs within six months after the date of issue of overalls;
  - (b) R5,00 per overall if such termination occurs within seven to twelve months after the date of issue of the overalls.
- (4) Should an employer fail to provide his employee with an overall or overalls as specified in subclause (1) within 60 days of the due date of issue and having been given two weeks written notice by the Council, such employer shall be liable to pay to his employee, as a penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days that has lapsed from the due date of issue of such overall or overalls.
- (5) If an employee fails to wear an overall as specified in subclause (1), the employer shall have the right to advise such employee that failure to appear at work with an overall on the following day will result in a new overall being issued, in such case an amount equal to the cost of such overall, but not exceeding R15,00, may be deducted from the wage due to such employee on the first pay day following the issue of such overall.

## **28. SAFEGUARD OF WORKERS' EARNINGS**

- (1) Every employer shall, within two months of the date of coming into operation of this Collective Agreement or within two months of the coming into operation of the workplace of a new factory, give a bankers' or other guarantee, acceptable to the Council, payable on demand in the event of the employer's insolvency or otherwise.
- (2) Such guarantee shall be used to cover the payment of all contributions due to the Council and all benefit funds established in terms of this part of the Agreement and the payment of holiday pay and wages due to his employees: Provided that the amount so guaranteed shall be an amount equal to two months' contributions for all his employees and three weeks' wages for each and every employee in his employ.

## **29. PROVIDENT FUND**

- (1) The Provident Fund for the Clothing Industry (Free State and Northern Cape), (hereinafter referred to as the "Fund"), originally established on the 1st pay day in September 1971 in terms of Government Notice No' R. 321 dated 1 March 1974, is hereby continued.

The purpose of the Fund shall be the provision of benefits to employees.



- (2) The Fund shall consist of
- (a) contributions paid into the Fund in terms of subclause (3) of this clause;
  - (b) interest derived from the investment of any moneys of the Fund;
  - (c) any other sums to which the Fund may become entitled or which may be donated to the Fund;
  - (d) any moneys held in trust by the Council for the purposes of the Fund.
- (3) Contributions:
- (a) Every employer shall on the pay day of each week deduct from the wage of each employee (hereinafter referred to as "contributor") to whom this clause applies and who has worked for at least 20 hours in the week in which the deduction falls due, an amount equal to 5,75% of the basic weekly wage of the contributor. The employer shall add thereto an amount equal to 6,5%, being the employer's contribution in respect of each employee. The total amount so deducted from the wages of his employees together with the amount contributed by the employer shall be paid to the Secretary of the Council, P.O. Box 4866, Johannesburg, 2000, within seven days from the end of the month in which the deductions fall due, accompanied by a completed return in the form of Annexures E and F to this part of the Agreement.
  - (b) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general Funds of the Council.

### 30. ADMINISTRATION AND INTERPRETATION OF AGREEMENT

The Council shall be the body responsible for the administration of this Collective Agreement and may give expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

### 31. SEVERANCE PAY

- (1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer: Provided that the previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.
- (2) An employee, who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Where an employee aged 50 years or older, subject to subclause (5) below, is retrenched, such employee shall receive the stipulated enhanced Provident Fund benefits due in terms of the rules read with the constitution of the fund. The employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in subclause (1) above where the enhanced Provident Fund benefit is less than the severance pay.
- (5) Where an employee reaches the stipulated retirement age of 55 years or older, the employer shall have no liability for retrenchment pay.



### 32. MATERNITY BENEFITS

- (1) Subject to clause 13 (9) (a) of this part of the Agreement, the Medical Benefit Society shall pay one month's wages (4,33 weeks' wages) to an employee going on maternity leave: Provided that such employee has one or more years' service with the same employer and a medical certificate is produced. An employee may take up to 6 months' maternity leave, but may return earlier on giving two weeks' notice to the employer of her intention to return to work.
- (2) A substitute employee may be employed in the place of a person on maternity leave for the duration of the maternity leave. Such substitute employee's employment may be terminated by giving the required notice on the return of the employee who went on maternity leave.

### 33. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement have been breached then the following procedure shall apply to enforce compliance:
  - (a) The Council shall request a designated agent to investigate the alleged breach and/or refer the matter to the Council.
  - (b) If, upon completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
  - (c) At the end of the conciliation process the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
  - (d) Upon receipt of the report, the Secretary of the Council may
    - (i) require the designated agent to make further investigations; or
    - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
    - (iii) take such other steps as may be deemed reasonable.
  - (e) If the Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
  - (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
  - (g) The Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.
  - (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to
    - (i) give evidence;
    - (ii) call witnesses;
    - (iii) question the witnesses of any other party;
    - (iv) address concluding arguments to the arbitrator;
    - (v) be represented by
      - (aa) a legal practitioner; or

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- (ab) an office bearer or official of his/her trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of the Agreement;
  - (ii) to make any appropriate award that gives effect to the Collective Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings.
  - (iv) to make any order as to costs that he/she deems appropriate and where the Act provides for such an order to be made or for the Council to recover its costs of providing the arbitration service:
 

Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 34 (3) (c) (iii) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's cost of dealing with the dispute;
  - (v) to make an award in the absence of a party who is alleged to have breached the agreement if
    - (aa) the party fails to appear in person or be represented at the arbitration proceedings;
    - (ab) proof presented that such party has been notified of the proceedings, and notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
    - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement.
  - (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown, and without limiting the generality hereof the arbitrator shall have this power if
    - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
    - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
    - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator, together with any reasons, shall be served on all interested parties by the Council.
- (k) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Labour Relations Act.

## 34. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:

- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
- (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators**

- (a) The Council shall appoint:
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.

- (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(4) *Dispute involving non-parties to the Council***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

**(a) *Referral and conciliation of disputes:***

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.

- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
  - (iv) The conciliator may, during conciliation proceedings:
    - (aa) mediate the dispute;
    - (bb) conduct a fact-finding exercise; and
    - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
  - (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
  - (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
  - (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.
- (b) Adjudication of disputes referred to the Council for arbitration:**
- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
    - (aa) the Act requires that the dispute be arbitrated; or
    - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
  - (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
  - (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
  - (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
  - (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
  - (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
    - (aa) give evidence;



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- (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
  - (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
  - (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
  - (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, the arbitrator shall have this power if:
    - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
    - (bb) the award is ambiguous or contains an obvious error or omission;
    - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
  - (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
  - (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council -**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the

procedure set out in subclause (4) above, subject to subclause 5 (d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council -**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
    - (aa) publicising the contents of the agreement;
    - (bb) conducting inspections;
    - (cc) investigating complaints;
    - (dd) endeavouring to secure compliance with the agreement through conciliation; or
    - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
  - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
  - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
  - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
  - (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.

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- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to 4(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138(9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

### 35. INDUSTRY PROTECTION FUND

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents: Provided that no deductions shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.

- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an equal amount per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chamber.

- (8) The moneys so collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2):
  - (a) 'Buy Local' campaigns;
  - (b) combating customs fraud and illegal imports;or for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Free State and Northern Cape Clothing Manufacturers' Association (FSNCCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and be subject to approval by the Registrar: Labour.
- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the FSNCCMA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the FSNCCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the FSNCCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the FSNCCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure-
  - (a) is in terms of the approved plan;
  - (b) is clearly classified by strategy, activity and the nature of the expense; and



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- (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the FSNCCMA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the FSNCCMA for unauthorised purposes or activities and for which SACTWU or the FSNCCMA, have been paid or reimbursed, may be recovered by the Regional Chamber from SACTWU or the FSNCCMA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the FSNCCMA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard of conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

### **36. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

- (1) This part of the Agreement shall remain in force until 31 August 2006: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2005.
- (2) To parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

### **37. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING**

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.



**38. PRODUCTIVITY**

- (1) An employer shall be entitled to initiate plant level discussions with employees for the introduction of a productivity scheme.
- (2) Should such discussions lead to an agreement, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (3) Should such discussions not lead to an agreement, the matter shall be so concluded.
- (4) Discussions referred to in sub-clauses (1) to (3) shall not be subject to the declaration of disputes from either party, and neither party shall be entitled to pursue industrial action in support or in consequence of such discussions.
- (5) The provisions of this clause shall not detract from the union's right to table productivity demands at the level of the Council and to negotiate concerning these in terms of the normal negotiating procedure of the Council.

**PART C : PROVISIONS FOR THE KWAZULU-NATAL REGION****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
  - a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
  - b) in the Magisterial Districts of Chatsworth, Durban, Inanda, Pinetown, Pietermaritzburg and Lower Tugela.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall-
  - (a) apply in respect of employees for whom wages are prescribed in this part of the Agreement; and
  - (b) not apply in respect of employees whose basic wages exceed two and a half times the wage rate for a qualified Grade 1 employee or whose occupation is monthly paid and of a managerial, specialist, technical or non-production related nature.
- (3) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (4)
  - (a) The purpose of this part of the Agreement shall be to establish levels of remuneration and other conditions of employment for employees without seeking to restrict entrepreneurial initiative and employment opportunities.
  - (b) Employers employing five (5) or less employees shall, upon application to the council in terms of clause 23, be exempted from this part of the Agreement.
  - (c) Where an employer or an employee can satisfy the Council that any of the provisions of this part of the Agreement are restricting entrepreneurial initiative and/or employment opportunities, such employer or employee may apply to the Council for exemption from those specific provisions in terms of clause 23 of this part of the Agreement.
- (5) Clauses 1(1)(a), 2, 4(5), 23B and 38(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

**2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

### 3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Act shall have the same meaning as in the Act. Any reference to an Act includes any amendments of such Act, and, unless the contrary intention appears, any reference to one gender shall include the other, further, unless inconsistent with the context-

#### A. General Definitions

**"Accounting Officer"** means -

- (a) any Manager or Secretary of an establishment who is a member of a recognised profession as set out in section 60 of the Close Corporations Act, 1984; and
- (b) any other person approved by the Council.

**"Act"** means the Labour Relations Act, 1995;

**"Clothing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear, nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

#### A. and includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes-**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a Council which amalgamated to form the National Council, who has given effect to this and other agreements or who has received due exemption therefrom, who is up to date with Council and any benefit fund contributions or who has implemented a signed Council- approved arrears repayment plan, and who has registered all permanent and contract employees with the Council;

**"contract worker"** means an employee who is employed on a fixed-term contract;

**"Council"** means the Kwazulu-Natal Chamber (formerly the Bargaining Council for the Clothing Industry (Natal) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"earnings"** means the total remuneration due to an employee for the time actually worked;

**"employee"** means -

- (a) any person within the scope of application of this part of the Agreement as set out in clause 1, excluding an independent contractor, who works for another person in the Clothing Industry and who receives, or is entitled to receive, any remuneration; and
- (b) any other person within the scope of application of this part of the Agreement as set out in clause 1, who in any manner assist in carrying on or conducting the business of an employer in the Clothing Industry.

**"establishment"** means any place in which any operation in connection with the Clothing Industry is carried on;

**"experience"** means the total period of employment an employee has had in the Clothing Industry, whether within the Republic of South Africa or elsewhere, in any capacity other than as a driver of a motor vehicle, or mechanic, and includes-

- (a) in the case of a clerical employee, all periods of employment which such employee has had as a clerical employee, irrespective of the trade, industry or undertaking in which such experience was gained;
- (b) in the case of a retail or private dressmaker seeking employment in the Clothing Industry in a capacity other than that of a clerical employee, traveller, mechanic, belt man, boiler attendant or driver of a motor vehicle, half of his total experience as a retail or private dressmaker;
- (c) in the case of a presser and/or folder who has been in the Laundry Trade, seeking employment as a presser, ironer and/or folder in the Clothing Industry, half of his total experience in the Laundry Trade;
- (d) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are prescribed in this part of the Agreement shall entitle the employee to one increment on the appropriate wage scale;

**"hourly wage or rate"** means the weekly wage divided by 42½.

**"Laundry Trade"** means the trade in which employers and employees are associated for the purpose of laundering, cleaning or dyeing all types of woven, spun, knitted or crocheted fabrics or articles made from such fabrics, including all operations incidental thereto or consequent thereon, if carried out by such employers and their employees;

**"learner"** means an employee whose period or periods of employment do not entitle him to be paid the qualified wage prescribed in clause 4 (1) for an employee of that class;

**"monthly wage"** means the weekly wage multiplied by four and one-third;

**"National Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"night shift"** means any period of work performed in an establishment, the major portion of which falls between the hours 18:00 and 06:00;

**"paternity"** means any event connected to the birth or adoption of a child parented by a male employee;

**"piece-work"** means any system by which earnings are calculated upon the quantity or output of work performed;

**"premium"** means, without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return for the training of an employee;

**"qualified employee"** means in relation to an employee in the Industry, an employee other than a learner, labourer, watchman and driver of a motor vehicle;

**"qualified wage"** means the maximum wage prescribed in clause 4 (1) for an occupation;

**"rates"** means piece-work rates or rates of payment for overtime;

**"retail dressmaking"** means the making of single garments for girls and women to the measurement of individual persons, not as special measure orders from dealers whose customers' measurements are taken by or the responsibility of such dealers;

**"retail millinery"** means the making of hats in shops for sale in such shops and the making of hats to the measurements of individual persons;



**"task-work"** means the setting by an employer or his representative to an employee of a definite number of garments or portions of garments to be made up by such employee in a specified time;

**"unladen mass"** means the mass of any motor vehicle and/or trailer as expressed in a licence or certificate issued by a licensing authority in respect of such motor vehicle or trailer: Provided that in the case of a two or three-wheeled motor vehicle (other than a mechanical horse), the unladen mass shall be deemed to be under 454 kg;

**"weekly wage" or "wage"** means that portion of the remuneration payable in money to an employee in respect of the ordinary hours of work set out in clause 9 (1);

**"workshop"** means any premises in which one or more employees are engaged on operations in the Clothing Industry.

**B. Definitions of the occupations, capacities and duties of employees in the Clothing Sector only:**

**"assistant head cutter"** means a person who assist the head cutter in creating designs, styles, fashions and in making patterns, grading patterns and planning cutting jobs;

**"assistant storeman"** means an employee other than a labourer who, under the supervision of a storeman, assists in issuing or receiving goods;

**"automatic hydraulic hat presser"** means an employee operating an automatic hydraulic hat press used solely for shaping hats;

**"bandknife cutter"** means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings with a bandknife;

**"baster"** means an employee engaged in hand sewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e. hand sewing of linings of coats into position preparatory to sewing the edge seams;

**"belt man"** means an employee other than a learner mechanic, engaged in fixing machine belts, oiling bearings, filling oil cans and similar work and assisting the establishment's mechanic;

**"boiler attendant (Clothing)"** means an employee who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in an establishment, and who may stoke, rake, slice and draw the fire in such boiler;

**"cardboard box maker"** means an employee engaged in operating a cardboard box making machine;

**"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton left in the garments by previous operators;

**"clerical employee"** means an employee who is engaged in-

- (a) writing, typing and filling;
- (b) operating a calculating machine, computer terminal, punch card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk (clothing), storeman, shipping clerk, invoice clerk, work study clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, notwithstanding the fact that clerical work may form part of such employee's work.

**"clicker"** means an employee who cuts out parts of garments from dies using a mechanical or hydraulic press;

**"coat-turner"** means an employee engaged in turning coat facings out after machining;

**"conveyor" or "conveyor belt"** means a special machine used for the purpose of conveying articles or shirts and/or clothing from one employee to another on an automatic moving belt;

**"conveyor feeder"** means an employee responsible for feeding prepared parts of garments on to a conveyor for further operations and who may be assisted by one or more sorters;

**"cutter"** means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings by any method;

**"despatch packer (Clothing)"** means an employee who, under the supervision of a foreman or clerical employee, is wholly or mainly engaged in making up orders and in packing goods for transport, including the sealing of cellophane bags by hand or machine, or delivering in connection with the despatch department of an establishment;

**"dressmaker"** means a person engaged in making dresses to individual measurements for private persons;

**"driver 1"** means the driver of a motor vehicle with unladen mass of less than 454 kilograms;

**"driver 2"** means the driver of a motor vehicle with unladen mass of between 454 and 2 722 kilograms;

**"driver 3"** means the driver of a motor vehicle with unladen mass of between 2 723 and 4 540 kilograms;

**"driver 4"** means the driver of a motor vehicle with unladen mass of more than 4 540 kilograms;

**"examiner"** means an employee who examines finished garments for quality;

**"factory clerk (Clothing)"** means an employee who is engaged in one or more of the following duties and capacities:

- (a) Calculating bonus payments from production schedules for the computation of wages;
- (b) checking or recording for production control;
- (c) copying invoices or other documents by machine or hand;
- (d) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (e) checking attendance records or recording particulars of employees at work or absent from work, preparing wage cards or envelopes for subsequent use by another employee;
- (f) checking invoices or other documents;
- (g) filing of documents;
- (h) recording particulars of waste.

**"finisher by hand"** means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats; fastening or serging sleeve-heads; felling silk facings already basted into position; making button-holes by hand, felling sleeve-head linings, holding such in position with the fingers; beader or embroiderer by hand.

**"fitter-up"** means an employee who takes the outside garments together with the cut out linings (called trimmings) and adjusts the outside and insides together accurately so that parts may go forward to the machine to be put together correctly;

**"folder"** means an employee engaged in the folding of garments by machine or by hand and buttoning up of garments;

**"foreperson (Clothing)"** means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his/her care in a factory or a department;

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**"General Worker Heavy Work"** means an employee who is engaged in one or more of the following occupations:

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) loading or unloading vehicles, trailers or international standard containers;
- (c) carrying or stacking goods;
- (d) mixing rubber solution for rubberised garments;
- (e) general gardening work;
- (f) washing or polishing of floors and staircases by machine or by hand.

**"General Worker Light Work"** means an employee who is engaged in one or more of the following occupations:

- (a) sweeping with a broom and/or dusting and wiping down chairs and tables;
- (b) folding and/or inserting mail, affixing postage stamps or labels for posting;
- (c) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (d) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (e) delivering letters or messages or light parcels within the factory premises;
- (f) operating a duplicating and/or addressograph and/or franking machine;
- (g) mopping and/or washing of toilet facilities.

**"Grade I employee"** means an employee engaged in one or more of the following duties or capacities:

- (1) Baster;
- (2) clicker;
- (3) conveyor feeder;
- (4) examiner;
- (5) finisher by hand;
- (6) fitter-up;
- (7) folder;
- (8) lay copier;
- (9) machinist;
- (10) maker of bows for dresses;
- (11) operator of automatic lace, embroidery or monogramming machine;
- (12) presser;
- (13) seam welder;
- (14) setter of automatic pleating machines;
- (15) shaper;
- (16) sloper;
- (17) any other employee not elsewhere specified;
- (18) factory clerk.

**"Grade A Employee"** means an employee engaged in any one of the following duties or capacities:

- (1) General worker heavy work;
- (2) layer by machine;
- (3) underpresser.

**"Grade II employee"** means an employee engaged in any one or more of the following duties or capacities:

- (1) Assistant storeman;
- (2) automatic hydraulic hat presser;
- (3) belt man;
- (4) boiler attendant;
- (5) cardboard box maker;
- (6) cleaner;
- (7) coat turner;
- (8) covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt having been machined together;
- (9) cutter of traveller's swatches;
- (10) despatch packer;
- (11) eyelet punching and letting;
- (12) guiding material with paper through automatic pleating machine;
- (13) hat sprayers, i.e. those spray painting hats;
- (14) ironer of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;
- (15) marker;
- (16) operator of hand/or machine-operated button-covering machine;
- (17) operator of a shrinking press;
- (18) operator of a semi-automatic or automatic fusing machine;
- (19) operator of a semi-automatic press stud-machine;
- (20) operator of zip machine;
- (21) packer;
- (22) patent turner (hand or machine);
- (23) pinner;
- (24) plain sewer;
- (25) putting fasteners on caps;
- (26) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (27) putting prepared formers in steambox and taking them out again in hand or loom pleating;
- (28) rivetting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;

- (29) rubberising, i.e. waterproofing processes on the work of smearing rubber solution upon seams or edges and rolling them over with a small wooden hand roller, cleaning off any rubber solution, painting seams or oilskins and waterproof hats;
- (30) sorter;
- (31) spreading of PVC (plastic solution) in waterproofing process and/or on raincoats and protective wear;
- (32) Stamper;
- (33) raking material out of looms in hand or loom pleating process;
- (34) waterproofing seams;
- (35) winder or unwinder of lace, embroidery, braids, ribbons, bindings and elastic;
- (36) layer by hand;
- (37) general worker light work.

**"hat sprayer"** means an employee engaged in spray painting hats,

**"head cutter"** means the person who actively supervises the cutting room and who designs, styles and fashions, makes patterns, grades patterns and who plans cutting jobs;

**"lay copier"** means an employee engaged in placing of numbered patterns on a lay to conform with a numbered photograph, diagram or plan;

**"layer by hand"** means an employee engaged in laying up materials by hand preparatory to cutting;

**"layer by machine"** means an employee engaged in laying materials by machine preparatory to cutting;

**"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;

**"marker"** means an employee engaged in marking the position of pockets, buttons and/or button holes;

**"mechanic (Clothing)"** means an employee engaged in the installation, repair and maintenance of boilers and machinery;

**"motor vehicle driver" or "driver of a motor vehicle"** means an employee engaged in driving a motor vehicle and for the purposes of this definition "driving a motor vehicle" is deemed to include all periods of driving and any time spent by the driver on work connected with the vehicle or the load, and all periods during which he is obliged to remain on duty in readiness to drive;

**"packer"** means an employee engaged in packing garments into boxes or other suitable wrappings or tying them into bundles prior to their being sent to the despatch department;

**"patent turner"** means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets and/or flaps whether by hand or machine;

**"pinner"** means an employee engaged in pinning unfinished and/or finished garments;

**"plain sewer (Clothing)"** means an employee engaged solely in performing by hand one or more of the following operations:

Tacking permanent turn-ups; tacking waistband linings; sewing on hooks and eyes, tickets and/or press studs; fastening catch in tops of trousers; sewing on buttons; making and sewing on hangers; felling crutch linings in trousers, felling bottoms and waist-band linings and various odds and ends of sewing; felling necks of vests; fastening edge stays and odds and ends of sewing; felling bottoms



of linings or seams of same already basted into position; felling bindings; fastening facings inside already basted in position;

**"presser"** means an employee employed in pressing the finished garment by hand or machine;

**"seam welder"** means an employee who joins seams by any method other than by a thread-sewing machine;

**"setter of automatic pleating machines"** means an employee engaged on setting of pleats on automatic pleating machines;

**"shaper"** means an employee engaged in shaping the lapels and collars of coats preparatory to underbasting;

**"shop steward"** means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

**"short-time"** means working time that is reduced below the usual number of working hours in the establishment when such reduction is due to slackness of work or the exigencies of the industry;

**"sloper"** means an employee engaged in marking or trimming the shape of the necks in the shirt section, preparatory to other operations;

**"sorter"** means an employee engaged in sorting out garments or parts of garments for the various operations;

**"stamper"** means an employee engaged in stamping the size or identity work numbers on garments or parts of garments, or on any article connected with packaging or despatching of garments;

**"storeman (Clothing)"** means an employee in charge of the main stock room of an establishment;

**"trimmer"** means an employee engaged in marking in and/or cutting linings and interlinings;

**"under-presser"** means an employee other than a presser employed in pressing processes;

**"watchman (Clothing)"** means an employee engaged in guarding premises, buildings or other property;

**"waterproofing seams"** means waterproofing of a threadsewn seam by means of a hot press;

#### **C. Definitions of the occupations capacities and duties of employees in the Garment Kitting Sector only:**

**"boiler attendant (Knitting)"** means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

**"colouring mass-measurer"** means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

**"cutter or shaper (Knitting)"** means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

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**"despatch clerk (Knitting)"** means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

**"despatch packer (Knitting)"** means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

**"driver of a motor vehicle (Knitting)"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

**"dyer"** means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

**"dyer's assistant"** means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

**"factory clerk (Knitting)"** means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

**"floorwalker/runner"** means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

**"foreperson (Knitting)"** means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

**"general worker (Knitting)"** means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

**"handyman"** means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

**"knitting machine operator"** means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

**"linker"** means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in hosiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

**"mechanic (Knitting)"** means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

**"mechanic's assistant"** means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

**"mender"** means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery; **"night work"** means work performed after 18:00 and before 06:00 the next day;

**"parcel maker"** means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

**"plain sewer (Knitting)"** means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

**"pre- or post-boarder or former"** means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

**"seamer"** means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

**"security officer"** means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

**"sewing machinist (Knitting)"** means an employee who is engaged in operating a sewing machine using a needle and thread in a Garment Knitting establishment;

**"sorter and/or grader"** means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

**"store clerk"** means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

**"storeman (Knitting)"** means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

**"supervisor (Knitting)"** means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees in a Garment Knitting establishment;

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**"traveller's assistant"** means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

**"warp knitting machine operator"** means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

**"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

**"watchman(Knitting)"** means an employee who is engaged in guarding premises or other property;

**"winder"** means an employee who is engaged in operating a yarn-winding machine;"

In classifying an employee for the purpose of this part of the Agreement he shall be deemed to be in that class in which he is wholly or mainly engaged.

#### 4. WAGES

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments shall be as follows:

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EXPERIENC E	GRADE 1	GRADE 2	GRADE A	HEAD CUTTER	ASSIST HEAD CUTTE R	CUTTE R / TRIMME R	B/KNIF E CUTTE R	MECHAN IC	CLERK	WATCH MAN	DRIVER 1	DRIVER 2	DRIVER 3	DRIVER 4	FORE PERSON
0 - 6 Months	R 356.95	R 355.05	R 374.05	R 862.75	R 690.20	R 340.10	R 380.40	R 427.80	R 394.05	R 485.70	R 456.20	R 498.50	R 581.25	R 702.10	R 664.70
7 - 12 Months	R 394.85	R 470.00	R 481.55			R 379.90	R 422.45	R 491.30	R 444.85						
13 - 18 Months	R 432.65					R 418.15	R 461.00	R 563.80	R 486.65						
19 - 24 Months	R 540.80					R 463.70	R 504.80	R 636.30	R 579.50						
25 - 30 Months						R 542.10	R 570.45	R 713.75							
31 - 36 Months								R 784.80							
37 - 42 Months								R 854.80							
> 43 Months								R 927.15							



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- (b) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:

		Wage per week
		<i>R</i>
(i)	Foreperson:	1,015.10
(ii)	Dyer: (See (iv) below)	
(iii)	Storeman:	
	(i) Qualified:	977.10
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	509.00
	third six months of experience	665.10
	fourth six months of experience	821.10
	Thereafter, the wage specified in (iii)(i) i.e.	977.10
(iv)	Mechanic/Dyer:	
	(i) Qualified:	1,015.10
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	419.10
	third six months of experience	485.40
	fourth six months of experience	551.60
	fifth six months of experience	617.90
	sixth six months of experience	683.90
	seventh six months of experience	750.30
	eighth six months of experience	816.50
	ninth six months of experience	882.60
	tenth six months of experience	949.00
	Thereafter, the wage specified in (iv)(i) i.e.	1,015.10
(v)	Mechanic's Assistant:	
	(i) Qualified:	664.90
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	383.90
	third six months of experience	415.50
	fourth six months of experience	446.40
	fifth six months of experience	477.80
	sixth six months of experience	509.10
	seventh six months of experience	540.10
	eighth six months of experience	571.40
	ninth six months of experience	602.50
	tenth six months of experience	633.80
	Thereafter, the wage specified in (v)(i) i.e.	664.90
(vi)	Supervisor:	702.90

		Wage per week
(vii)	<b>Final Examiner of fully-fashioned garments:</b>	652.80
(viii)	<b>Factory Clerk, Despatch Clerk, Store Clerk:</b>	
	(i) Qualified:	639.20
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	424.50
	third six months of experience	496.10
	fourth six months of experience	567.70
	Thereafter, the wage specified in (viii)(i) i.e.	639.20
(ix)	<b>Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer, Cutter or Shaper (Knitting) of fully-fashioned garments, Handyman and Warper:</b>	
	(i) Qualified:	639.20
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	400.60
	third six months of experience	448.20
	fourth six months of experience	496.10
	fifth six months of experience	543.70
	sixth six months of experience	591.50
	Thereafter, the wage specified in (ix)(i) i.e.	639.20
(x)	<b>Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Sewing Machinist (Knitting) including a button, buttonhole and hemming machinist, Mender and Plain Sewer:</b>	
	(i) Qualified:	557.70
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	404.00
	third six months of experience	455.20
	fourth six months of experience	506.60
	Thereafter, the wage specified in (x)(i) i.e.	557.70
(xi)	<b>Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:</b>	
	(a) does not exceed 453,5 kg	533.20
	(b) exceeds 453,5 kg but not 2 721 kg	629.50
	(c) exceeds 2 721 kg but not 4 535 kg	670.30
	(d) exceeds 4 535 kg	727.40
(xii)	<b>Security Officer:</b>	814.30
(xiii)	<b>Watchman:</b>	628.40
(xiv)	<b>Employee not elsewhere specified:</b>	
	(i) Qualified:	654.20
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	428.20

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		Wage per week
	third six months of experience	503.70
	fourth six months of experience	578.90
	Thereafter, the wage specified in (xiv)(i) i.e.	654.20
(xv)	<b>Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre-and Post-boarder or Former, Precutter, Presser, Turner, Operator of calender, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming off surplus threads, Folding, Carding and/or Packing, Waxing Maker, Boiler Attendant, Creeler, Despatch Packer, Parcel Maker and Floor Walker/Runner</b>	
	(i) Qualified:	458.50
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	388.10
	third six months of experience	423.50
	Thereafter, the wage specified in (xvii) (i) i.e.	458.50
(xvi)	<b>Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker</b>	458.50
(xvii)	<b>General Worker (Knitting)</b>	532.60

Whenever a qualified Grade 2 employee is transferred to another occupation classified as the work of a Grade 1 employee, he shall receive not less than his existing rate of pay for a period of six months and thereafter, on completion of that period, he shall receive his next increment and thereafter the prescribed increments in his new occupation. An unqualified Grade 2 employee who is transferred to another occupation classified as the work of a Grade 1 employee, shall be paid not less than the wage he was receiving prior to his transfer, but shall be paid the prescribed increments in his new occupation.

- (2) Nothing in this part of the Agreement shall operate to unilaterally reduce the wage which was being paid to any employee at any time prior to or at the date of commencement of this part of the Agreement.
- (3) An employee employed as a conveyor feeder shall receive the wages prescribed for an employee of this class, plus 10 per cent.
- (4) (a) Any increase in the wage to which a learner becomes entitled as a result of previous experience shall become payable on the accruing date unless the employee has been absent from work of his own accord for a period longer than seven days in the aggregate in any of the six-monthly qualifying periods provided for in this clause. The accruing date, when an increase of wage falls due to him, may be advanced to the equivalent of the number of days in excess of seven days that he has been absent from work of his own accord in any of his six-monthly qualifying periods.

- (b) In the case of an employee who has yearly qualifying periods, the accruing date when an increase of wages falls due to him, may be advanced to the equivalent of the number of days in excess of 14 days that he has been absent from work on his own accord in any of his yearly qualifying periods.
- (5) Unless otherwise stated in this part of the Agreement, the Council shall be the sole forum for the purposes of negotiating matters regulated in this part of the Agreement, inclusive of the Sick Benefit Fund Agreement and the Provident Fund Agreement, and the trade union shall not seek to improve the remuneration of employees in the Industry nor seek to re-negotiate any matters which are regulated in the aforementioned Agreements during the periods of operation of such Agreements: Provided that-
- (a) the trade union shall be entitled to submit demands to the employers' organisation for the sole purpose of commencing negotiations for any agreement if such agreement is intended to replace any of the aforementioned Agreements at the expiry of their respective periods of operation; and
- (b) notwithstanding anything to the contrary contained herein, the remuneration of employees employed at a particular establishment may be negotiated between the employer of that establishment and his employees provided any improvement thereof is specifically linked to productivity improvement.
- (6) Transitional provision following the 2005 negotiations: In addition to the wage to which an employee is entitled in terms of this Amending Agreement, he/she shall be entitled to receive, no later than six (6) weeks from the date on which the Minister declares this Amending Agreement binding, by publication in the Government Gazette (hereinafter referred to as the implementation date), and in equal weekly instalments an amount equal to the difference between the remuneration paid to him calculated from 1 July 2005 until the implementation date and the remuneration based on his wage as specified in this Amending Agreement, calculated from the 1st July 2005 until implementation date.

## 5. SHIFT ALLOWANCE

- (1) A twelve and a half percent (12½%) allowance shall be paid to all workers engaged in normal shift work calculated on the basic minimums.
- (2) normal shift work shall mean a regular pattern of rotating hours of work and/or a regular pattern of work which falls outside normal working hours and shall exclude work pertaining to a twilight shift.

## 6. TASK-WORK

Task-work is prohibited.

## 7. SHORT-TIME

- (1) Where short-time is being or has been introduced in any establishment, an employee who attends at the establishment on any day shall, unless he has prior to such date received notice that his services will not be required on such day, be employed for at least half a day or be paid half a day's wages *in lieu* thereof.
- (2) If, owing to slackness of trade, it is found impossible to work full-time, short-time shall be worked by distributing the work evenly, as far as practicable, in any section or department concerned.



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- (3) When it is necessary to introduce short-time in any factory the clock cards shall be suitably endorsed in respect of each employee so affected.
- (4) The provisions of this clause shall not apply to watchmen.

**8. PAYMENT OF WAGES AND OVERTIME**

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes on which shall be reflected, or which shall be accompanied by a slip or statement showing-
    - (i) the name and Council number of the employee;
    - (ii) weekly rate of pay;
    - (iii) total hours worked;
    - (iv) date up to which payment is made;
    - (v) total amount contained in the envelope;
    - (vi) details of all deductions [in terms of subclause (6)]; and
    - (vii) the amounts paid in respect of work done on Sundays.

All such information shall be either machine-printed, or written in ink, or shall be clear carbon copy. Such payments shall be made in cash weekly on Fridays, during working hours, at the establishment of the employer within half an hour before the closing time of the establishment: provided that, where an employee's services do not terminate on the ordinary payday of the establishment concerned, any amounts due to him shall be paid immediately upon such termination. [This clause shall not apply to monthly-paid employees who are in receipt of at least R650 per month and clerical employees, who are provided for in paragraph (b) hereof].
  - (b) An employer shall pay wages to monthly paid employees who are in receipt of at least R650 per month and clerical employees who are engaged on a monthly basis, not later than the last day of each calendar month, or upon termination of their employment, if this should take place before the ordinary payday of the employee.
  - (c) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (2) On every day on which wages or other remuneration are payable in terms of subclause (1) (a)-
    - (a) every employer shall by 14:00 have available in cash in the establishment the full amount to be paid;
    - (b) the envelopes referred to in subclause (1) (a) shall be duly completed and sealed at least one hour before the closing time of the establishment.
  - (3) Where work is performed by employees organised in sets or teams, every employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.
  - (4) An employer shall pay to an employee who, during any part of any week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the highest of such different weekly wages for the whole of such week.



- (5) An employee other than a watchman, engaged on night shift, shall be paid not less than the remuneration prescribed for his class of work in clause 4 of this part of the Agreement, plus 12½ per cent.
- (6) No employer shall make a deduction of any description from amounts due to an employee in respect of wages or overtime, except in the following circumstances:
- (a) Whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof may be made unless otherwise provided in this part of the Agreement;
  - (b) in any establishment where the regular weekly hours of work are less than 42½, the employee may be paid for the actual number of hours worked at the hourly rate: Provided that an employee shall be paid an amount not less than 40 times the hourly wage in respect of any week's work;
  - (c) deductions may be made by an employer for insurance or pension funds with the written consent of the employee;
  - (d) contributions to Council funds shall be deducted in terms of clause 25 of this part of the Agreement;
  - (e) deductions shall be made by the employer in terms of the Provident Fund Agreement of the Clothing Industry (Natal);
  - (f) the costs of scissors supplied to employees may be deducted;
  - (g) if, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee only for the time lost which is in excess of one hour in respect of each stoppage;
  - (h) any amount which an employer is legally compelled or permitted to pay on behalf of any employee may be deducted;
  - (i) contributions to the Sick Benefit Fund shall be deducted in terms of clause 35 (3) of this part of the Agreement;
  - (j) deductions for trade union subscriptions shall be made in terms of clause 27 (2) of this part of the Agreement;
  - (k) where short-time has been introduced, the employee shall, subject to the provisions of clause 7 of this part of the Agreement, be paid for the actual time worked.

## 9. HOURS OF WORK AND OVERTIME

- (1) Hours of Work: A five day week shall be observed from Monday to Friday inclusive and the ordinary hours of work of an employee shall not exceed-
- (a) 42½ hours, excluding meal intervals in any week from Monday to Friday, inclusive;
  - (b) 8½ hours on any day between the hours of 07:00 and 18:00;
  - (c) except that, in the case of an employee wholly engaged as a boiler attendant, the weekly hours may be 45 and the daily hours may be 9.
- (2) (a) All hours of work in any day shall, except for meal intervals, be consecutive.

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- (b) An employer shall not require or permit an employee to work more than five consecutive hours continuously without a meal interval of at least half an hour, provided that if such interval be for longer than half an hour, the period in excess of half an hour shall be deemed to be hours of work.
- (3) An employee shall be deemed to be working in addition to any period during which he is actually working-
- (a) during the whole of any interval in his work if he is not free to leave the workroom of his employer for the whole of such interval;
  - (b) during any other period during which he is in the workroom of his employer:
- Provided that if it is proved that any such employee was not working and was free to leave the workroom during any part of any such period, the presumption provided for in this sub-clause shall not apply in respect of such employee with reference to that part of such period.
- (4) (a) All time worked-
- (i) in excess of the ordinary hours set out in clause 8 (1); or
  - (ii) before 07:00 and after 18:00 on Monday to Friday, except in the case of boiler attendants, shall be deemed to be overtime.
- (b) No employer shall require or permit an employee to work overtime for more than-
- (i) 10 hours in any week;
  - (ii) two hours on any day (Monday to Friday).
- (c) No overtime in excess of one and a half hours, from Monday to Friday, may be required or permitted of an employee unless the employer-
- (i) has given notice thereof to such employee the previous day;
  - (ii) provides such employee with an adequate meal before he/she has to commence overtime or pays such employee an allowance of R5,00 in sufficient time to enable him to obtain a meal before the overtime is due to commence.
- (d) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.
- (5) No overtime in excess of that stated in terms of clause 9 (4) (b) shall be allowed unless permission has been obtained, in writing, from the Council prior to the performance of such work. In cases of urgency, the Secretary may issue provisional authority, which shall be valid until the next meeting of the Council.
- (6) In respect of overtime worked an employer shall pay to-
- (a) an employee wholly or mainly engaged as a boiler attendant at a rate which is not less than one and a half times the weekly wage prescribed for an employee of his respective class of work divided by 45;
  - (b) an employee who is employed as a piece-worker at a rate which is not less than 1½ times the piece-work rates or 1½ times his weekly wage divided by 42½, whichever is the greater;
  - (c) all other employees, at a rate which is not less than one and a half times the weekly wage divided by 42½, provided that if overtime calculated on a daily basis differs from that calculated on a weekly basis, the basis more favourable to the employee shall be adopted;

- (e) an employee in respect of overtime worked on a Saturday which is in excess of 4¼ hours or after 12h00 at double the ordinary hourly rate.
- (7) Sunday work. Whenever an employee works on Sunday with the written permission of the Council, his employer shall either-
  - (a) pay to the employee-
    - (i) if he so works for a period not exceeding four hours, not less than the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day; or
    - (ii) if he so works for a period exceeding four hours, remuneration at a rate not less than double his ordinary rate of remuneration, in respect of the total period worked on such Sunday, or remuneration which is not less than double the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
  - (b) pay the employee remuneration at a rate not less than one and one-third times his ordinary rate of remuneration in respect of the total period worked on such Sunday and grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (8) (a) There shall be installed and maintained in working order in every establishment-
  - (i) one or more bells, or other audible signals, which shall operate automatically and indicate all times for starting and for stopping work;
  - (ii) one or more time clocks for the clocking in and out of employees: Provided that an employee shall be paid for the time which the employee has worked notwithstanding that the employee has not clocked in or clocked out.
- (b) Unless written exemption is obtained from the Council or Exemptions Board in terms of clause 23, every employee shall, unless prevented by sickness or other unavoidable circumstances at the establishment, clock in and clock out every working day, and no employee may clock in for any other employee in such establishment.
- (9) (a) The employer shall grant to each employee rest intervals of not less than 15 minutes during the morning work periods and 10 minutes during the afternoon work periods. Rest intervals shall be granted as nearly as practicable to the middle of each morning and afternoon and such intervals shall be reckoned as part of the usual working hours, but no employer shall require an employee to perform work during such interval.
- (b) For the purposes of this sub-clause the first half of any normal shift of more than five hours shall be deemed to be a morning work period, and the second half of any such normal shift, an afternoon work period.
- (10) No employer shall allow an employee to work a night shift unless permission has been obtained in writing, from the Council, prior to the performance of such work.
- (11) An employer may, in order to make up time lost through not working on any day which is a normal working day, permit his employees to work overtime on any day except Sunday prior or subsequent to the day not worked at ordinary rates of pay, provided such working-in takes place within a twelve (12) calendar month period of the original day not worked.
- (12) The provisions of this clause shall not apply to watchmen, except as provided below:
  - (a) (i) An employer shall grant to each of his watchmen one full day of rest during every seven consecutive days, but, if an employer requires or permits such an

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employee to work on his day of rest, the hours worked shall be deemed not to be part of the ordinary hours of work, and the employee shall be paid for such work an amount of not less than double his daily wage;

- (ii) an employer shall grant his watchmen, other than a daily employee, not less than six days of rest in every six consecutive weeks of employment.

(b) Provided that-

- (i) an employer shall make no deduction from the watchman's wage in respect of days of rest;
- (ii) an employer may, *in lieu* of granting his watchman any such day of rest, pay him double his daily wage in respect of each such day of rest not granted;
- (iii) where a watchman's contract of employment terminates before he has been granted all the days of rest to which he has become entitled by virtue of this sub-clause, his employer shall pay him in respect of each such day of rest not granted an amount of not less than his daily wage;
- (iv) for the purposes of this sub clause the expression "day of rest" means a period of 24 consecutive hours calculated from the time the watchman normally commences duty, and "daily wage" means the employee's weekly wage divided by six.

(13) Twilight Shift

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:

- (i) Only unemployed people may be recruited for working this shift.
- (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.

- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:

- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
- (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.

- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:

- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or

- (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

**(14) Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
  - (i) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (ii) time not worked as a result of the employer having declared short time;
  - (iii) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (v) time not worked as a result of any authorised absenteeism.
- (15) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

**10. PUBLIC HOLIDAYS**

- (1) For the purposes of this clause, "public holiday" shall mean a public holiday as defined in the Public Holidays Act, 1994, and includes the remainder of the day following the first 4½ hours after starting time on the Thursday before Good Friday.
- (2) If an employee does not work on a public holiday [as defined in subclause (1) above]-
  - (a) which falls on a day which otherwise is an ordinary working day for him, his employer shall pay to him in respect of that public holiday an amount not less than the remuneration payable to him in respect of the time (excluding overtime) which is ordinarily worked by him on that day of the week;
  - (b) which falls on a Saturday or during the period of annual leave referred to in clause 14, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
- (3) Whenever an employee works on a public holiday which otherwise is an ordinary working day for him, his employer shall pay him remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday in addition to the remuneration he would ordinarily have received [as set out in subclause (2) (a) above].
- (4) Whenever an employee works on a public holiday which otherwise is not an ordinary working day for him, his employer shall pay him-
  - (a) either an amount at least equal to the remuneration payable to him in respect of the time (excluding overtime) ordinarily worked by him on a working day; or



- (b) remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday, whichever is the greater, in addition to an amount not less than one fifth of his ordinary weekly wage.
- (5) Remuneration payable to an employee in terms of subclauses (2), (3) or (4) shall be paid out to him no later than the payday next succeeding the day in respect of which such remuneration is payable.

#### 11. RECORDS

- (1) All records with regard to wages required to be kept in terms of Section 32 of the Unemployment Insurance Act, 1966, or in terms of this part of the Agreement, shall be completed by 12:00 on each Friday.
- (2) Every employer shall keep as part of his records a clock card to be used in connection with the time clocks referred to in clause 9 (8) in respect of each employee for each week or part of a week for which wages are due and payable, such clock card to form the basic document for the computation of remuneration.
- (3) All clock cards, or other types of records, shall, in accordance with the requirements of section 31 of the Basic Conditions of Employment Act, 1997 be kept for a period of three years subsequent to the date of the record and, on request, shall be available for the inspection by an agent of the Council.
- (4) In addition to the powers of the agents of the Council as set out in clause 30 of this part of the Agreement and section 33 (3) read with section 142 of the Act, the agent(s) may at any time, for the purpose of ensuring that the provisions of the Act and this part of the Agreement are being complied with-
  - (a) cause to be investigated any books, records or documents of any employer, whether or not the same are required to be kept in terms of any law and whether or not the same are at any establishment;
  - (b) take and retain copies of any such books, records or documents.

#### 12. WORK IN THE CLOTHING INDUSTRY

- (1) No employer shall require his employees to work and no employee shall work in premises other than an establishment provided, equipped, maintained and controlled by such employer, and which shall be registered with the Council in terms of Clause 19 of this part of the Agreement.
- (2) An employer shall not allow any work in the Clothing Industry to be performed in a dwelling-house.
- (4) No employee engaged in the employ of one establishment may perform work in another establishment without first having been discharged by the first establishment and re-registered by the second establishment.

#### 13. PROPORTION OR RATIO OF EMPLOYEES

- (1) Cutters: Every employer shall employ a head cutter before employing any cutters: Provided that in a factory where 30 machines or less are operated and where the employer performs the duties of a head cutter in his establishment he need not employ an employee of the

said class. Any such employer shall, however, employ an assistant head cutter before employing any cutters.

- (2) No employee who has been absent from work for a continuous period of four weeks for any reason except illness, shall be taken into account when calculating ratio.

#### 14. ANNUAL LEAVE

- (1) (a) Every employer shall grant to each of his employees, whether employed on piece-work or on time-work, who has been in his employ for a continuous period of not less than 12 months, not less than three consecutive weeks' annual leave, between 15 December and 15 January annually, at 15 days' wages. For the purposes of this subclause a "day's wage" shall mean the weekly wage divided by five.
- (b) Every employer shall prior to 30 November of each year advise the Council of the dates during which his factory will be closed for annual leave.
- (2) (a) Save as provided for in subclause (3) (d) every employer shall lodge with the Council a guarantee acceptable to the Council to cover the payment of holiday pay due to his employees, alternatively forwarded monthly to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, holiday pay due to each of his employees, at the rate of one and one-quarter of a day's pay for each completed 30 days of service, such payments to be made not later than 10 days after the end of each calendar month to which it refers: Provided that the holiday pay for the months November and December shall be forwarded to the Secretary of the Council not later than 7 December of each year and the total of such holiday pay shall be distributed by the Council to the employees concerned not later than 24 December of that year.
- (b) An employee whose service are terminated before the date on which leave is to be granted in terms of subclause (1) (a) shall be paid holiday pay amounting to one and a quarter of a day's pay for each completed 30 days' service. Such holiday pay shall, in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a) be paid by the employer upon the date the employee's services are terminated. Where the employee's holiday pay has been paid to the Council as provided for in subclause (2) (a) the holiday pay shall be paid to the employee by the Council within a period of three weeks from the date on which application for payment is made to Council. Holiday pay shall not be due or payable to a person who has deserted from service.
- (c) An employer shall grant to an employee who at the date of granting leave has not completed 12 months' continuous employment with him, leave for a similar period to that referred to in subclause (1) (a): Provided that in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a), he shall only pay the employee holiday pay at the rate of one and a quarter of a day's pay for each completed 30 days' service.
- (d) For the purposes of subclause (2) "days of service" shall mean calendar days.
- (3) (a) All holiday pay received by the Council shall be held in trust. The difference between holiday pay paid by the Council to employees in terms of subclause 2(a) and (b), and the amount of holiday pay paid by the employer to the Council in terms of subclause 2 (a) shall be refunded to the employer not later than 31 January of the following year.

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- (b) A list of employees who are to be paid holiday pay by the employer as provided for in subclause (1) (a) hereof, showing Council number, name, rate of pay, period of employment for which holiday pay is due and amount of holiday pay due to each such employee shall be forwarded by the employer to the Council not later than 7 December of each year.
  - (c) Whenever a guarantor advises the Council that a guarantee for holiday pay is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period give by the guarantor lodge a fresh guarantee with the Council in terms of subclause (2) (a).
  - (d) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement.
- (4) An employer who closes his factory for any period between 15 December and 15 January in order to grant his employees their annual holiday plus statutory holidays, may close for a period not exceeding four weeks without being liable for the payment to any employee of any wages in excess of the amounts due in terms of subclause (1) hereof, in respect of such period.
- (5) An employer, having reached agreement with his employees and having notified the Council accordingly, may close his factory for less than the three-week annual holiday period; provided that he closes his factory for not less than two weeks: Provided further that the additional one week's holiday is taken by employees before 30 June of the following year. Employees shall be paid for leave when it is taken.
- (6) Any period during which an employee-
- (a) is on leave in terms of this clause; or
  - (b) is absent from work on the instructions or at the request of the employer; or
  - (c) is absent from work owing to illness, shall be deemed to be a period of employment for the purposes of subclause (1) and (2) hereof, provided that-
    - (i) the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days if the employee, not being an employee referred to in subparagraph (iii) and fails, after a request for such certificate by the employer, to submit to the employer a certificate issued by a Sick Benefit Fund medical officer appointed in terms of clause 35 stating that the employee was prevented by illness from doing his work (although clerical employees may produce such certificate from any practitioner); and
    - (ii) the provisions of paragraph (c) above shall not apply in respect of the part of any total period of absence exceeding 30 days during any 12 months of employment; and
    - (iii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in subparagraph (i).
- (7) An employer may make mutual arrangements with: his employees in receipt of R650 per month or more, clerical employees, drivers of motor vehicles, foremen, mechanics, watchmen, or employees solely engaged in cleaning premises or in the delivery of goods or messages, to take their annual leave at a period other than between 15 December and 15 January: Provided that such leave shall be granted within two months of the completion of the year of employment to which it relates.
- (8) Where the Council holds holiday pay on behalf of an employee, who ceased to be employed in the Clothing Industry during the course of that calendar year, for a period of

six months from the date on which it became due to such employee or to the end of that calendar year, whichever is the later, such holiday pay shall be refunded to the employer if unclaimed within the said period: provided that an employee may make application to the Council for payment of his holiday pay after expiry of the said period and such application shall be considered by the Council on its merits.

- (9) All payments for leave to which an employee is entitled under subclauses (1) to (10) shall be made at the employees actual rate of pay.
- (10) Holiday pay due to employees at the end of each year in terms of this clause, shall be calculated at the rate of pay an employee was earning when his leave commenced in December each year.
- (11) An employer shall give not less than 30 days' provisional notice and not less than 15 days' definite notice of the date of which annual leave will commence by exhibiting such notice(s) in a prominent place in the factory readily accessible to the employees.
- (12) The period of leave specified above shall not run concurrently with any period during which an employee is under notice of termination of employment.
- (13) Notwithstanding anything to the contrary contained in this clause, an employer may, in terms of an agreement between himself and his employees, set off against the period of annual leave any days of occasional leave granted on full pay to employees during the period of 12 months employment prior to which the period of annual leave relates, provided that the occasional leave so granted shall not exceed two days.

#### 15. HOLIDAY LEAVE BENEFIT (ANNUAL BONUS) FUND ACCOUNT

- (1) The Fund known as the Holiday Leave Benefit Fund Account for the Clothing Industry (Natal), originally established on 13 November 1992 in terms of Government Notice No. R. 310 is hereby continued, the purpose of which is to provide for an annual bonus to employees. The Fund Account is administered by the Council.
- (2) The Fund Account shall maintain individual employer accounts which shall consist of-
  - (a) contributions paid into the Fund Account in accordance with the provisions of this part of the Agreement;
  - (b) interest derived from the investment of any moneys of the Fund Account.
  - (c) any other moneys to which the Fund Account may become entitled.
- (3)
  - (a) For the purposes of the Fund every employer shall contribute 3,47% of an employee's weekly wage, which shall be forwarded monthly, no later than the 10th day of each month, to the Secretary of the Council.
  - (b) Such total sum must be accompanied by a list showing the Council registration numbers of the employees and the amounts contributed.
- (4)
  - (a) An employee is entitled to a benefit of 3,47% of the actual annual basic wages earned with the employer by whom he is employed on the day of factory closure: Provided that he is still in that employer's service. This benefit is payable to him in December of each year on the day of factory closure.
  - (b) A pro rata share of the bonus set out in paragraph (a) above shall be paid to an employee who leaves employment before the day of factory closure.
  - (c) This benefit is inclusive of and not additional to any annual bonus paid by an employer.



- (5) Notwithstanding the provisions of subclause (4), an employee shall not suffer a reduction in the amount of the annual holiday leave benefit as a result of periods of authorised absence from work.

## 16. MATERNITY LEAVE

- (1) Every employer shall acknowledge the right of an eligible employee to reasonable security of employment prior to, during and following confinement and notwithstanding anything to the contrary contained in this part of the Agreement, the following special provisions shall apply to such employee.
- (2) For the purposes of this clause unless a different meaning appears from the context-
- (a) **"Continuous Service"** shall mean the period of employment during which an employee's name has remained continuously on the employers employment register.
  - (b) **"Eligible Employee"** means a permanent employee, who is or was pregnant and who has been in the continuous service of the same employer for a minimum period of twelve (12) months at the commencement of that employee's maternity leave, subject to the provisions of subclause (4) (b) below.
  - (c) **"Maternity Leave"** shall mean the period of leave to which an eligible employee is entitled by virtue of the provisions of this clause.
  - (d) **"Permanent Employee"** means an employee, other than a temporary employee, who is in continuous employment with an employer and whose conditions of employment are regulated by the provisions of the Main Collective Agreement.
  - (e) **"Provident Fund"** shall mean The Clothing Industry (Natal) Provident Fund.
  - (f) **"Sick Benefit Fund"** shall mean the Sick Benefit Fund as provided for in clause 35 of this part of the Agreement.
  - (g) **"Temporary Employee"** means an employee other than a permanent employee whose employment contract is for a fixed predetermined period of time.
- (3) An employee shall not be permitted to work during the period commencing four (4) weeks prior to the expected date of confinement and ending eight (8) weeks after the date of confinement.
- (4) (a) Subject to compliance with the provisions of this clause, an eligible employee proceeding on maternity leave shall be entitled to a maternity benefit payment equal to 3¼ weeks of such employee's wage rate; or where the employee's wage has been varied in accordance with clause 4 (8) (a), such wage rate as was applicable immediately prior to such variation (notwithstanding that the employee's Sick Benefit Fund contributions may have been calculated after such variation had been implemented). Such maternity benefit payment shall be paid by the Sick Benefit Fund: Provided that such payment is not made earlier than four (4) weeks prior to the expected date of confinement, as certified by a current medical certificate issued by the Sick Benefit Fund.
- (b) Maternity leave shall be for a maximum period of six (6) months in respect of the period before, during and after confinement.
  - (c) For the purpose of calculating length of service, maternity leave shall not be deemed to constitute a break in service other than as specified in this clause.
  - (d) Benefits which accrue to eligible employees arising from service e.g. annual leave and sick leave shall not accumulate during the period of maternity leave.



- (5) (a) If an eligible employee elects to continue contributing to the Provident Fund and /or Sick Benefit Fund during maternity leave, the employer must continue his reciprocal contributions.
- (b) Any benefits in terms of the Provident Fund and/or Sick Benefit Fund shall, subject to the rules of these funds, continue to accrue to a member.
- (6) (a) An employer shall upon the expiry of maternity leave continue to employ an eligible employee in the same job grade and at the same rate of pay that was applicable immediately prior to the commencement of maternity leave, or at the new appropriate wage for the applicable job grade whichever is the greater, provided that-
  - (i) at the time of granting maternity leave, the employee indicates the intention to return to work by completing and returning to the employer a form published for the purpose by the Council;
  - (ii) such employee returns to work within a period of six (6) months calculated from the date of commencement of maternity leave;
  - (iii) where suitable vacancy does not exist for a similar position within the same grade, such employee shall be employed on a temporary basis at a lower job grade, but without affecting pay, until a suitable vacancy arises;
  - (iv) employment shall not be guaranteed where such employee has been selected for retrenchment on the basis of the criteria agreed between an employer and the union.
- (b) An eligible employee who intends to return to work shall-
  - (i) provide to an employer a medical certificate from a registered medical practitioner indicating that such employee is fit for work;
  - (ii) advise the employer in writing on a form published for the purpose by the Council, of the intention to return to work at least one (1) month before returning to work confirming the date on which such employee will resume employment.
- (c) A temporary employee engaged to fill the position of an eligible employee on maternity leave shall cease to be employed when the eligible employee returns to work, unless a suitable vacancy exists in which event the temporary employee may be employed to fill that vacancy on a permanent basis.
- (d) An employee temporarily promoted and paid at the higher rate to fill a vacancy while an eligible employee is absent on maternity leave shall be demoted with consequent reduction in pay, when such employee returns to work, unless a suitable alternative vacancy exists.
- (e) The union agrees that it shall not challenge the termination of service of a temporary employee or the demotion of a temporarily promoted employee in terms of the above paragraphs (c) and (d), provided that the temporary or temporarily promoted has signed a temporary contract of employment or promotion, in keeping with the pro-forma contract drafted by the Council.

## 17. PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer is entitled to require proof of paternity.

## 18. PREMIUMS FOR TRAINING

No premium shall be charged or accepted by an employer for training of an employee: Provided that this clause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

## 19. REGISTRATION OF EMPLOYERS

- (1) Every employer who has not already done so in pursuance of a previous agreement at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations as the case may be forward to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, by registered post, the following particulars which shall be in writing and signed by the employer or a person duly authorised to sign on behalf of the employer:
  - (a) The trading name, business address and registered address of the establishment;
  - (b) the full names and residential addresses of all partners and/or directors and/or members;
  - (c) the full name and residential address of the responsible manager;
  - (d) the section or sections of the Industry in which the establishment is engaged;
  - (e) date of commencing operations.
- (2) Written notification shall be sent by registered post to the Council by every employer of any alteration in respect of any details supplied in terms of subclauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.
- (3) Save as provided in subclause (6), every employer in the Industry at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations, as the case may be, lodge with the Council, and at all times thereafter have with the Council, a guarantee acceptable to the Council to cover payment of one week's wages as prescribed in clause 4 of this part of the Agreement for his employees and also to cover 12 weeks' levies; due in terms of clauses 25 and 35 of this part of the Agreement and clause 6 of the Provident Fund Agreement of the Council.
- (4) Whenever cash is deposited with the Council in terms of subclause (3) above, such money shall be invested in a savings account, permanent shares or fixed deposits in any registered bank or financial institution. Any interest accruing thereon shall be paid to the employer by the Council not later than 31 January of each year.
- (5) Whenever a guarantor advises the Council that a guarantee in terms of subclause (3) is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period given by the guarantor lodge a fresh guarantee with the Council in terms of subclause (3).
- (6) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement: Provided that the Council may at any time give the employer 14 days notice to the effect that any such

guarantee is no longer acceptable and the employer shall within such period of 14 days lodge a fresh guarantee acceptable to the Council.

## 20. REGISTRATION OF EMPLOYEES

- (1) An employer shall, before engaging an applicant for work, require the applicant to produce a service card issued by the Council. If the applicant is a new entrant into the Clothing Industry or cannot produce a Council service card, the provisions of subclause (2) (c) below shall apply.
- (2) Upon engagement, the employer shall-
  - (a) enter in the relevant columns of the service card; the name of his factory, the date of engagement, occupation, wage on engagement and total previous experience and shall retain the card in safekeeping so that it can be dealt with in terms of subclause (4) of this clause upon termination of service of the employee; and
  - (b) complete a "Registration of Employee" form in triplicate, forward the original to the Council not later than Friday of that week, hand the duplicate copy to the employee and retain the triplicate copy for his records; and
  - (c) in the case of an employee who is a new entrant into the Industry or an employee who cannot produce a Council service card-
    - (i) complete the "Registration of Employee" form in triplicate and send the applicant with the original and duplicate copy to the Council offices where he will be allocated a Council registration number, issued with a Council service card and be registered in the employ of the employer. The triplicate copy shall be retained by the employer for his records;
    - (ii) the employer shall acquire the service card of the employee before he commences work and the employer shall retain same until the employee's services are terminated and the service card is dealt with in terms of subclause (4).
- (3) An employer shall forward to the Council for amendment the service card of any employee who is transferred from one category to another, the latter of which requires a higher rate of remuneration, within seven (7) days of such transfer.
- (4) The service card shall be retained by the employer until the employee leaves his employer, whereupon the employer shall enter on the card the date of termination of employment, the occupation and the rate of pay on termination, and return the card to the employee after signing it.
- (5) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Council a report of termination of service.
- (6) The Council shall have the power to withdraw any record of service card which is subsequently found to contain incorrect information. The Council shall upon being furnished with the correct information, issue a fresh record card *in lieu* thereof.

## 21. TERMINATION OF SERVICE

- (1) An employer or an employee shall give, in writing-
  - (a) in the case of a weekly-paid employee, not less than one week's notice of the intention to terminate the contract of employment, such notice to commence on the employee's ordinary pay-day;

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- (b) in the case of a monthly-paid employee, not less than two week's notice of the intention to terminate the contract of employment, such notice to commence on the first or 15th day of the calendar month.
- (2)
  - (a) An employer may terminate the contract of employment without notice by paying to the employee, *in lieu* of notice, an amount equal to not less than-
    - (i) in the case of a weekly paid employee, one full week's wages; and
    - (ii) in the case of a monthly paid employee, two weeks' wages.
  - (b) An employee may terminate the contract of employment without notice by forfeiting wages and/or holiday pay due to him by the employer.
- (3) The provisions of subclauses (1) and (2) hereof shall not affect-
  - (a) the right of an employee or employer to terminate the contract of service without notice for any good cause recognised by law as sufficient;
  - (b) any agreement between an employer and employee which provides for a period of notice longer than one week, in which event wages *in lieu* of notice shall be correspondingly increased.
  - (c) the right of an employee who is working short-time in any week on the instruction of the employer to terminate his contract of service at any time after such instruction has been given, without giving notice; Provided further that, in the case of an establishment in which short time is being worked in terms of clause 7, an employee who has been given notice by his employer in terms of this subclause shall be paid a full day's pay, in respect of every day during the period of such notice upon which he attends a such establishment and is available for work the whole day, or in respect of which he has been notified by the employer that his services will not be required;
  - (d) the operation of any forfeitures or penalties which, by law, may be applicable in respect of desertion by an employee;
  - (e) the right of an employee to withdraw such notice of his intention to terminate his contract of employment provided it is done in writing within two (2) working days of having been tendered.
- (4) An employer may terminate the contract of employment on grounds of incapacity where the employee has been absent from work due to ill-health or injuries for a period of time. In these circumstances-
  - (a) the employer shall consider the following factors before terminating the contract of employment:
    - (i) Whether the employee is capable of performing the work; and
    - (ii) if the employee is not capable-
      - (a) the availability of any suitable alternative work;
      - (b) the extent to which the employee's duties and/or work circumstances might be adapted to accommodate disability;
    - (iii) alternatives to dismissal.

- (b) An employee shall be allowed an opportunity to state his case and to be assisted by a trade union representative in the process of investigations referred to in paragraph (b) above.
- (c) Provided that the provisions of this sub-clause shall not limit the employee's right to challenge his dismissal in terms of the Act.
- (5) The period of notice shall not run concurrently with nor shall notice be given during, an employee's absence on leave granted in terms of clause 14.
- (6) This clause shall not apply to an employee during his first week of employment. Such an employee shall be paid for at least four hours, notwithstanding that such employee has worked for a lesser period during his first week of employment.
- (7) (a) Notwithstanding anything to the contrary contained in this part of the Agreement the first fifteen (15) working days of the period of employment of any employee shall be deemed to be a probationary period.
- (b) The dismissal of an employee during the probationary period shall be preceded by an opportunity for the employee to state his case in response and to be assisted by a trade union representative.

## 22. DISCIPLINARY AND GRIEVANCE PROCEDURES

- (1) Every employer shall permit the trade union to negotiate with it a disciplinary procedure and grievance procedure appropriate to its individual circumstances.
- (2) The provisions of this clause in terms of the implementation thereof may be read with the document headed "guidelines for the Implementation of Disciplinary and Grievance Procedures", which documents is available to employers and employees from the offices of the Council.

## 23. EXEMPTIONS

### A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation, and in addition, shall set out the following information:
  - (a) The period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;



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- (c) the clauses and subclauses of this part of the Agreement from which the exemption is requested.
  - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace and shall include the response resulting from such consultations.
  - (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4)
- (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
  - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in sub-clause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
  - (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
  - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).

- (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred to appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the amount thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal; and
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The Exemptions Board's decision shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levy, or, if so, an agreed payment plan exists in respect of any such

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outstanding monies. Arrears, for this purpose, shall mean any payment of Bargaining Council levies or employer or employee or trade union subscriptions that remain unpaid as at the last day of the month following the month in respect of which the payment is due.

- (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the Industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of employees affected at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transfer-ability, administration, management, costs, growth and stability. Sufficiency for the purposes of this sub-clause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period for which exemption is sought.
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.

- (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer that is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement will be granted in the following circumstances:
- (a) Where an employer that is a party or a member of a party to the Council and its employees, represented by a trade union representative, as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards in this part of the Agreement and in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and

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- (ii) wage rates and contributions to social funds, including the Council's fund, may not be amended without the Council's approval.
- (2) An employer that is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
  - (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### 24. PERSONS UNDER THE AGE OF 15 YEARS

No employer shall employ any person under the age of 15 years.

#### 25. COUNCIL FUNDS

- (1) Every employer shall deduct R1,00 per week from the earnings of each of his employees (other than employees exempted from the provisions of this clause by the Council, in writing, in terms of clause 23) or whom minimum wages are prescribed in the Agreement.
- (2) The total so deducted together with an equal amount which shall be contributed by the employer shall be forwarded together with a list showing Council registration numbers of employees detailing particulars of contributions, to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, to reach him no later than 10 days after the end of each calendar month.

#### 26. SACTWU FUNDS

- (1) Every employer shall, in respect of each trade union member employed by him, contribute an amount of 20 cents per week towards the Trade Union Bursary Fund which is administered by SACTWU for the benefit of employees in the industry.
- (2) Every employer shall also, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 25 of this part of the Agreement, contribute towards the trade union's HIV/AIDS Project at the rate of 10 cents per week.
- (3) The total contribution by the employer in respect of subclauses (1) and (2) shall be forwarded to the Council not later than the 10<sup>th</sup> day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions.
- (4) Whenever proceedings are instituted against an employer for failure to pay outstanding contributions to the SACTWU bursary fund and HIV/AIDS Project, the employer shall pay



interest on such amounts outstanding, calculated from the date or dates when such amounts became due and payable, at the bank prime rate prevailing on that date.

#### **27. CLOSED SHOP AND TRADE UNION MEMBERSHIP/SUBSCRIPTIONS**

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
  - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
  - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the KwaZulu-Natal Regional Chamber of the Council not later than the 10<sup>th</sup> day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
  - (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.
- (5) The production of a membership card issued by the trade union shall be proof of membership of the trade union.

#### **28. ACCESS TO AND ORGANISING FACILITIES ON AN EMPLOYERS' PREMISES BY THE TRADE UNION**

- (1) Every employer shall permit duly accredited trade union officials who are so authorised in writing by the Council, to enter its premises in order to undertake *bona fide* union business provided that-
  - (a) the employer reserves the right of admission to its premises as proprietor or occupier thereof;
  - (b) such access shall be by prior arrangement with the employer;

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- (c) union officials comply with the employer's prevailing security, safety and health rules;
  - (d) meetings with employees are held outside their working hours.
- (2) (a) Every employer shall allow the distribution of the Union newspaper on its premises and shall provide the trade union with notice board facilities for the display of union notices, subject to the prior approval of the employer of every notice displayed.
- (b) Should the employer not approve a notice or document which it is proposed to display or distribute, which approval shall not be unreasonably withheld, it shall be withdrawn from the employer's premises by the union immediately.
- (3) Where available and commensurate with the individual circumstances and the size of an establishment, every employer shall provide to the union shop stewards reasonable facilities to enable them to discharge their *bona fide* trade union duties in respect of such employer, including the use of a telephone and a meeting venue, provided that the use of such facility shall be subject to prior permission being sought and obtained from the employer and that during normal working hours there shall not be unnecessary disruption to an employers operations.
- (4) A document entitled: Guidelines for the Implementation of the Provisions of clause 28 of the Main Agreement, is available to employers and employees from the offices of the Council.
- (5) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

### 29. RIGHTS OF TRADE UNION REPRESENTATIVES

- (1) Every employer shall permit the election of shop stewards by union members in terms of section 14 (1) of the Act.
- (2) The nomination, election, terms of office and removal from office of a shop steward shall be governed by the trade union constitution, as lodged with the Registrar of Labour Relations in terms of section 96 of the Act.
- (3) Every employer shall recognise the right of shop stewards to assist and represent employees who are union members in grievance and disciplinary proceedings.
- (4) Duly elected shop stewards are each entitled to nine working days paid leave per calendar year pooled per establishment to be used at the discretion of the trade union for *bona fide* trade union activities, provided that the employer is given at least ten (10) working days prior notice thereof. (For the purpose of this clause a "working day" shall mean any day excluding a Saturday and Sunday, a public holiday in terms of this part of the Agreement and the period of annual shut-down).
- (5) A document entitled: "Guidelines for the election and rights of shop stewards" is available to employers and employees from the office of the Council.

### 30. AGENTS

- (1) The Council may request the Minister of Labour to appoint one or more specified persons as designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) Any such designated agent shall have the right to-

- (a) subpoena for questioning any person who may be able to give information relevant to the enforcement of this part of the Agreement;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the enforcement of this part of the Agreement, to appear before the agent to be questioned or to produce that book, document or object;
  - (c) enter and inspect any premises or place in which the Clothing Industry is carried on at any time when he has reasonable cause to believe that any person is employed therein, or that a book, document or object relevant to the enforcement of this part of the Agreement may be found on or in the premises;
  - (d) examine and demand the production of and seize of any notice, book, list or document which is by this part of the Agreement required to be kept, exhibited or made or which is relevant to the enforcement of this part of the Agreement;
  - (e) require the production of, inspect, examine and copy all records of time worked, clock cards, books or documents wherein an account is kept of time worked or actual wages, or rates whether payable for piece-work or not, paid to any employee whose wages are fixed by this part of the Agreement;
  - (f) take a statement in respect of any matter relevant to the enforcement of this Agreement from any person on the premises who is willing to make a statement.
- (3) A subpoena issued for any purpose in terms of subclause (2) shall be signed by the Secretary of the Council and shall-
- (a) specifically require the person named in it to appear before the agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (4) A designated agent shall obtain written authorisation from the Secretary of the Council before exercising the powers referred to in paragraphs (c), (d) and (f) and subclause 2.
- (5) Such designated agent when entering, inspecting or examining any such place, may take with him an interpreter.
- (6) Every employer and employee upon whom the provisions of this part of the Agreement are binding shall grant to such designated agent all the facilities referred to above.

### **31. EXHIBITION OF AGREEMENT, WAGE RATES AND HOURS OF WORK**

- (1) Every employer shall keep a legible copy of this part of the Agreement exhibited in his establishment in a place readily accessible to his employees.
- (2) Every employer shall give a copy of this part of the Agreement-
  - (a) to an employee who has paid the prescribed fee; and
  - (b) free of charge, on request, to an employee who is a trade union representative.
- (3) One or more notices, provided by the Council, showing wage rates payable in the Clothing Industry in Natal shall be prominently displayed by every employer in such place or places as may be indicated by the agent.

- (4) Every employer shall display in his establishment in a place readily accessible to his employees a notice specifying the starting and finishing time of work for each day of the week and the meal intervals.

### **32. ADMINISTRATION OF AGREEMENT**

The Council shall be the body responsible for the administration of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

### **33. TRADE UNION'S REPRESENTATIVES OF THE COUNCIL**

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council: Provided that in establishment employing five or fewer employees the trade union shall give the employer five working days written days notice of its request for time off in terms of this clause, for its representative.

### **34. WORKING PROPRIETORS AND / OR WORKING PARTNERS**

Working proprietors and/or working partners engaged in manufacturing operations in the Clothing Industry and who are employers shall observe the working hours laid down in clause 9 of this part of the Agreement.

### **35. SICK BENEFIT FUND**

- (1) The Sick Benefit Fund (hereinafter referred to as the "Fund") established under Government Notice No. 1845 of 11 November 1938, is hereby continued. The Fund shall be maintained from levies in terms of subclause (3) hereof.
- (2) Within two weeks of an employee entering the Industry he may, at the discretion of the Management Committee, be required to present himself to one of the Fund's medical officers for a medical examination and shall complete forms giving his past medical history. The Management Committee referred to in subclause (6) (a) may thereafter exclude such employee from receiving benefits for any illness due to chronic ailment: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.
- 3) Subject to subclause (14), an employer shall deduct 1,5% per week of the wage of each employee who has worked during that week, irrespective of the time worked.
- (4) (a) In addition to the amounts so deducted, the employer shall contribute 1,75% per week of the employee's wage in respect of each employee who has worked during that week, irrespective of the time so worked.
- (b) The employer shall add his contribution to that deducted from each employee's weekly earnings and shall forward this total to the Secretary of the Fund, P.O.Box 18354, Dalbridge, 4014, so as to reach the said Secretary not later than 10 days after the end of each calendar month, together with a list showing the Council registration numbers of the employees and the amounts.
- (5) (a) The fund shall be applied to provide employees with medical treatment, medicine and sick pay in case of illness.
- (b) The Council shall contribute R150 000,00 from the Fund to HIV/AIDS education and treatment programmes during the period of operation of this Amending Agreement.

- (6) (a) The Fund shall be administered by a Management Committee consisting of one representative each from the employers and employees appointed by the Council, together with the Chairman and Vice-Chairman of the Council, who shall be *ex officio* members of the Management Committee, who may make regulations not inconsistent with the provisions of this clause.
- (b) For each representative an alternative shall be appointed.
- (c) All the decisions of the Management Committee shall be subject to ratification by the Council.
- (7) For the purpose of benefits, sickness shall mean any illness, affliction or disease including pregnancy of employees who are eligible for maternity benefits in terms of the Unemployment Insurance Act, 1966, but excluding-
- (a) venereal disease and illness, affliction or disease which is attributable to misconduct or excessive indulgence in intoxicating liquors or drugs; and
- (b) any accident, illness or disease in respect of which compensation is payable in terms of the Compensation for Occupational Injuries and Diseases, 1993.
- (8) (a) Payment of benefits shall be subject to the production of a certificate of absence from work to which shall be attached a medical certificate signed by one of the Funds medical officers.
- (b) The Management Committee has the right to require the claimant for benefits to submit himself to such of the fund's medical officers as it may direct.
- (c) Every employer shall complete a certificate of absence from work for each employee who has been off from work through illness and who has produced a medical certificate from a hospital, or a medical officer of the Fund. The employer shall forward such absence from work certificate together with the medical certificate to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014.
- (9) An employee who has contributed to the Fund for 13 weeks shall, subject to the provisions of subclause (7) and (8) hereof, be entitled to the following benefits during the currency of this part of the Agreement: Provided that the amount standing to the credit of the fund is not less than R200:
- (a) Free medical attention (excluding surgical treatment and maternity cases, save where these are approved in whole or in part by the Management Committee, and venereal diseases) by the medical officer(s) appointed by the Management Committee.
- (b) Free medicine when prescribed by the Fund's medical officer(s): Provided that such are made up by a chemist(s) specified by the Management Committee, or the Sick Benefit Fund Clinic.
- (c) In any one calendar year, sick pay equal to half a day's wage prescribed in clause 4 for each day of absence from work through illness to a maximum of forty (40) days' absence. Provided that a member shall not be entitled to any sick pay whatsoever in respect of a period of absence of two days or less unless they constitute the first two days of a period of not less than three continuous days' absence, in which case such members shall receive for a period of absence which is limited to three days, one day sick pay. No claim for sick pay shall be recognised if lodged after the expiry of six calendar months, calculated from the date of fitness for work indicated on the medical certificate. In cases of permanent unfitness, the period of six months shall be calculated from the last day in respect of which sick pay is due.
- (d) Contributors become unemployed shall remain eligible for membership of the fund, and, while unemployed, shall be entitled to the benefits prescribed in paragraph (a) and (b) for the following periods:



	Weeks
Those with one year but not exceeding two years' service	6
Those with more than two years but not exceeding five years' service	12
Those with more than five years but not exceeding ten years' service	18
Those with more than ten years' service in each cycle of one year	24

- (e) Should a contributor's period of unemployment exceed that specified in paragraph (d) he shall be required to be employed in the Clothing Industry and contribute to the Fund for a further period of 13 weeks after restarting in the Industry before again becoming eligible for benefits.
- (10) An member who was employed within the Clothing Industry, Natal, for at least 20 years and whose employment was terminated due to ill health or old age shall be entitled to receive medical service upon payment of a R5,00 user charge due to the fund, until the member reaches the age of 65 years.
- (11) In the event of the expiry of this part of the Agreement by effluxion of time or cession or any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created: Provided that the fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within 12 months of the date of expiry of this part of the Agreement.
- (12) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding, the Management Committee shall continue to administer the Fund and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternatives in the membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purpose. In the event of no Council being in existence the Fund shall upon the expiry of this part of the Agreement be liquidated by the Committee or the trustee, as the case may be, in the manner set forth in subclause (11) of this clause, and if upon such expiry the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund as if it formed part of the general funds of the Council.
- (13) Upon liquidation of the Fund in terms of subclause (11) the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council.
- (14) The Management Committee shall have the right to exclude from all the provisions of this clause any employee who, in its opinion, has abused the privileges of the Fund: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.

### 36. RETRENCHMENT

- (1) For the purposes of this clause "retrenchment" shall mean the dismissal of an employee for reasons based on the employer's operational requirements.
- (2) The employer shall endeavour to avoid retrenchments by transferring workers to other departments, by training or retraining, by limiting and/or eliminating overtime, working short-time, allowing voluntary retirement and such other suitable alternatives.
- (3) The employer shall furnish Council and the Union with the following information:
  - (a) The reasons for the proposed retrenchments;
  - (b) approximate number of employees to be retrenched and the job categories in which they are employed;
  - (c) the proposed method for selecting which employees to dismiss;
  - (d) the date when the dismissals are likely to take effect;
  - (e) the severance pay proposed.
- (4) The employer shall consult with the Union on the need and extent of the proposed retrenchment and the fairness of selection of employees to be retrenched:
  - (a) An employer must pay an employee who is retrenched severance pay equal to one weeks wage for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of subclause.
  - (b) An employee who unreasonably refused to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of paragraph (a) above.
- (5)
  - (a) The employer shall give the Council and the Union at least 21 days written notice provided that the Union and the employer may reduce the period of notice by mutual agreement which agreement shall not be unreasonably withheld.
  - (b) The notice shall not run concurrently with the Annual Shutdown period of the employer's establishment.
- (6) Where an employer has retrenched employees he shall, if he subsequently engages additional employees, as far as is possible, give preference to the reengagement of those employees who were retrenched from his establishment within the previous 6 (six) months.

### 37. FINANCIAL MATTERS

- (1) The Council shall, in accordance with the standards of generally accepted accounting practice, principles and procedures-
  - (a) keep books and records of the income, expenditure, assets and liabilities of the Funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;
  - (b) within six (6) months after the end of each financial year, prepare financial statements including-
    - (i) a statement of income and expenditure for the previous financial year; and
    - (ii) a balance sheet showing it's assets, liabilities and financial positions as at the

end of the previous financial year.

- (2) (a) The Council shall arrange for an annual audit of the books and records of account and the financial statements of the funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;
- (b) the auditor appointed by the Council shall--
  - (i) be registered to practice in the Republic of South Africa as a public accountant and auditor;
  - (ii) conduct the audit in accordance with generally accepted auditing standards; and
  - (iii) report in writing to the Council: Which report shall include the auditor's opinion as to whether or not the Council has complied with those provisions of its constitution related to financial matters.
- (3) The financial statements and auditor's reports shall be--
  - (a) available to the parties to the Council or their representatives for inspection;
  - (b) submitted to a meeting of the Council;
  - (c) provided to the Registrar of labour relations within thirty (30) days of receipt of the auditor's report.
- (4) All monies referred by the funds referred to in clause 14 (3) (a), 15 and 35 shall be deposited into a banking account opened in the name of the Fund. Withdrawals from the Fund shall be by cheque signed by a person duly authorised by the Council.
- (5) The money of any Fund referred to in clauses 14 (3) (a), 15 and 35 that is surplus to that Fund's requirements or the expenses of the Fund may be invested in--
  - (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (b) a registered unit trust;
  - (c) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975; and
  - (d) any other manner approved by the Registrar of labour relations.
- (6) All expenses of administration, banking and auditing shall be a charge against that Fund.

### 38. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation:**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators:**

- (a) The Council shall appoint
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by

appointing the nominees most preferred by the employer parties from the union parties' list.

- (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (1), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(4) Disputes involving non-parties to the Council:**

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure:



**(a) Referral and conciliation of disputes**

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) Adjudication of disputes referred to the Council for arbitration:**

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if-
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for

arbitration on good cause shown.

- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to-
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.

- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council-**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause (5) (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council-**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.

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- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-
  - (aa) publicising the contents of the agreement;
  - (bb) conducting inspections;
  - (cc) investigating complaints;
  - (dd) endeavouring to secure compliance with the agreement through conciliation; or
  - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including-
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;

- (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
- (ff) any award contemplated in section 138 (9) of the Act;
- (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

### 39. ATYPICAL WORK AND SUBCONTRACTING

- (1) The same terms and conditions of employment applicable to a permanent employee shall apply to a contract worker in that job grade, unless otherwise specified in this part of the Agreement.
- (2) The Council shall conduct a biannual survey amongst employers to analyse trends relating to contract work, outsourcing, subcontracting and the use of homeworkers.
- (3)
  - (a) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention that any agreement reached as a result of the survey shall be effective from 1 July 2004.
  - (b) Every employer shall complete a questionnaire as approved by the Council.
  - (c) All employers are required to co-operate with the survey.

### 40. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2006: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2005.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.



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- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

**41. PRODUCTIVITY**

- (1) An employer shall be entitled to initiate plant level discussions with the union for the introduction of a productivity scheme.
- (2) Should such discussions lead to an agreement between the parties, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (3) Should such discussions not lead to an agreement between the parties, the matter shall be so concluded.
- (4) Discussions referred to in sub-clauses (1) to (3) shall not be subject to the declaration of disputes from either party, and neither party shall be entitled to pursue industrial action in support or in consequence of such discussions.
- (5) The provisions of this clause shall not detract from the union's right to table productivity demands at the level of the Council and to negotiate concerning these in terms of the normal negotiating procedure of the Council.

**PART D : PROVISIONS FOR THE NORTHERN REGION (CLOTHING)****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
  - (b) in the Province of the Transvaal, as it existed prior to the coming into operation of the constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).
- (2) Clauses 1 (1) (a), 2, 19B, 22(5), 25(1) and 26A(1) to (3) of this Collective Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union respectively.

**2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

**3. DEFINITIONS*****General definitions***

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995;

"agency shop" means the compulsory payment of a monthly levy by the non-party employers;

"blocker" means an employee engaged in one or more of the following operations in a Millinery Sector establishment:

Blocking, panning, stiffening of raw materials, pressing, spraying and polishing of hats, dyeing and brushing of hats in the course of manufacture;

"blocker's assistant" means an employee who assists the blocker in a Millinery Sector establishment by standing in front of the blocker and keeping the hats in place on the block;

"Category A" means a pattern maker and/or grader;

"Category B" means a marker-in;

"Category C" means a mechanic;

"Category D" means a chopper-out, cutter and/or re-cutter, negative maker, screen maker (engraver), screen printer and sample cutter;

"Category E1" means a sample machinist;

"Category E" means a sewing machinist, a finisher, an operator of a linking, overlocking and/or sewing machine, an invisible mender, an embroiderer, an embroidery machinist (other than embroidery machine mincer), a faggotter, a beader and/or pleater by hand, a baster, a shaper, a fitter-up, a checker, a presser of garments, an assistant screen maker (engraver), an assistant screen printer, a darkroom assistant, a mixing and filtering operator, an oven and

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curing operator, a screen controller, a screen preparer, a squeegee preparer, and a despatch packer;

**"Category F1"** means a machinist promoted to assistant supervisor;

**"Category F"** means an assistant supervisor, other than a machinist promoted to assistant supervisor, a despatch clerk, factory clerk and a storeman;

**"Category G1"** means other pressers not provided for elsewhere in this clause, an underpresser, a presser of shirts, ties, pyjamas and other nightwear, hats, caps, underwear, knitwear, aprons, overalls and blouses without lace, embroidery, tucks and handmade pleats, a machine belt fixer, a maintenance assistant, a layer-up; a plain sewer, an operator of a button covering, zip tacking and/or pleating machine, an employee engaged on the trubenizing of collars and/or a clicker and shaper by template, a general worker, an applique cutter, a tracer and/or marker and/or framer, a pleater, and an embroidery machine mincer;

**"Category G2"** means all employees classified as G1, who are qualified as at 31 December 1987, other than a general worker, an applique cutter, a tracer and/or marker and/or framer;

**"Category H1"** means a foreman;

**"Category H2"** means a supervisor, an assistant foreman and a head cutter;

**"Category H3"** means an artisan;

**"Category H4"** means a labourer, scooter driver and/or boiler attendant;

**"Category H5"** means a watchman;

**"Category H6"** means a driver of a light motor vehicle;

**"Category H7"** means a driver of a medium motor vehicle;

**"chopper out"** means an employee engaged in the cutting out of material, other than trimming by hand or machine, in a Millinery Sector establishment;

**"Clothing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties) and underwear.

**A. and includes -**

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes -**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"Council"** means the Northern Chamber (Clothing) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"employee"** means those employees falling within the jurisdiction of the scope of the Council;

**"employer"** means any person who employs or provides work for any person within the Industry.

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**"experience"** means the total period or periods of employment of an employee in the Clothing Industry and/or Bespoke Tailoring Industry and/or private dressmaking, excluding the Millinery Sector, in any capacity or capacities in respect of which wages are prescribed in clause 4 of this part of the Agreement, and shall be deemed to each contract of service to have been continuous from the time the employee enters this employer's service until the time such service is terminated: Provided that-

- (a) for the purpose of computing an employee's experience in the Clothing Sector, employment for 16 weeks in any half year shall be deemed to have been employment for the whole half-year;
- (b) a trainee in his first half-year of employment in the Clothing Sector, although having less than 16 weeks' but more than 13 weeks' experience on the last day of a half-year shall be deemed to have been in employment for the whole half-year;
- (c) experience in the Knitting Sector shall be regarded as experience in the Clothing Sector but not in the Millinery Sector;
- (d) the trial period of an employee in terms of 13 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed;
- (c) for the purposes of the Millinery Sector of the Industry only, the total period of periods of employment of an employee in the Millinery Sector, irrespective of the place of such employment or the class of work performed by such employee, other than that of a labourer or driver of a motor vehicle, shall include the total period or periods of employment in a shop of a Millinery Sector employer mainly or wholly engaged in the alteration and/or repair of ladies' and/or girls' hats, incidental to the sale by retail of such articles; and shall be deemed in each contract of service to have been continuous from the time the employee enters his employer's service until the time that such service is terminated: Provided that for the purposes of computing an unqualified employee's experience, employment of 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year on condition that an unqualified employee in his first half-year of employment, although having less than 16 weeks' experience on the last day of the half-year, but more than 13 weeks, shall be deemed to have been in employment for the whole half-year;

**"half-year"** means the six-monthly period commencing on the first day of January or July;

**"hourly wage"** means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

**"medical practitioner"** means a person entitled to practice as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

**"milliner"** means an employee who has had two or more years' experience in one or more of the following operations in a Millinery Sector establishment:

- (a) the design of hats;
- (b) the making of complete hats with material, excluding the making up of hats from material by machine;
- (c) the setting out and/or chopping out of patterns, excluding the cutting of trimmings;

**"National Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"nightwork"** means work performed after 18:00 and before 06:00 the next day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"old age"** means 60 years of age;



**"operational requirements"** means requirements based on the economic, technological, structural or similar needs of an employer;

**"ordinary hours of work"** means a 40-hour week of five days and 60 hours in any one week in respect of a watchman in the Clothing Sector and a 41-hour week of five days and 45 hours in any one week in respect of a watchman in the Millinery Sector;

**"overtime"** means the time that an employee works during a day or a week in excess of ordinary hours of work;

**"permanent disability"**, as certified by a medical practitioner, means being permanently unfit for further employment in the Clothing Industry;

**"personal wage"** means the last wage paid by the employer which is higher than the prescribed wage and which is checked by the Council, in terms of clause 18 of the Agreement, plus any statutory increases prescribed in terms of this part of the Agreement since date of termination of employment: Provided that not more than the four most recent increases shall be taken into account in determining the personal wage: Provided further that where an employee has not been employed in the Industry for more than two years, the personal wage shall be the greater of the minimum currently prescribed and the last wage paid on termination of employment;

**"qualified employee"** in the case of an employee referred to in clause 4 (1) Categories A and B in the Schedule to clause 4 (1), means an employee who has six or more half-years' experience; and in the case of clause 4 (1) Category C, an employee who has nine or more half-years' experience, and in the case of clause 4 (1) Categories D and E, an employee who has four or more half-years' experience;

**"short time"** means a temporary reduction in the number of working hours of any employee in any one week below the number of hours prescribed for an employee of his class or temporary cessation of work by reason of the exigencies of the business, e.g. shortage of material or orders or the necessities of stocktaking;

**"task work"** means the setting by an employer or his representative to any employee of a definite number of garments or portions of garments, to be made by such employee in a specified time;

**"trade union representative"** means a member of a trade union who is elected to represent employees in a workplace;

**"trainee"** in the case of an employee referred to in clause 4 (1) Categories A and B, means an employee who has less than six half-years' experience; and in the case of an employee referred to in clause 4 (1) Category C, means an employee who has less than nine half-years' experience; and in the case of an employee referred to in clause 4 (1) Categories D and E, an employee who has less than four half-years' experience;

**"trimmer" or "stitcher"** means an employee engaged in one or more of the following operations in a Millinery Sector Establishment:

- (a) the application of trimmings such as elastic, ribbon, flowers or veiling to a ready blocked and shaped hat, according to a given model, by hand;
- (b) sewing by hand into hats of headbands, lining or leather, which may include as part of the same operation the stitching by hand of blocked crowns and brims which have been fused or pinned together;
- (c) making trimmings by hand according to a given design or pattern;
- (d) the wiring of brim or crown of hats by hand;
- (e) binding any edge of a hat with ribbon or other material, by hand;
- (d) cutting by hand of felt and straw strips for hat edges and trimmings;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

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**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles;

**"wage"** means the portion of the remuneration, excluding the bonus earned in terms of clause 5 of this part of the Agreement, payable to an employee in respect of the ordinary hours of work as laid down in clause 9 of this part of the Agreement;

**"week"** means a period of five working days;

**"working day"** means any day on which work is usually performed in the industry;

**"workplace"** means the place or places where the employees of an employer work; if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

**"occupations"** means the jobs listed and described as follows:

**"applique cutter"** means an employee who cuts off the loose edges of pieces of material which have been embroidered onto garments or parts of garments;

**"artisan"** means an employee who is engaged in work normally performed by a skilled artisan, other than minor repairs or adjustments to machinery or installations or minor repairs or renovations to buildings, and other than a machine belt fixer and maintenance assistant referred to in clause 4 (1) Category G1 of this part of the Agreement, and for the purposes of this definition the expression "skilled artisan" means a person who has completed or is deemed to have completed a contract of apprenticeship in a trade designated or deemed to have been designated in terms of the Manpower Training Act, 1981, or who holds a certificate issued or deemed to have been issued to him by the Registrar of Manpower Training and conferring on him artisan status in terms of that Act and any other employee engaged in work normally performed by an artisan except where specifically otherwise provided;

**"assistant foreman"** means an employee who assists a foreman in the performance of his duties;

**"assistant supervisor"** means an employee who assists a supervisor in the performance of his duties;

**"bartacker"** means an employee engaged in sewing the edges of garments by using a sewing machine;

**"baster"** means an employee engaged in hand-sewing in setting a coat or parts of a coat into position preparatory to other operations, and/or in underbasting, i.e. hand-sewing linings of coats into position preparatory to sewing the edge seams, and includes an employee engaged on outbasting and a person operating a programmed automatic machine that joins or holds two parts of a garment together;

**"beader"** means an employee who sews beads onto garments or part of garments by hand;

**"boiler attendant"** means an employee who, under general supervision, maintains the water level and steam pressure in a boiler and who makes, maintains or draws the fire in such a boiler and who removes ashes;

**"checker"** means an employee who examines the incompleting and/or completed garments for flaws;

**"clicker"** means an employee who cuts parts of garments from dies, using a mechanical or hydraulic press;

**"chopper out"** means an employee engaged in cutting out garments or parts of garments by hand from one or more layers of material;

**"cutter"** means an employee who, with the aid of a single pattern, cuts by hand or machine parts of knitted garments from one or more layers of body blanks;

**"despatch clerk"** means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

**"despatch packer"** means an employee who is wholly or mainly engaged in the making up of orders and/or parcels and/or bales in readiness for despatch;

**"driver of a light vehicle"** means an employee who has a light motor vehicle licence (previously referred to as 'Code 8') and drives a vehicle with a gross vehicle mass of less than 2 000 kg;

**"driver of a medium motor vehicle"** means an employee who has a medium motor vehicle licence (previously referred to as 'Code 10') and drives a vehicle with a gross mass of more than 2 000 kg;

**"embroiderer"** means an employee who operates a single-head machine; makes a predetermined logo by means of tracing and a frame, operates an embroidery machine, and threads up, adjusts tension, checks and/or examines work under needles, excluding a multihead machine operator;

**"embroiderer by hand"** means an employee who embroiders by hand using a needle and thread;

**"embroidery machine operator"** means an employee who operates a multi-head machine or machines;

**"factory clerk"** means an employee who is employed in the production area of the factory and who is wholly or mainly employed in the recording of attendance and/or production data, which data may require further processing by office administration;

**"finisher"** means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats, fastening or serging sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand, and felling sleevehead linings by hand;

**"fitter-up"** means an employee engaged in the cutting room who takes the outsides of garments together with the cut-out linings (called trimmings) and adjusts the outsides and the insides together accurately so that the parts may go forward to the machine to be put together correctly;

**"foreman"** means an employee in charge of the employees in a factory, who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees and who is responsible for the efficient performance by them of their duties;

**"framer"** means an employee who inserts a piece of cloth or part of a garment into a frame preparatory to the embroidering thereof;

**"general worker (Clothing)"** means an employee engaged in one or more of the following operations in the Clothing Sector of the Industry:

Cleaning, i.e. cutting or nipping off threads by machine or hand and/or removing spots or marks from materials or garments, folding, sorting, pinning finished garments, stamping, marking, sloping by hand or machine, patent turning, cutting by hand or any trimming (not being piece goods) to a given length or shape, feeding into or taking out of automatic roller or form presses, pulling out bastings, soaping, turning sleeves or trousers inside out, marking by template and cutting to shape, excluding the operations performed by a "sharper by template", marking trimmings, labelling by machine other than a machine using needle and thread, making tea or similar beverages, or carrying garments or parts of garments from one place to another within an establishment, acting as messenger, and sweeping floors;

**"general worker (Millinery)"** means an employee engaged in one or more of the following operations in the Millinery Sector of the Industry:

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- (a) laying up;
- (b) moulding of flowers;
- (c) cutting off surplus of brims along marked lines;
- (d) collecting and sorting hats;
- (e) fixing belts;
- (f) sheening and/or polishing and mangling hoods;
- (g) steaming of dusting hats;
- (h) straightening out the remnants;
- (i) stirring or grinding chemicals;
- (j) grinding shellac;
- (k) packing;
- (l) delivering or carrying messages, letters or other articles on foot, by means of a bicycle or a similar foot-propelled vehicle;
- (m) making tea or other similar beverages;
- (n) cleaning premises, utensils or other articles;
- (o) loading or unloading vehicles;
- (p) carrying, moving, stacking or sorting goods or waste;
- (q) making or maintaining fires;
- (r) opening or closing packages;

**"head cutter"** means an employee who is responsible for the efficient performance of duties by other cutters;

**"invisible mender"** means an employee who is engaged in repairing knitting faults in garments or parts of garments;

**"labourer"** means an employee engaged in one or more of the following operations: Cleaning premises, loading or unloading goods, carrying and/or stacking goods, removing refuse;

**"layer-up"** means an employee who is engaged in the laying of material in one or more thickness on the cutting tables and may include the duty of slitting the ends;

**"linker"** means an employee engaged in operating a linking machine used for the purpose of joining parts of a fully fashioned garment;

**"machine belt fixer"** means an employee who measures a leather belt and by means of a pair of pliers fits a belt to a sewing machine;

**"maintenance assistant"** means an employee who is engaged in oiling, greasing and cleaning sewing machines, and who may make adjustments or replace parts to sewing machines or other equipment used directly in the manufacture of the products of the workplace, such as chain hooks, bases, feed dogs, throat plates, tension controls, tension springs, presser feet, lifters, shuttles on bar-tack and button sew-on machines, and loopers on machines, and/or is engaged in cleaning plant, machines, vehicles, tools, utensils or articles other than garments;

**"marker-in"** means an employee who is engaged on marking-in patterns on cloth or any material, and includes an employee who makes the prototype markers;

**"mechanic"** means an employee (other than an artisan, machine belt fixer and/or maintenance assistant) who is wholly or mainly engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of the products of the workplace;

**"overlocker"** means an employee operating a sewing machine with one or more needles and thread which serges the edge of fabrics;



**"pattern grader"** means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern;

**"pattern maker"** means an employee engaged in designing and making patterns, but excludes a designer who makes only master patterns;

**"plain sewer"** means an employee performing one or more of the following operations by hand:

Felling crutch linings in trousers, felling hems, fastening permanent turn-ups, felling waistband linings or parts thereof, fastening catches in tops of trousers and various odds and ends of sewing, felling necks, shoulders or armholes of wastecoats, paddling collars or lapels, putting on bridles, fastening edgestraps and odds and ends of sewing, sewing buttons, felling hems of linings or seams of same already basted into position, felling bindings, making and sewing on hangers, canvases, and tacking, and all hand-sewing not elsewhere specified;

**"pleater"** means an employee engaged in one or more of the following operations:

Guiding material and paper through an automatic pleating machine, putting material between cardboard moulds and/or preparing for steam box in hand or mould-pleating process, taking materials out of moulds in hand or mould pleating process;

**"presser of garments"** means an employee who operates a pressing machine and presses a finished garment;

**"re-cutter"** means an employee who is engaged in cutting out and/or marking-in materials for replacing damaged or missing parts of a garment;

**"sample machinist"** means an employee who completely machines prototype garments, other than patent machining;

**"scooter driver"** means a driver of a three or two-wheeled motor vehicle used for the delivery of goods;

**"sample cutter"** means an employee engaged in marking-in and cutting out garment samples or parts thereof, where the conventional marking-in skill is not required;

**"sewing machinist"** means an employee engaged on operating a sewing machine using a needle and thread;

**"shaper"** means an employee engaged on shaping by hand designs of lapels and collars of coats preparatory to underbasting, but does not include trimming by hand;

**"shaper by template"** means an employee, other than a shaper, engaged on marking by template and cutting to shape of collars, lapels and/or fronts of ladies', men's and children's jackets and/or coats;

**"storeman"** means an employee who is in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse and/or delivering goods from a store or warehouse to the consuming departments in a workplace or for despatch;

**"supervisor (Clothing)"** means an employee in a Clothing Sector establishment who, under supervision, is responsible for the efficient performance of the duties of the employees or a section of the employees in a workshop, but does not include an assistant supervisor;

**"supervisor (Millinery)"** means an employee in a Millinery Sector establishment, who is in charge of employees engaged on production in a workplace and who is responsible for the distribution and efficiency of their work;

**"tracer and/or marker"** means an employee who, with powdered chalk or other similar material, marks or traces the outlines of a pattern onto the material with the aid of a perforated lay marker;

**"under-presser"** means an employee who is engaged in pressing seams, linings, unfinished parts of garments and/or unfinished garments, or who may be engaged in any pressing operations incidental to further machining operations; **"watchman"** means an employee



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engaged in guarding property and/or patrolling premises; "operations" means all clothing manufacturing operations including those defined below:

"*beading*" means the application by means of needle and thread of beads, sequins or other similar articles to a garment for the ornamentation of such garment;

"*faggotting*" means the joining of two pieces of cloth side by side by means of ornamental stitches;

"*felling*" means the operation of folding one end of the fabric over the other and sewing it down in such a manner that the stitching does not appear on the other side;

"*marking*" means the marking of the position of pockets, buttons, buttonholes, loops, fasteners, darts, hems, turn-ups and the like, preparatory to further operations;

"*patent fuming*" means turning out or over the edges of collar facings, belts, bands, cuffs, tabs, pockets and/or flaps by hand or machine and turning garments or parts thereof inside out;

"*pleating*" means the insertion of pleats or permanent folds into the cut-out parts of the skirt portion of a dress;

"*sloping*" means the marking and/or trimming of the shapes of the necks of shirts and underwear;

"*sorting*" means the sorting out of garments or parts of garments as required for various operations;

"*stamping*" means the stamping of sizes, identity or work numbers or other details on garments or parts of garments and/or labels.

### Screen Printing Operations

#### (1) Category 4D employees:

"**negative maker**" means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;

"**screen maker (engraver)**" means an employee who engraves and cures screens;

"**screen printer**" means an employee engaged in--

- (a) operating a screen printing machine;
- (b) setting up screens in sequence of colour to be printed on fabric;
- (c) squaring off and testing that screens fit according to master feeler;
- (d) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (e) positioning colours in correct sequence to ensure that colour combination matches the master feeler and colour card;
- (f) checking the base fabrics to ensure correct face and quality;
- (g) supervising the operations of the colour thrower;
- (h) supervising the handling of screens to and from wash bays;
- (i) examining screens from wash bays to ensure that they are in a satisfactory condition;
- (c) carrying out checks for faults;

#### (2) Category 4E employees:

"**assistant screen maker (engraver)**" means an employee who assists a screen maker (engraver);

**"assistant screen printer"** means an employee who assists in screen printing and who may screen print by hand;

**"darkroom assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;

**"mixing and filtering operator"** means an employee engaged in-

- (a) cleaning and preparing drums returned from printing machines;
- (b) cleaning mixing equipment;
- (c) ensuring thorough mixing and blending dyes and auxiliaries;
- (d) filtering mixed dyes;
- (e) handling drums from mixers to filter machines;
- (f) watching for malfunctions in mixing equipment;
- (g) operating a high-speed stirrer;
- (h) operating a tub washer;
- (i) removing solid or foreign articles from print paste;
- (j) supplying clean drums to colour weighers;
- (k) transferring identifying labels to drums of dye;

**"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;

**"screen controller"** means an employee engaged in-

- (a) applying masking tape set for automatic printing machine;
- (b) checking for faults and rectifying same;
- (c) clearing blockages by means of a high-pressure gun;
- (d) painting in any open motive pinholes;
- (e) painting in masking and making trial print proof;
- (f) placing screens in rack ready for use;
- (g) putting end rings into rotary screens;
- (h) retouching screens;

**"screen preparer"** means an employee engaged in-

- (a) coating screens;
- (b) fitting gauze to frames;
- (c) operating a stretching machine;
- (d) placing screens in conditioning chamber;
- (e) preparing and checking screen frames;
- (f) removing grease from screens;

**"squeegee preparer"** means an employee who makes and prepares squeegees.

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## 4. WAGES

- C. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:
- (1) Subject to the provisions of subclauses (2) (a), 2 (b), (3), (5) and (6), not less than the following minimum wages shall be paid to the undermentioned categories of employees employed in the Clothing Sector of the Industry, from the date of coming into operation of this part of the Agreement and on each pay day thereafter: Provided that trainees whose increased experience as at 30 June 2005 entitles them to a higher wage in terms of the table below shall be paid the increased wage from the date of coming into operation of this part of the Agreement and on each pay day thereafter:

		Wage per week
CAT	DESCRIPTION OF OCCUPATION	R
(A)	<b>Pattern Maker and/or Grader:</b>	
	(i) Qualified:	978.50
	(ii) Learners:	
	first six months of experience	352.70
	second six months of experience	456.50
	third six months of experience	561.50
	fourth six months of experience	666.20
	fifth six months of experience	771.10
	sixth six months of experience	875.80
	Thereafter, the wage specified in (A)(i) i.e.	978.50
(B)	<b>Marker-In:</b>	
	(i) Qualified:	812.50
	(ii) Learners:	
	first six months of experience	352.70
	second six months of experience	428.90
	third six months of experience	505.50
	fourth six months of experience	582.40
	fifth six months of experience	659.20
	sixth six months of experience	736.00
	Thereafter, the wage specified in (B)(i) i.e.	812.50
(C)	<b>Mechanic:</b>	
	(i) Qualified:	792.50
	(ii) Learners:	
	first six months of experience	352.70
	second six months of experience	400.80
	third six months of experience	449.80
	fourth six months of experience	498.90
	fifth six months of experience	548.10
	sixth six months of experience	596.70
	seventh six months of experience	645.80
	eighth six months of experience	694.80
	ninth six months of experience	743.90
	Thereafter, the wage specified in (C)(i) i.e.	792.50
(D)	<b>Chopper Out, Cutter and/or Re-Cutter, Negative Maker, Screen Maker (Engraver), Screen Printer, Sample Cutter:</b>	
	(i) Qualified:	588.70
	(ii) Learners:	
	first six months of experience	352.70
	second six months of experience	411.20

- (3) Notwithstanding the definition of "experience", an employee who is transferred from any occupation to an occupation for which a higher qualified wage is prescribed, shall be dealt with as follows:
- (a) An employee transferred to the machinist occupation shall, if such employee has already completed six months' experience or more, be credited with six months' experience and, irrespective of the wage previously paid to him, he shall be paid a wage in accordance with his credited plus his actual experience as a machinist.
  - (b) If an employee who is a chopper-out is transferred to the class of marker-in, he shall be credited with actual experience as a chopper-out but with only four half-years. If his experience as a chopper-out exceeds four half years, he shall continue to receive the wage paid as a chopper-out or the wage according to his credited plus actual experience as a marker-in, whichever is the higher.
  - (c) In every other case of a transfer, not dealt with in (a) and (b) above, the employee shall be regarded as having no experience but shall continue to receive the wage he received prior to the transfer, until such time as he is entitled to receive an increase according to the experience gained in his new occupation.
  - (d) Should an employee be transferred back to his previous occupation, he shall revert back to the wage paid or due to him in that occupation, according to his experience.
  - (e) A qualified sewing machine operator who is transferred to the assistant supervisor category shall be credited with six months' experience as an assistant supervisor and shall be entitled to a wage in accordance with credited plus actual experience in that category.
- (4) Notwithstanding anything to the contrary contained in this part of the Agreement, the increase to which a learner may become entitled in terms of subclause (1) shall be paid on the first day of each half-year, on the basis of the learner's experience on the last working day.
- (5) Notwithstanding anything to the contrary contained in this part of the Agreement, the commencing wage of an employee who has had only bespoke dressmaking experience shall be determined, after a trial period not exceeding 20 working days, by the employer and employee concerned in conjunction with the Council. That employee shall then be deemed to be a learner starting with only that period of experience which could enable him to earn the wage agreed to by the employer, the employee and the Council.
- (6) Notwithstanding the provisions of this clause and the provisions of clause 7 (1) relating to weekly payment of wages, an employer shall be permitted to pay an employee whose weekly wage is greater than one-and-a-half times the qualified machinists' wages at that time, a monthly salary: Provided that the amount so paid shall not be less than four-and-one-third times the weekly wage paid or prescribed in this clause, whichever is the greater: Provided further that such monthly salary shall be paid during working hours and not later than the last working day of the month to which it relates.
- (3) **Transitional provision following the 2005 negotiations:** In addition to the wage that an employee is entitled to in terms of this part of the Agreement, he shall be entitled to receive, by no later than six weeks from the date from which the Minister declares this part of the Agreement binding by publication in the Gazette (hereinafter referred to as implementation date) and in equal weekly instalments, an amount equal to the difference between the remuneration paid to him calculated from 1 July 2005 until the implementation date and the remuneration based on his wage, as specified in this part of the Agreement, calculated from 1 July 2005 until the implementation date.

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This provision shall apply to both the Clothing and Millinery Sectors of the Industry.

**B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:**

- (8) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees, employed at Millinery Sector establishments, shall be as follows:

		Wage per week
		<i>R</i>
(a)	<b>Supervisor:</b>	821.30
(b)	<b>Milliner (Upgrade to Trimmer):</b>	
	(i) Qualified:	651.60
	(ii) Learners:	
	first six months of experience	461.80
	second six months of experience	504.90
	third six months of experience	554.30
	fourth six months of experience	614.70
	Thereafter, the wage specified in (b)(i) i.e.	651.50
(c)	<b>(1) Blocker-Front (Upgrade from Assistant Blocker):</b>	
	(i) Qualified:	548.40
	(ii) Learners:	
	first six months of experience	454.60
	second six months of experience	469.30
	third six months of experience	498.90
	fourth six months of experience	522.10
	Thereafter, the wage specified in (c)(i) i.e.	548.40
	<b>(2) Driver:</b>	548.40
(d)	<b>Machine Operator &amp; Chopper-Out:</b>	
	(i) Qualified:	507.40
	(ii) Learners:	
	first six months of experience	320.10
	second six months of experience	365.80
	third six months of experience	391.70
	fourth six months of experience	452.00
	Thereafter, the wage specified in (d)(i) i.e.	507.40
(e)	<b>Trimmer/General Worker/Labourer/Assistant Blocker:</b>	
	(i) Qualified:	432.50
	(ii) Learners:	
	first six months of experience	320.10
	second six months of experience	350.90
	third six months of experience	376.80
	fourth six months of experience	405.20
	Thereafter, the wage specified in (d)(i) i.e.	432.50
(f)	<b>Boiler Attendant &amp; Watchman:</b>	473.10



- (9) Nothing in this part of the Agreement shall operate to reduce the wage of an employee who was paid higher than the prescribed minimum rate. Such employee shall continue to receive the higher rate, as if it were the minimum in respect of that employee. This provision shall also apply if an employee obtains employment with another employer in the Industry.
- (10) Any calculation of wages or deductions from wages shall be based on a five-day week, i.e. the weekly wage divided by five.
- (11) The minimum wage due to a monthly paid employee shall be calculated at four-and-a-third times the weekly wage due.
- (12) An employer who requires an employee of one class of his employees to perform the work of another class shall either pay-
  - (a) a wage calculated on the highest weekly rate than his own class for that period; or
  - (b) not less than the wage for the period calculated on the rate specified in the rising scale for the highest class, resulting in a higher wage than that of his own class: Provided that the provisions of this clause shall not apply where the difference between classes is based on age or experience.
- (13) Where an employer transfers an employee from one class of work to another, the Council shall be notified in writing of such transfer within 14 days of the date on which the change was put into operation: Provided that where any such change has been in operation for a period less than two weeks and the work which he was performing prior to the change, no notification need be sent to the Council as herein specified.

#### 5. BONUS SCHEMES, TASK WORK AND PIECEWORK

- (3) No employees shall be employed on task work or piecework in any workplace: Provided that an employer may agree with any one or more of his employees for the payment of bonuses for any work performed by such employee or employees in excess of the normal day's or week's work, subject to clause 9, having been mutually agreed upon between the employer and the employee or employees: Provided further that such bonus system shall enable an employee to earn a bonus amounting to at least 10 per cent of the relative prescribed wage for an employee of his class.
- (4) Any employer who wishes to introduce a bonus system in his workplace or to effect alterations in one already operating, shall, prior to the introduction or alteration thereof, furnish the under-mentioned information to the Secretary of the Council and obtain the Council's approval of such system or alteration, and no bonus system shall be introduced or altered without the Council's approval:
  - (a) The rate of the bonus and the method of calculating the amount payable as a bonus;
  - (b) the period in respect of which the bonus is calculated from time to time;
  - (c) the day upon which the amount of the bonus earned by an employee during each such period is payable.
- (3) The provisions of subclause (2) hereof shall not have the effect of rendering it unlawful for any employer to continue to operate a bonus system of which he has notified the Council under any previous agreement for the Industry.

#### 6. SHORT TIME

- (3) Where short time has been or is introduced on any workplace after notifying the Council in writing, an employee who is not required to work on any day shall be given

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notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday in the case of the Clothing Sector of the Industry and by not later than 12:00 the previous Friday in the case of the Millinery Sector of the Industry.

- (4) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.
- (5) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

## 7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

### A. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) Subject to the provisions of clause 13 (5) of the Agreement, wages and other amounts due to employees shall be paid weekly in cash, during working hours on Friday, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a Friday, any amounts due to him shall be paid immediately upon such termination: Provided further that when an employee is working short time or the ordinary pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (2) No deduction of any description shall be made from amounts due to an employee except as provided below:
  - (a) Where an employee is absent from work other than at the request or on the instructions of the employer, a pro rata amount for the actual time lost may be deducted from his total remuneration;
  - (b) subject to the provisions of clause 6 (1) of this part of the Agreement, where short time has been introduced, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour not worked may be made;
  - (c) where an employer closes his workplace during the month of December and/or January owing to the holiday recess and his employees have been paid holiday pay in terms of the provisions of clause 12, wages may be deducted for the actual period of the holiday recess but not exceeding a period of 15 working days;
  - (d) where an employer supplies an employee with tea, he may deduct 40c per week from his wages;
  - (e) with the consent of the employee, deductions may be made by an employer for insurance or pension funds, or for dental plates and other dental work not otherwise provided for, or for purposes of repaying any money owing to Council funds or other benefit funds operated by the Council;
  - (f) contributions to Council funds shall be deducted;
  - (g) contributions to the Medical Benefit Society shall be deducted;
  - (h) the cost of equipment supplied to employees may be deducted in terms of clause 16 of this part of the Agreement;

- (i) if, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for the time lost in excess of two hours;
- (j) any amount paid by an employer on behalf of an employee in order to comply with any law or order of court may be deducted;
- (k) with the written consent of an employee, deductions may be made from the wages and/or holiday pay for amounts owing to an employer in respect of money borrowed and in respect of goods purchased by the employee from the employer: Provided that the amounts so deducted in respect of such goods purchased shall not exceed one-third of the amount due to the employee as wages or holiday pay;
- (l) contributions to the Slack Pay Fund shall be deducted;
- (m) contributions to the Provident Fund shall be deducted;
- (n) an employer shall deduct trade union subscriptions and levies from trade union members on written authorisation, other than where an exemption has been granted by the Bargaining Council: Provided such monies have been determined in terms of the union's constitution; the employer shall forward such amounts so deducted to the Secretary of the Council; PO Box 5101, Johannesburg, 2000, for transmission to the union;
- (o) contributions to the Sick Pay Fund shall be deducted;
- (p) an amount may be deducted in respect of the cost of an over-all supplied as provided in clause 16 (2) of this part of the Agreement.
- (3) (a) All cash payments to employees shall be made in sealed envelopes which shall be retained by the employee.
- (b) Payments may be made by bank transfer, bank deposit or by cheque.
- (c) Payments must be accompanied by a payslip with the following details: Name and factory number of the employee, the weekly wage, number of hours worked, amount earned for the time worked, amount of any bonuses earned, amount of holiday pay (if any), details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which the wages are paid.
- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 7 (7) (d) of the Fund Collective Agreement.
- (6) (a) Each employee must be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus is inclusive of and not additional to any bonus paid by an employer.
- (c) For purposes of calculating this bonus, absences of any nature may not be taken into consideration.

**B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:**

- (3) Wages and other amounts due to an employee shall be paid weekly during working hours: Provided that where an employee's services are terminated on a day other than a pay day, any amounts due shall be paid immediately upon such termination. Failure to pay the amounts immediately, the employer shall pay the employee four hours' pay for every day that the employee is required to collect amounts due at the workplace.

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- (4) Pay may be made in cash or by cheque, or may be deposited into the employee's account with a financial institution, or by bank transfer: Provided that there is prior consultation to reach agreement on who would bear the additional costs which arise in consequence.
- (5) Payment shall be accompanied by a pay slip with the following details of the employee:
- (a) The name, occupation and clock-card number;
  - (b) the date of employment;
  - (c) the rate of pay;
  - (d) the total ordinary hours worked;
  - (e) the overtime hours worked and the overtime rate;
  - (f) any other payments due to the employee;
  - (g) the deductions made and the reason for the deductions; (h) the period in respect of which payment is made; and
  - (i) the actual amount paid to the employee.
- (3) Payment in cash shall be made in an envelope and during working hours.
- (4) Where an employee is working short time, or the nominated pay day is a holiday, payment shall be made before the employee finishes work for the week.
- (5) No deductions of any description shall be made from an employee's remuneration, other than the following:
- (a) Whenever an employee is absent from work, other than on the instruction or at the request of his employer.
  - (b) When an employee commences employment with an employer after the beginning of the working week of the workplace concerned, a deduction proportionate to the actual time lost may be made from the remuneration of such employee.
  - (c) Where short time has been introduced, a deduction may be made for the actual time not worked.
  - (d) Where an employer closes his workplace during the December shutdown, wages may be deducted for the actual period of the holidays recess up to a maximum of 15 working days.
  - (e) With the written consent of the employee, deductions may be made by an employer for insurance, provident or pension funds, or for dental plates or dental work not otherwise provided for, or for purposes of repaying a housing loan in terms of a housing loan scheme, approved by the Council.
  - (f) Contributions to the-
    - (i) Council;
    - (ii) Medical Benefit Society;
    - (iii) Sick Pay Fund;

- (iv) Provident Fund.
  - (g) Where, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee for time lost in excess of two hours.
  - (h) Where an employer is legally or by an order of a competent court required or permitted to deduct any amount.
  - (i) With the consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union.
- (3) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to one week's wages: Provided that a pro-rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
  - (4) The bonus is inclusive of and not additional to any bonus paid by an employer.
  - (5) For purposes of calculating the bonus, absence of any nature may not be taken into consideration.

### 8. PROPORTION OR RATIO OF EMPLOYEES

The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) An employer shall not employ an unqualified employee unless he has in his employ two qualified employees, and for every two qualified employees not more than three unqualified employees shall be employed: Provided that for the purpose of this subclause an unqualified employee receiving not less than the total wage of a qualified employee of his class shall be reckoned as a qualified employee: Provided further that employees, for whom a flat rate of payment is prescribed, shall not be included for the purposes of this subclause.
- (2) Notwithstanding the provisions of subclause (1), no employer shall employ an assistant supervisor unless he has in his employ a supervisor, and for each supervisor he has in his employ, not more than three assistant supervisors shall be employed.

The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:

- (3) One qualified milliner and one qualified trimmer shall be employed before a trainee milliner or trimmers may be employed in a workplace. For every five trainee milliners and/or trimmers employed in a workplace, at least one qualified milliner and one qualified trimmer shall be employed.
- (4) One qualified machine operator shall be employed before employing any other trainee machine operators. For every qualified machine operator, two trainee machine operators shall be employed.

### 9. HOURS OF WORK

- (1) An employer shall not require or permit an employee, other than an employee referred to in subclause (4)-
  - (a) (i) to work for more than 40 hours, excluding meal intervals, in any one week at a Clothing Sector establishment;



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- (ii) For more than 41 hours in any one week at a Millinery Sector establishment;
- (b) to work for more than five days in any week;
- (c) on Saturdays or Sundays;
- (d)
  - (i) to work more than eight hours per day: Provided that extra time not exceeding 30 minutes per day may be worked on a Monday, Tuesday, Wednesday, and Thursday, if the working time on Friday of such wage week is shortened by the extra time worked or to be worked on the other four days if the employee is employed at a Clothing Sector establishment;
  - (ii) for more than eight and a half hours a day, excluding Friday, where the normal hours shall be half an hour less if the employee is employed at a Millinery Sector establishment;
- (e)
  - (i) to work before 07:00 or later than 16:45 or during the rest intervals provided for in subclause (2), on any day from Monday to Friday, inclusive, if the employee is employed at a Clothing Sector establishment;
  - (ii) before 07:30 or after 18:00 from Monday to Friday or during the rest interval, if the employee is employed at a Millinery Sector establishment;
- (f)
  - (i) to work more than five hours, without a meal interval of not less than 30 minutes and not more than one hour's duration, except in accordance with the provisions of clauses 10 of this part of the Agreement if the employee is employed at a Clothing Sector establishment;
  - (ii) to work for longer than five hours without an uninterrupted interval of at least one hour if the employee is employed at a Millinery Sector establishment.
- (2) Rest intervals of not less than 10 minutes, during which no work shall be performed, shall be allowed to each employee not later than two hours after the commencement of the morning work period and as near as practicable in the middle of the afternoon work period, and such intervals shall be regarded as time worked. Utensils and boiling water for making tea shall be provided by the employer and be made available to the employees at the commencement of each rest interval and meal interval every day from Monday to Friday, inclusive.
- (3) An employer may only require or permit an employee to perform nightwork, if so agreed, and if-
  - (a) the employee is compensated by the payment of an allowance, which may be a night shift allowance, or by a reduction of working hours; and
  - (c) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's night shift.

This provision shall not apply to the Millinery Sector.
- (4) *Exclusions:* The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
  - (a) for more than 45 hours per week as from 1 December 2000; or
  - (b) for more than six days in anyone week:

Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

This provision shall not apply to the Millinery Sector.

- (3) In the case of Millinery Sector establishments, the Council shall be notified of any change in the hours of work.

(4) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:

- (i) only unemployed people may be recruited for working this shift.
- (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.

- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:

- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
- (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.

- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:

- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
- (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

## 10. OVERTIME AND SUNDAY WORK

- (1) Overtime, that is time worked in excess of the hours prescribed in clauses 9 (1) (a) and (d), and 4 (a) and (b), may not be worked in excess of the limitations laid down in subclause (2) without the prior written consent of the Council.
- (2) Notwithstanding the provisions of clause 9 (1), an employer may, subject to the provisions of this clause, permit an employee to work overtime: Provided that no employer shall permit any employee to work overtime-

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- (a) for more than two hours on any working day;
  - (b) on more than three consecutive days;
  - (c) for more than 10 hours in any calendar week;
  - (d) on more than 60 days in any year;
  - (e) after completion of his ordinary working hours, for more than one hour on any day, unless he has-
    - (i) given notice thereof to such employee before midday; or
    - (ii) provided such employee with an adequate meal before he has to commence overtime; or
    - (iii) paid such employee an allowance of R5,00 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (3) Payment for overtime worked shall be made at the rate of one-and-a-half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (4) An employer shall pay an employee who works on a Sunday, double the employee's rate of pay for the number of hours worked.
- (5) No employee shall be required to work overtime without his consent.
- (6) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.
- (7) No employee shall be required or permitted to work overtime between the hours of 18:00 and 06:00.
- (8) *Exclusions:* The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.
- (9) **Aggregation of Overtime**
- For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.
- Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:
- (iii) time not worked as a result of protected industrial/protest action;
  - (iv) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (v) time not worked as a result of the employer having declared short time;
  - (vi) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (vii) the three days family responsibility leave provided for in clause 9 of this part of the Agreement.
- (10) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

## 11. REGISTRATION OF AN EMPLOYER

- (3) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous agreement, shall within seven days of the date on which this part of the Agreement becomes binding furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council.
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars required by the Council shall be provided in the form and manner specified by the Council, in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Secretary of the Council a notice in writing setting out full particulars of such change within seven days of its taking place:
  - (a) A change of name;
  - (b) a change of address;
  - (c) changes in the composition of its members or partners or directors;
  - (d) the sequestration or liquidation of the business;
  - (e) the transfer or abandonment of the business;
  - (f) the acquisition of another business which is covered by the Agreement;
  - (g) the commencement of any other business covered by this part of the Agreement.

## 12. HOLIDAY LEAVE

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year and not later than the 24th of that month, grant to each of his employees who has been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who during any year has been absent from work for a continuous period of six months or more on confinement or 12 weeks or more for any other reason, shall be paid holiday pay in terms of subclause (2). The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.
- (2) An employee-
  - (a) who commenced work with an employer on or after 1 February in any year; or
  - (b) who commenced work with an employer before 1 February in any year, and whose employment terminated before 1 December of that year, shall be paid in lieu of holiday leave for the period of employment in that year an amount equal to "a" divided by "b" x "c" x "d", where-
    - a = 15 days
    - b = 12
    - c = actual weekly wage divided by 5
    - d = number of months of employment in the current year.The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year or, if the employee's employment

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terminates before that day, on the day he leaves the employer's service except as provided for in clause 13 (5) of this part of the Agreement.

The provision of paragraph (a) and (b) shall not apply to employees employed in the Millinery Sector of the Industry, to whom paragraph (c) below shall apply:

- (c) An employee who commenced employment after 1 February, or who terminates his services before the first day in December, shall be paid holiday pay equivalent to 1,25 days' pay for every completed month of service.
- (3) In determining the period of employment in respect of which holiday pay must be calculated in terms of subclause (2), the expression "employment" shall be deemed to include any period during which an employee-
  - (a) is absent from work on the instructions or at the request of the employer;
  - (b) is on sick leave, provided a medical certificate for the period or periods of absence has been produced;
  - (c) is on maternity leave, provided a medical certificate to this effect has been produced;amounting in the aggregate in any year to not more than 12 weeks in respect of the periods referred to in paragraphs (a) and (b) plus up to six months in respect of the period referred to in paragraph (c).
- (4) Every employer shall grant to each of his employees, including watchmen, New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill as paid holidays, and no employer shall employ an employee and no employee shall work on these twelve (12) days and, in addition, each employer shall grant to all of his employees who have worked the whole morning period of the Thursday preceding Good Friday time off from the commencement of the normal meal interval until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday: Provided further that if an employee has to work on any public holiday, such employee shall be remunerated at time and a half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.
- (5) In the event of an employer closing his factory in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day such employer shall pay a full day's pay in respect of each of such day to each of his employees in his employ on the date he so closes his factory. In addition, he shall pay a full day's pay in respect of these four paid public holidays to each employee whose contract of service is terminated on or after the 15th day of November but before the date he closes his factory: Provided that such an employee has been in continuous employment of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any good cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his intention forthwith to discontinue business in the Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (3).

The above provisions of this subclause shall not apply to the Millinery Sector of the Industry, in respect of which the following shall apply:

An employee whose services are terminated on or after 1 December, shall be paid a full day's wage in respect of the Day of Reconciliation, Christmas Day, the Day of Goodwill and New Year's Day: Provided that this shall not apply in the case of an



employee who is dismissed on the grounds of misconduct or who commenced employment later than 1 July of that year.

- (6) For the purposes of this clause, "day's pay" means the "weekly wage" divided by five, and "full pay" means the "wage" paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).
- (7) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, or the Day of Goodwill, falling on a Saturday or Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first day after such day or when payment for these days is payable in terms of this clause or, alternatively, shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (8) Notwithstanding the provisions of clause 7 (2), an employer may close his establishment on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days: Provided that he shall afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay should the majority of his employees so agree: Provided further that an employer shall notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Council be notified thereof in writing.
- (9)
  - (a) An employee is entitled to six consecutive months' unpaid maternity leave.
  - (b) An employee may commence maternity leave-
    - (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
    - (ii) on a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health or that of her unborn child.
  - (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
  - (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
  - (e) An employee must notify an employer, in writing, unless the employee is unable to do so, of the date on which the employee intends to-
    - (i) commence maternity leave; and
    - (ii) return to work after maternity leave.
  - (f) Notification in terms of subparagraph (e) must be given-
    - (i) at least four weeks before the employee intends to commence maternity leave; or
    - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10)
  - (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
  - (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms

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and conditions that are no less favourable than her ordinary terms and conditions of employment, if-

- (i) the employee is required to perform nightwork, as defined in this part of the Agreement, or her work poses a danger to her health or safety or that of her child; and
  - (ii) it is practicable for the employer to do so.
- (11) (a) An employer must grant an employee who has been in his employ for longer than four months, three days' unpaid family responsibility leave, which the employee is entitled to take-
- (i) when the employee's child is born;
  - (ii) when the employee's child is sick; or
  - (iii) in the event of the death of-
    - (aa) the employee's spouse or life partner; or
    - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (b) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in paragraph (i) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause lapses at the end of the annual leave cycle in which it accrues.
- (e) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted he shall be paid in lieu of such leave two-and-a-fifth times his daily wage in respect of each complete month of employment, calculated from the date of commencement of his employment or from the first day after the last 12 months' period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.
- For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.
- The provisions of paragraph (e) above shall not apply to employees employed in the Millinery Sector of the Industry.

- (12) The following sick leave provisions shall apply only to employees employed in the Millinery Sector of the Industry:

- (a) All employees shall be entitled to 10 days' sick leave on full pay in any 12 months.
- (b) During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

### 13. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of paragraphs (d), (e) and (f) of this subclause, written notice of not less than five working days, which for the purposes of this clause shall include paid holidays, to take effect from the working day following that on which it is given

shall be given by an employer or an employee to terminate a contract of service: Provided that this shall not affect-

- (a) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
  - (b) any written agreement between the employer and the employee providing for a longer period of notice than one week: Provided further that-
    - (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (b);
    - (ii) an employee who is working short time may terminate his employment without giving notice;
    - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated either by the employer or by the employee at any time within such trial period by giving 24 hours' notice;
  - (d) Monthly paid employees employed in the Clothing Sector of the Industry shall give or be given not less than 30 days' notice in writing, to be given in advance on the first or the 15th day of the month to take effect from such day;
  - (d) monthly paid employees employed in the Millinery Sector of the Industry shall give or be given not less than two weeks' notice, in writing.
- (2) An employee put off during the currency of any period of notice given in terms of subclause (1) shall receive full pay for such week, or in the case of a monthly paid employee, full pay for the unexpired period of such notice.
- (3) No employer shall terminate the services of any employee by reason of such employee's-
- (a) approaching confinement;
  - (b) absence from work through illness: Provided that-
    - (i) the employer is notified within three working days of the commencement of such illness; and
    - (ii) a medical certificate for the period of absence is provided on the employee's return to work;
  - (c) absence on leave, upon obtaining written permission from the employer for such leave.
- (4) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work for a period of five consecutive working days without notifying his employer may be terminated by the employer without notice: Provided that-
- (a) the employer attempts to contact the employee in writing at the last-known address supplied by the employee;
  - (b) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (5) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage if the employee is paid a weekly or monthly wage if such employee is paid monthly, in lieu of notice: Provided that the Council shall be notified in writing and any money owing to the employee after the above deduction, shall be sent to the Council's offices within seven days of the fifth day of absence.

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The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (a).

- (6) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage of such employee, and the employee's service card, together with any balance of wages and holiday pay due, shall be forwarded to the Secretary of the Bargaining Council, P.O. Box 5101, Johannesburg, 2000, not earlier than the tenth day nor later than the 21st day of such absence. Any amount so withheld by the employer shall be forfeited by the employee concerned unless such employee can prove that he did not leave without notice.
- (7) The period of notice shall not run concurrently with nor shall notice be given during an employee's absence on leave granted in terms of clause 12.
- (8) Subject to the provisions of subclause (3) (b), no notice shall be given during absence on sick leave or confinement leave as provided for in clause 12 (9).
- (9) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of on an employee.

#### 14. SEVERANCE PAY

- (1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's wages for each completed year of continuous service with that employer: Provided that previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Where an employee aged 50 years or older, subject to subclause (5) below, is retrenched, such employee shall receive the stipulated enhanced Provident Fund benefit due in terms of the rules of the Fund. The employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in subclause (1) above where the enhanced Provident Fund benefit is less than the severance pay.
- (5) Where an employee reaches the stipulated retirement age of 60 years or older, the employer shall have no liability for retrenchment pay.

#### 15. PREMIUMS

No premium shall be charged or accepted by an employer for the training of an employee.

**16. OVERALLS AND EQUIPMENT****A1. OVERALLS (provisions for employers and employees in the Clothing Sector of the Industry)**

- (1) Every employer shall, within three months of the commencement of employment of an employee, issue an employee with a new overall and shall thereafter issue such employee with a new overall annually: Provided that if overalls were issued to an employee in terms of the former clause 25, the new overall shall be issued to such employee not later than 1 July of each year. An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering, away from the workplace where he is employed, of such overalls: Provided further that an employer may launder such overalls and withdraw the right of employee to take such overalls away from the workplace where he is employed.
- (2) An employee shall, on termination of his services, return the overall last issued to him, and should an employee fail to return the overall, the employer shall be entitled to deduct R5,00 from his wages and/or holiday pay.
- (3) For the purpose of this clause, the terms "overall" shall include protective garments approved by the Council.
- (4) Every employer shall keep a record of overalls issued reflecting the name of the employee receiving the overall, the signature of the employee, the date of issue and date of return and shall retain such record for inspection by the Council's designated agents, as required.

**A2. OVERALLS (provisions for employers and employees in the Millinery Sector of the Industry)**

- (1) An employer shall, within six months of the commencement of employment of an employee or six months of the date of publication of this part of the Agreement, issue every employee with two new overalls of the required size and as approved by the Council. Thereafter, two overalls shall be issued to every employee every 12 months.
- (2) An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder such overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed. Nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.
- (3) Should an employer fail to provide his employee with an overall or overalls as specified in subclause (1) within 60 days of the due date of issue, such employer, having been given two weeks' written notice by the Council, shall be liable to pay to his employee, as penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days which has lapsed from the due date of issue of such overall or overalls.
- (4) It shall be compulsory for an employee who has been issued with an overall or overalls in terms of subclause (1) to wear such overall or overalls while at work, and the employer shall have the right to warn an employee failing to wear an overall at work and to notify such employee, in writing, that he must appear at work wearing an overall on the working day following the day on which the notice is given. Should an employee fail to appear at work wearing an overall for five consecutive days, due notice in writing



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having been given to the employee, the employer shall have the right to issue such employee with an overall and deduct R1,50 from the wages of such defaulting employee. The deduction referred to in this clause shall be made from the due wages of the employee on the first pay day following the failure to appear with an overall or on the first pay day after the issue of the new overalls.

**B. EQUIPMENT (Provisions for employers and employees in the Clothing Sector of the Industry only)**

- (1) Every employer shall supply equipment to his employees who need them for the purpose of their employment, at the price paid therefor by the employer.
- (2) The cost of such equipment may be deducted from the employee's wages in weekly instalments, as mutually agreed upon between the employer and employee.
- (3) The employer shall keep the equipment in good order, free of charge.
- (4) An employee shall be responsible for the replacement of equipment issued to him that has been lost, provided that the employer supplied the employee with individually lockable storage for such equipment.

**17. CONTRACTS**

**(1) Existing contracts:**

Any contract of service in operation at the date of commencement of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

**(2) Fixed term contracts:**

- (a) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task
- (b) any employee engaged on a fixed-term contract must be employed, subject to the same terms and conditions as prescribed in this Collective Agreement and other employees of the same job category;
- (c) a fixed-term contract must be reduced to writing and must stipulate the commencement and termination dates and/or completion date of the contract task;
- (d) copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry must be forwarded to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for registration and processing by no later than seven days after commencement of duty of such employee.

**18. ENGAGEMENT OF PERMANENT AND CONTRACT EMPLOYEES**

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Council, in the form and manner specified by the Council : Provided that, in the case of persons who have not previously been employed in the Clothing Industry (Northern Areas), a period of seven days may elapse before production of the service card shall be required.
- (2) If, during or on completion of the trial period in terms of clause 13 (1) (b) (iii), the contract of service is confirmed, the employer shall immediately on such confirmation enter in the service card the name of his factory, occupation of the employee, date of commencement of employment and prescribed wage of such employee and forward

the card, within three days of such confirmation, to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for checking, together with a statement in the form and manner specified by the Council.

- (3) Such information as is required by the Council shall be taken from the service card as soon as reasonably possible, after which the card shall be returned to the employer who shall retain it until the employee leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his doctor's card in exchange for his service card: Provided that if the employee is unable to surrender his doctor's card the employer shall immediately forward the service card to the Council's office, where the employee may make application for the service card.
- (4) If, during a period of employment, an employee is transferred from one occupation to another, the employer shall, immediately on such transfer, enter in the service card the new occupation of the employee, the date of such transfer and the wage paid to such employee on the date of transfer, and forward the card to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for checking, together with a statement in the form and manner specified by the Council.

#### 19. EXEMPTIONS

- (A) **For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**
  - (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
  - (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
  - (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
    - (a) The period for which the exemption is sought;
    - (b) the number of employees affected and how many of such employees are members of a registered trade union;
    - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
    - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
    - (e) the demonstrable commercial need of the applicant for the exemption sought.
  - (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.

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- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
  - (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (c) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the

- Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
    - (i) the cost incurred for the hearing of the appeal;
    - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
  - (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding monies. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:

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- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.



- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.
- B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**
- (1) Exemption from the provisions of this part of the Agreement shall be granted in the following circumstances:
  - (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards set out in this part of the Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
    - (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
  - (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

## **20. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS**

- (1) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this part of the Agreement in terms of clause 21 of this part of the

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Agreement or the Disputes' Procedure in terms of clause 22 of this part of the Agreement, may-

- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute to appear before the designated agent to be questioned or to produce that book, document or object;
  - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
  - (d) at any reasonable time, but only after obtaining the necessary written authorisation-
    - (i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there;
    - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
    - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;
  - (e) inspect and retain, for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.
- (2) A subpoena issued for any purpose in terms of subclause (1) must be signed by the Secretary of the Council and must-
- (a) specifically require the person named in it to appear before the designated agent;
  - (b) sufficiently identify the book, document or object to be produced; and
  - (c) state the date, time and place at which the person is to appear.
- (3) The written authorisation referred to in subclause (1) (d)-
- (a) If it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on the application of the designated agent setting out under oath or affirmation the following information:
    - (i) The nature of the dispute;
    - (ii) the relevance of any book, document or object to the resolution of the dispute;
    - (iii) the presence of any book document or object on the premises; and
    - (iv) the need to enter, inspect or seize the book document or object;
  - (b) in all other cases, may be given by the Secretary of the Council.
- (4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, must provide facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.

- (5) The designated agent must issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally in terms of this clause.
- (7) The designated agent must pay to each person who appears before him in response to a subpoena issued the specified witness fee, as may be determined by the Council from time to time.
- (8) A person commits contempts of the designated agent-
  - (a) if, after having been subpoenaed before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
  - (c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;
  - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (6);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
  - (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults or disparages or belittles a designated agent, or prejudices or improperly influences an investigation, or improperly anticipates a designated agent's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.
- (9) The designated agent may refer any contempt to the Labour Court for an appropriate order.

## **21. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT**

- (1) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears that the provisions of this part of the Agreement have been breached, then the following procedure shall apply to enforce compliance:
  - (a) The Council shall request a designated agent to investigate the alleged breach and/or refer the matter to the Council.
  - (b) If, upon completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
  - (c) At the end of the conciliation process, the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
  - (d) Upon receipt of the report, the Secretary of the Council may-
    - (i) require the designated agent to make further investigations; or

- (ii) refer the matter to arbitration in terms of this Agreement; or
  - (iii) take such other steps as may be deemed reasonable.
- (e) If the Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
  - (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address concluding arguments to the arbitrator;
  - (v) be represented by-
    - (aa) legal practitioner; or
    - (ab) an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employer thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of the Agreement;
  - (ii) to make an appropriate award that gives effect to the Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
  - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council to recover its costs of providing the arbitration service: Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 22 (3) (c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's cost of dealing with the dispute;
  - (v) to make an award in the absence of a party who is alleged to have breached the Agreement if-
    - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
    - (ab) proof is presented that such party has been notified of the proceedings; notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and

- (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement;
- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; without limiting the generality hereof the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party effected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or commission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator together with any reasons shall be served on all interested parties by the Council.
- (k) The Secretary of the Council may apply to make the arbitration award on order of the Labour Court in terms of section 158 (1) of the Act.

## 22. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
  - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation**
  - (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
  - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.
- (3) **Panel of conciliators, arbitrators and senior arbitrators**
  - (a) The Council shall appoint:
    - (i) a panel of conciliators, for the purpose of conciliating disputes;
    - (ii) a panel of arbitrators, for the purpose of determining disputes;
    - (iii) a panel of senior arbitrators, for the purpose of determining disputes where



- (aa) the nature of the questions of law raised by the dispute;
  - (bb) the complexity of the dispute;
  - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
  - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.
  - (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.

- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(3) *Dispute involving non-parties to the Council***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

**(a) *Referral and conciliation of disputes:***

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii)

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above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.

- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) Adjudication of disputes referred to the Council for arbitration:**

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
- (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
- (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.

- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, the arbitrator shall have this power if:
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council -**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council -**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.
    - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
      - (aa) publicising the contents of the agreement;
      - (bb) conducting inspections;
      - (cc) investigating complaints;
      - (dd) endeavouring to secure compliance with the agreement through conciliation; or
      - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
  - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
  - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
  - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
  - (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
  - (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.



- (viii) The provisions of subclause 4(b)(v) to 4(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138(9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

### 23. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this part of the Agreement in one official language.

### 24. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR

- (1) No person may employ a child-
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- (2) No person may employ a child in employment-
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk a child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour is prohibited.

- (4) No person may, for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclause 5 (1) to (4) commits an offence.

## 25. AGENCY SHOP: EMPLOYERS' ORGANISATION

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
  - (i) an employer employing 60 or fewer employees, a total of R219.30 per month (exclusive of VAT);
  - (ii) an employer employing 61 or more employees, R3.73 (exclusive of VAT) per employee times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P.O. Box 5101, Johannesburg, 2000, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.
- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
  - (a) pay all membership fees received to the employers' organisation; and
  - (b) deposit all the levies received into a separate account administered by
- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the industry and may not be-
  - (a) paid to a political party as an affiliation fee; or
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
  - (a) conducts the audit in accordance with generally accepted auditing standards;
  - (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).

- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.
- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

## 26. TRADE UNION LABOUR

### A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of the employers' organization shall continue to employ an employee-
  - (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.
- (4) For the purposes of this part of the Agreement no union membership subscriptions may be-
  - (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

**B. RIGHTS AND ACCESS TO PREMISES**

- (1) Any office-bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) A representative trade union is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union are entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause are subject to any conditions as to time and place that are reasonable and necessary to safe-guard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workshop.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, noticeboards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
  - (a) Such facilities shall be available during the normal working hours of that business, while normal output is maintained, including tea and lunch breaks.
  - (b) The granting of facilities shall be subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council from time to time.
  - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

**C. TRADE UNION REPRESENTATIVES**

- (1) Trade Union representatives shall be granted nine days' paid time off per annum, pooled for each workplace and to be divided between various trade union representatives at the discretion of the union: Provided that-
  - (a) all such leave shall be subject to the operational requirements of the workplace;
  - (b) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
  - (c) in the case of employers not referred to in paragraph (b), the union shall give the employer one days' notice of the activity for which it seeks time off in terms of this clause; and
  - (c) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

**D. TRADE UNION AGENCY SHOP**

- (1) **Scope-** Agency fees will apply to employees who –

- (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (3) **Union membership:** Employees are not compelled to become members of the trade union party.
- (4) **Agency fee deductions:** Every employer to whom this clause applies shall:
- (c) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (d) shall pay such monies to the Regional Secretary of the Regional Chamber, P O Box 5101, Johannesburg, 2000, within seven days from the end of the month in which the deductions fall due.
  - (e) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (5) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (6) **Utilisation of agency fees:** No agency fee deducted may be -
- (c) paid to a political party as an affiliate fee;
  - (d) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (e) used for any expenditure that does not advance or protect the socio-economic interests of employees.

### 3. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2006: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2005.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.



**28. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING**

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

**29. PRODUCTIVITY**

- (3) An employer shall be entitled to initiate plant level discussions with employees for the introduction of a productivity scheme.
- (4) Should such discussions lead to an agreement, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (5) Should such discussions not lead to an agreement, the matter shall be so concluded.
- (6) Discussions referred to in sub-clauses (1) to (3) shall not be subject to the declaration of disputes from either party, and neither party shall be entitled to pursue industrial action in support or in consequence of such discussions.
- (7) The provisions of this clause shall not detract from the union's right to table productivity demands at the level of the Council and to negotiate concerning these in terms of the normal negotiating procedure of the Council.

**PART E : PROVISIONS FOR THE NORTHERN REGION (KNITTING)****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Knitting Industry, and by all employees who are members of the trade union and who are employed in the Industry;
  - (b) in the Magisterial Districts of Alberton, Benoni, Germiston, Johannesburg and Roodepoort as well as only those portions of the City of Tshwane, including only those portions of the Southern Pretoria Metropolitan Substructure, the Central Pretoria Metropolitan Substructure and the Northern Pretoria Metropolitan Substructure established in terms of the Premier of the Province of PWV Proclamation No 38 of 1994 published in Provincial Gazette Extraordinary No 5064 of 8 December 1994 as amended by the Premier's Notice No 43 of 1995 published in Provincial Gazette Extraordinary No 66 of 1 September 1995, which previously made up the 'municipal area of Pretoria' as such existed immediately prior to the establishment of the Transitional Metropolitan Council with Transitional Metropolitan Substructures in respect of the Greater Pretoria Metropolitan Area published under aforementioned Proclamation No 38 of 1994.
- (2) Clauses 1 (1) (a), 2, 13A(1) to (3) and (5), 16B and 28(5) of this part of the Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.

**2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

**3. DEFINITIONS**

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act, and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended.

"agency shop" means the compulsory payment of a monthly levy by non-party employers, calculated in terms of clause 26 (3);

"boiler attendant" means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

"casual employee" means an employee who is employed by the same employer on not more than three days in any week and for not more than eight weeks in any year;

**"colouring mass-measurer"** means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a Council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"continuous service"** means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer: Provided that any periods of employment with the same employer interrupted by a period of unemployment resulting from retrenchment of less than one year shall be deemed continuous;

**"Council"** means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

**"cutter or shaper"** means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

**"despatch clerk"** means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

**"despatch packer"** means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

**"driver of a motor vehicle"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

**"dyer"** means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

**"dyer's assistant"** means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

**"employee"** includes all those employees who fall within the jurisdiction of the Council;

**"employee not elsewhere specified"** means any person who is employed in the Knitting Industry for whom wages are not specified in clause 4 (1)(a) (i)-(xvii), but excludes any person who works in a office;

**"employer"** means any person who employs or provides work for any person who is employed within the Knitting Industry;

**"experience"** means the total period or periods of employment which an employee has had in his class of work in the Knitting Industry or similar work in the Clothing and Textile Industries and allied industries;

**"factory clerk"** means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

**"fixed-term contract employee"** means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

**"floorwalker/runner"** means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

**"foreman or forewoman"** means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

**"fully-fashioned garments"** means garments whose form or body, or body and sleeves, or sleeves and back and front are fully shaped on a knitting machine;

**"general worker"** means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

**"half-year"** means the six-monthly periods commencing on the first day of January and/or July;

**"handyman"** means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

**"head warper"** means an employee who exercises control and supervision over two or more warpers;

**"hourly wage"** means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

**"Knitting Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the term, the industry in which employers and their employees are associated for the purpose of manufacturing hosiery and fully-fashioned garments and/or any part thereof by means of a knitting process and includes the marking-in or cutting of such garments and/or all succeeding processes or operations performed in connection therewith but excludes:

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- (i) the marking-in or cutting of, and all succeeding processes or operations performed in connection with, all classes of garments other than fully-fashioned garments;
- (ii) the manufacture of any article of wearing apparel by any employer from knitted fabrics not manufactured by himself; and
- (iii) the manufacture by any employer or trimmings for use by such employer in the making of any wearing apparel from fabrics not produced by himself;

**"knitting machine operator"** means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

**"linker"** means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in osiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

**"mechanic"** means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

**"mechanic's assistant"** means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

**"medical practitioner"** means a person entitled to practise as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

**"mender"** means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery;

**"night work"** means work performed after 18:00 and before 06:00 the next day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"old age"** means 60 years of age;

**"operational requirements"** means requirements based on the economic, technological, structural or similar needs of an employer;

**"ordinary hours of work"** means 42½ hours per week of five days and in respect of a watchman, 45 hours in any one week;

**"overtime"** means the time that an employee works during a day or a week in excess of the ordinary hours of work;

**"parcel maker"** means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

**"part-time driver of a motor vehicle"** means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who, on more than two days in any week, is engaged in driving a motor vehicle for not more than three hours in the aggregate of any such day, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle, on work in connection with the vehicle or the load;



**"plain sewer"** means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

**"pre- or post-boarder or former"** means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

**"qualified employee"** means, in the case of an employee referred to in clause 4 (1) (a) (ii), (iv) and (v), an employee who has had not less than five years' experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had not less than three years' experience; in the case of an employee referred to in clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has had not less than two years' experience; and in the case of an employee referred to in clause 4(1) (a) (xvii), an employee who has had not less than one and a half years' experience;

**"Regional Chamber"** for the purposes of this part of the Agreement, means the Northern Chamber [formerly the Knitting Industry Bargaining Council (Northern Areas)] of the Council;

**"seamer"** means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

**"security officer"** means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

**"set leader" or "team leader"** means an employee who is in a set or team and who is generally responsible for the work executed by the employees comprising such set or team;

**"sewing machinist"** means an employee who is engaged in operating a sewing machine using a needle and thread;

**"short time"** means a temporary reduction in the number of ordinary hours of work owing to slackness of trade or shortage of raw materials;

**"sorter and/or grader"** means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

**"storeman"** means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

**"store clerk"** means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

**"supervisor"** means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees;

**"trade union representative"** means a member of a trade union who is elected to represent employees in a workplace;

**"trainee"** means, in the case of an employee referred to in clause 4(1) (a) (ii), (iv) and (v), an employee who has had less than five years' experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had less than three years' experience; in the case of an employee referred to in clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has had less than two years' experience; and in the case of an employee referred to in clause 4 (1) (a) (xvii), an employee who has had less than one and a half years' experience;

**"traveller's assistant"** means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

**"union with the majority membership in the workplace"** means any trade union of which more than 50 per cent of the employees in the workplace are members;

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or autocycle or cycle fitted with an auxiliary engine, the unladen mass shall be deemed not to exceed 453,5 kg;

**"wage"** means the amount of money payable to an employee in terms of clause 4 (1) in respect of his ordinary hours of work as specified in clause 6: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1), it means such higher amount;

**"warp knitting machine operator"** means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

**"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

**"watchman"** means an employee who is engaged in guarding premises or other property;

**"winder"** means an employee who is engaged in operating a yarn-winding machine;

**"working day"** means any day on which work is usually performed in the Knitting Industry;

**"workplace"** means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

**"yarn changer/pig tailor"** means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines, and who may stop the machine to change the yarn and restart the machine only if it was stopped for the purpose of changing the yarn and who shall not carry out any other functions of the knitting machine operator.

**4. REMUNERATION**

- (1) (a) An employer shall, subject to the provisions of subclauses (1) (b), (c) and (d), (2), (4) (5) and (6), pay to each of his employees, from the date of coming into operation of this part of the Agreement, not less than the weekly wage prescribed for an employee of his class as set out below:

		Wage per week
		<b>R</b>
(i)	<b>Foreman:</b>	1,015.10
(ii)	<b>Dyer: (See (iv) below)</b>	
(iii)	<b>Storeman:</b>	
	(i) Qualified:	977.10
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	509.00
	third six months of experience	665.10
	fourth six months of experience	821.10
	Thereafter, the wage specified in (iii)(i) i.e.	977.10
(iv)	<b>Mechanic/Dyer:</b>	
	(i) Qualified:	1,015.10
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	419.10
	third six months of experience	485.40
	fourth six months of experience	551.60
	fifth six months of experience	617.90
	sixth six months of experience	683.90
	seventh six months of experience	750.30
	eighth six months of experience	816.50
	ninth six months of experience	882.60
	tenth six months of experience	949.00
	Thereafter, the wage specified in (iv)(i) i.e.	1,015.10
(v)	<b>Mechanic's Assistant:</b>	
	(i) Qualified:	664.90
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	383.90
	third six months of experience	415.50
	fourth six months of experience	446.40
	fifth six months of experience	477.80
	sixth six months of experience	509.10
	seventh six months of experience	540.10
	eighth six months of experience	571.40
	ninth six months of experience	602.50
	tenth six months of experience	633.80
	Thereafter, the wage specified in (v)(i) i.e.	664.90

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		Wage per week
		R
(vi)	<b>Supervisor:</b>	702.90
(vii)	<b>Final Examiner of fully-fashioned garments:</b>	652.80
(viii)	<b>Factory Clerk, Despatch Clerk, Store Clerk:</b>	
	(i) Qualified:	639.20
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	424.50
	third six months of experience	496.10
	fourth six months of experience	567.70
	Thereafter, the wage specified in (viii)(i) i.e.	639.20
(ix)	<b>Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer, Cutter or Shaper of fully-fashioned garments, Handyman and Warper:</b>	
	(i) Qualified:	639.20
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	400.60
	third six months of experience	448.20
	fourth six months of experience	496.10
	fifth six months of experience	543.70
	sixth six months of experience	591.50
	Thereafter, the wage specified in (ix)(i) i.e.	639.20
(x)	<b>Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Sewing Machinist including a button, buttonhole and hemming machinist, Mender and Plain Sewer:</b>	
	(i) Qualified:	557.70
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	404.00
	third six months of experience	455.20
	fourth six months of experience	506.60
	Thereafter, the wage specified in (x)(i) i.e.	557.70
(xi)	<b>Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:</b>	
	(a) does not exceed 453,5 kg	533.20
	(b) exceeds 453,5 kg but not 2 721 kg	629.50
	(c) exceeds 2 721 kg but not 4 535 kg	670.30
	(d) exceeds 4 535 kg	727.40
(xii)	<b>Security Officer:</b>	814.30
(xiii)	<b>Watchman:</b>	628.40
(xiv)	<b>Employee not elsewhere specified:</b>	
	(i) Qualified:	654.20
	(ii) Learners:	



		Wage per week
		R
	first six months of experience	353.00
	second six months of experience	428.20
	third six months of experience	503.70
	fourth six months of experience	578.90
	Thereafter, the wage specified in (xiv)(i) i.e.	654.20
(xv)	Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre-and Post-boarder or Former, Precutter, Presser, Turner, Operator of calender, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming off surplus threads, Folding, Carding and/or Packing, Waxring Maker, Boiler Attendant, Creeler, Despatch Packer, Parcel Maker, General Worker and Floor Walker/Runner:	532.60
(xvi)	Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker employed after 30-06-1987	458.50
(xvii)	All employees classified in (xv) and who were employed after 30-06-1987, other than general worker, traveller's assistant, cloakroom supervisor and/or attendant and teamaker:	
	(i) Qualified:	458.50
	(ii) Learners:	
	first six months of experience	353.00
	second six months of experience	388.10
	third six months of experience	423.50
	Thereafter, the wage specified in (xvii) (i) i.e.	458.50

Provided that-

- (i) any trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall, on the first pay day following the date of coming into operation of this part of the Agreement and on each subsequent pay day, be paid as a weekly wage the next higher wage prescribed for an employee of his class; and any such increase granted to a trainee on such dates shall not affect the actual experience of such trainee for the purpose of granting further increases;
- (ii) the wage of an employee other than a trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall be increased with effect from the first pay day following the date of coming into operation of this part of the Agreement by an amount equal to the increase which an employee of his class would receive if he earned the prescribed wage, as from the said date;
- (iii) an employee, other than a trainee, in receipt of a wage higher than that prescribed for an employee of his class, who was employed for a period of



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13 weeks or more prior to the incremental date, shall be entitled to the prescribed increase, notwithstanding the provisions of clause 4 (1)(b).

- (b) **Incremental dates:** An employer shall pay the increase due to each of his trainee employees on the basis of the experience of each of his trainee employees on the first pay day in the month of January and again on the first pay day in July of each year. For the purpose of computing a trainee employee's experience, employment for 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year: Provided that a trainee employee in his first half-year of employment who has less than 16 weeks' experience but more than 13 weeks' experience on the last day of the half-year shall be deemed to have been in employment for the whole half-year.
- (c) **Set or team leader or head warper:** Any employee who is called upon to perform the duties of a set or team leader or head warper shall be paid, in addition to the wage prescribed in paragraph (a) for a qualified employee of his class, an additional 10 per cent of such wage for an employee of his class.
- (d) **Traveller's assistant:** A traveller's assistant shall, in addition to his ordinary wage, be paid a subsistence allowance of R3,00 for each day away from the workplace, plus a further allowance of R6,00 for each night he is away from his home town; and, in addition, the employer shall be responsible for the payment of accommodation expenses for each night he is away from home.

(2) **Differential rates of pay:**

- (a) **Temporary work:** An employer who requires or permits an employee of one class to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which a higher wage for a qualified employee than that of his own class is prescribed in subclause (1), shall pay such an employee in respect of that day not less than the daily wage calculated at the higher rate as if such employee had the period of experience in the class for which the higher rate is prescribed.
  - (b) **Transfer:** An employer shall inform the Regional Chamber within 14 days of transferring an employee from one class of work to another by completing a transfer form in the form and manner specified by the Council or Regional Chamber.
  - (c) **Night shift remuneration:** In addition to the remuneration prescribed for an employee of his class in subclause (1) (a), an employee shall in respect of each night shift worked in any week, be paid an additional 12,5 per cent of such employee's daily wage in respect of any time worked, other than overtime, falling outside of the ordinary hours worked in the workplace in which he is employed.
- (3) **Calculation of wages:** The daily wage of an employee, other than a casual employee, shall be his weekly wage, divided by five, and his hourly wage shall be his weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class.
- (4) **Reduction of wages:** Nothing in the Agreement shall operate to reduce the wage paid to an employee prior to the date of coming into operation of this part of the Agreement if that wage was higher than the wage prescribed in the Agreement for that class of employee.
- (5) **Casual employee:** A casual employee shall be paid in respect of everyday or part of a day of employment not less than one-fifth of the weekly wage prescribed for an employee who performs the same class of work as the casual employee is required to do: Provided that, where the employer requires a casual employee to perform the work of a class of employee for whom wages on a rising scale are prescribed, the

expression "weekly wage" shall mean the weekly wage prescribed for a qualified employee of that class: Provided further that where the employer requires a casual employee to work for a period of not more than four consecutive hours on any day, his wage may be reduced by not more than 50 per cent of his daily wage.

- (6) (a) **Attendance bonuses:** In any workplace where attendance bonuses are regularly paid, no deduction or nullification of such bonuses shall be effected for absenteeism of two days' or less duration owing to the death of an employee's child, spouse or parent: Provided that the employer may require the employee concerned to produce the death certificate of the deceased.
- (a) **Bonus schemes:** Any employer who introduces an incentive and/or attendance bonus scheme or who already has such a scheme in operation shall within 30 days after introducing such scheme or within 30 days after the coming into operation of this part of the Agreement, submit to the Regional Secretary of the Regional Chamber full details of such scheme and shall similarly within 30 days after effecting any alterations to such scheme submit full details of such alterations to the Regional Secretary of the Regional Chamber. An employee employed on incentive bonus work shall be paid in any week not less than the wages to which he would have been entitled had he been employed on the basis of time worked, and the rate and/or amount or incentive bonus paid to such employee before the dates on which wage increases are due in terms of this part of the Agreement shall not be decreased so as to reduce or nullify the amount of the wage increase to which an employee of his class is entitled in terms of subclause (1). No bonus scheme may be changed without the consent of the employees.
- (7) **Transitional provision following the 2005 negotiations:** In addition to the wage that an employee is entitled to in terms of this part of the Agreement, he shall be entitled to received, by no later than six weeks from the date from which the Minister declares this part of the Agreement binding by publication in the Gazette (hereinafter referred to as implementation date) and in equal weekly installments, an amount equal to the difference between the remuneration paid to him calculated from 1 July 2005 until the implementation date and the remuneration based on his wage, as specified in this part of the Agreement, calculated from 1 July 2005 until the implementation date.

## 5. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

- (1) Wages and other amounts due to employees shall be paid weekly in cash, during working hours, on the nominated pay day of a workplace, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a nominated pay day, any amounts due to him shall be paid immediately on such termination: Provided further that when an employee is working short time or the nominated pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (2) No deductions of any description shall be made from amounts due or paid to an employee except as provided below.
- (a) Where an employee is absent from work or arrives late at work, a pro rata amount of the actual time lost may be deducted from his total remuneration: Provided that where the doors of the workplace are locked, thus preventing an employee, other than an employee working a night shift, from entering the premises on arrival at work, the employee shall be paid in full for the whole day.

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- (b) Subject to the provisions of clause 21, whenever the ordinary hours of work prescribed in clause 6 are reduced on account of short time, a pro rata deduction from the employee's wage may be made: Provided that no deduction shall be made in the case of short time arising out of slackness of trade or shortage of supplies, unless the employer has made an agreement with the employees as to short time working and has given notice to such employees and to the Regional Chamber of his intention to reduce ordinary hours of work.
- (c) If, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for time lost in excess of two hours.
- (d) An employee shall, at the written request of any of his employees, make deductions weekly from the employee's remuneration of any amount or amounts of subscription, specified in the said written request, to the funds of the trade union party to the Agreement, and shall forward the amount or amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month immediately succeeding the month during which such deductions were made.

This paragraph shall apply in respect of clerical employees, notwithstanding that no wages are prescribed in this part of the Agreement for such employees.

- (e) With the consent of the employee, deductions may be made for insurance, death benefits, pension and/or provident funds: Provided that such funds shall be approved by the Council or Regional Chamber and that no deduction shall be made unless this subclause which has the effect of circumventing paragraph (d) above.
  - (f) Deductions shall be made for contributions to the Council's or Regional Chamber's Funds, Medical Benefit Society, Sick Pay Fund and Provident Fund as provided for in this part of the Agreement, or to any other fund established by this part of the Agreement or any other agreement reached by the Council or Regional Chamber.
  - (g) Any amount which an employer is legally required to deduct from his employee's wage may be deducted.
  - (h) With the written consent of the employee, deductions may be made in respect of amounts owing to the employer in respect of money borrowed or goods purchased by the employees from, the employer: Provided that the amount so deducted shall not exceed one-third of the employee's wage.
  - (i) An employer shall deduct trade, union subscriptions and levies from trade union members on written authorisation other than where an exemption has been granted by the Council or Regional Chamber: Provided such monies have been determined in terms of the union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for transmission to the union.
- (3) (a) All cash payments to employees; shall be made in sealed envelopes which shall be retained by the employee.
- (b) Payments in terms of subclause (1) may be made by bank transfer, bank deposit or by cheque.
- (c) Payments shall be accompanied by a payslip with the following information:

Name of the workplace, name, occupation and number of the employee, the weekly wage, number of hours worked on ordinary time; number of hours, worked on overtime, and/or Sunday, time., amount earned for the time worked, amount of any bonuses earned, amount of, holiday pay, (if any); details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which wages are paid.

- (4) Particulars of all deductions made shall be entered in the wage register.
- (5)
  - (a) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
  - (b) The bonus shall be inclusive of and not additional to any annual bonus paid by an employer.
  - (c) For the purpose of calculating this bonus, absence of any nature may not be taken into consideration.
- (6) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 20 (6) of this part of the Agreement.

#### 6. HOURS OF WORK

- (1) **Ordinary hours of work:** Provided that the status quo prior to the coming into operation of this part of the Agreement remains at a workplace where the normal working hours were less than in the Agreement, an employer shall not require or permit an employee other than an employee referred to in subclause (5) to work for more than-
  - (i) 42½ hours, excluding meal intervals but including rest intervals, in any week from Monday to Friday, inclusive;
  - (ii) nine hours per day in any one week; and
  - (iii) five hours without a meal interval.
- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.
- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than 10 minutes as near as practicable to-
  - (a) the middle of each morning work period; and
  - (b) the middle of each afternoon work period;during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.
- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work: Provided that-



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- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous; and
  - (b) where normal shifts are worked in any workplace, a normal shift worker shall be granted one interval of not less than 30 minutes per normal shift, during which interval such employee shall not be required or permitted to perform any work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
- (a) for more than 45 hours per week; or
  - (b) for more than six days in any one week; or
  - (c) for more than 12 hours in any one day/shift:

Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage, an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
  - (i) Only unemployed people may be recruited for working this shift.
  - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
  - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
  - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
  - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
  - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
  - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
  - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.



## 7. OVERTIME AND SUNDAY WORK

- (1) Payment of overtime worked shall be made at the rate of one and a half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (2) An employer shall pay an employee who works on a Sunday double the employee's rate of pay for the number of hours worked.
- (3) No employer shall require or permit an employee to work overtime for more than 12½ hours per week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed from or prejudiced in his employment by reason of his refusal to work overtime.
- (6) Every employee who is required to work overtime of one and a half hours or more shall be paid an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence, unless the employer has notified the employee thereof not less than 24 hours before the overtime commences.
- (1) Exclusions: The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.

### (2) Aggregation of Overtime

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 6 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
  - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (iii) time not worked as a result of the employer having declared short time;
  - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (v) the three days family responsibility leave provided for in clause 6 of this part of the Agreement.
- (9) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

## 8. ANNUAL LEAVE AND PAID HOLIDAYS

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year, and not later than the 24th day of the month, grant to each of his employees who have been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who, during any year, has been absent from work for a continuous period of more than six months on confinement, or for 12 weeks or more, shall be paid holiday pay in terms of subclause (2). The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.

- (2) Any employee-
- (a) who commenced work with an employer on or after 1 February in any year; or
  - (b) whose employment terminated before 1 December of that year shall, if his contract of employment with the same employer endured for a period of not less than four weeks in that year, in the case of an employee referred to in paragraph (a), be paid as holiday pay for that period of employment an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment and, in the case of an employee referred to in paragraph (b), be paid in lieu of holiday leave for that period of employment, an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year and if the employee's employment terminates before that day, on the day he leaves the employer's service.
- (3) In computing the amount upon which the five per cent holiday pay is to be calculated in terms of subclause (2), the amount which would have been payable to an employee had he not been absent from work shall be deemed to be amounts actually received by him if such absence is-
- (a) on the instructions or at the request of the employer;
  - (b) because of sick leave, provided a medical certificate for the period or periods of absence has been produced; or
  - (c) because of maternity leave, provided a medical certificate to this effect has been produced.
- (4) Every employer shall grant to each of his employees as paid holidays: New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill and no employer shall employ an employee and no employee shall work on these 12 days and, in addition, each employer shall grant to all his employees who have worked the morning period of the Thursday, preceding Good Friday, time off from the commencement of the normal meal time until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.

Provided further that if an employee has to work on any public holiday, such employee will be remunerated at time-and-a-half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.

- (5) In the event of an employer closing his workplace in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the day before the date he so closes his workplace. Payment for such days shall also be made to an employee whose contract of service is terminated by the employer on or after the 15<sup>th</sup> day of November but before the date he closes his workplace: Provided that the employee concerned has been in the continuous employ of his employer for a period of not less than six months immediately prior to the 15<sup>th</sup> day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his intention forthwith to discontinue business in the

Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (1).

- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause, or alternatively shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the weekly wage divided by five, and "full pay" means the wage paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).
- (8) Notwithstanding the provisions of subclause (4), an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days; Provided that he afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay, should the majority of his employees agree: Provided further that the employer notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Regional Chamber be notified thereof in writing.
- (9)
  - (a) An employee shall be entitled to six consecutive months' unpaid maternity leave.
  - (b) An employee may commence maternity leave-
    - (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
    - (ii) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
  - (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
  - (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
  - (e) An employee shall notify an employer, in writing, unless the employee is unable to do so, of the date on which the employee intends to-
    - (i) commence maternity leave; and
    - (ii) return to work after maternity leave.
  - (f) Notification in terms of subclause (9) (e) shall be given-
    - (i) at least four weeks before the employee intends to commence maternity leave; or
    - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

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- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (i) the employee is required to perform night work or work that poses a danger to her health or safety or that of her child; and
- (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employment for longer than four months, three days' unpaid family responsibility leave which the employee shall be entitled to take-
- (i) when the employee's child is born;
- (ii) when the employee's child is sick; and
- (iii) in the event of the death of-
- (aa) the employee's spouse or life partner; or
- (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (b) An employee may take family responsibility leave in respect of the whole of or a part of a day.
- (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (12) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two and a fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first day after the last 12-month period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.

For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

## 9. TERMINATION OF EMPLOYMENT

- (1) Written notice, in the form and manner specified by the Council or Regional Chamber, of not less than five working days which for the purpose of this clause shall include paid holidays, to take effect from the working day following that on which it is given, shall be given by an employer or an employee to terminate contract of service:
- (a) Provided that this shall not affect-

- (i) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
  - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week;
- (b) Provided further that-
  - (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (a) (ii);
  - (ii) an employee who is working short time may terminate his employment without giving notice;
  - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated by either the employer or by the employee at any time within such trial period by giving 24 hours' notice;
  - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first day of the month following that in which notice is given.
- (2) (a) In the event of an employer failing to give notice or permitting the employee to work the required notice period, or an employee failing to give notice and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b), an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.
- (b) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Regional Chamber not earlier than the sixth nor later than the 11<sup>th</sup> day of such absence, together with any wages due, holiday pay and any other moneys due in terms of this part of the Agreement, together with a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a).
- (3) Subject to the provisions of subclause (2) (a) and (b), an employee who is discharged or leaves without giving notice during the currency of any period of notice given in terms of subclause (1) shall receive full pay if discharged, or shall forfeit such wages for the unexpired period of such notice if the employee left without giving notice.
- (4) No employer shall terminate the services of any employee by reason of such employee's-
  - (a) approaching confinement: Provided that the employee shall return not later than six months after having gone off on confinement;
  - (b) absence from work through illness: Provided that a medical certificate for any period of absence of more than two consecutive days, or on more than two occasions during an eight-week period be provided on the employee's return to work;
  - (c) absence on leave, the written permission of the employer having been obtained;
  - (d) partial disablement through injury on duty.



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- (5) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work or is absent from work through illness for a period of five consecutive working days without notifying his employer, in writing, may be terminated by the employer without notice as required in subclause (1): Provided that-
- (i) the employer shall attempt to contact the employee in writing at the last-known address supplied by the employee;
  - (ii) the employee be allowed to lodge with his employer a written appeal against his dismissal.
- (6) Whenever an employer terminates the services of an employee in terms off subclause (4), notice of such termination shall be given by notifying the Regional Secretary of the Regional Chamber in writing. Any such notification to the Regional Chamber shall be accompanied by the employee's service card and wages or other amounts due to the employee on such termination, for transmission to the employee on application. The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (i).
- (7) Notwithstanding the provisions of subclauses (4), (5) and (6), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

#### 10. ENGAGEMENT IN EMPLOYMENT

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Regional Chamber: Provided that, in the case of persons who have not previously been employed in the Industry in the Northern Areas, a period of seven days may elapse before production of the service card shall be required. The service card shall be in the form and manner specified by the Council or Regional Chamber.
- (2) If, during or on completion of the trial period in terms of clause 9 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter in the service card the name of his workplace, the occupation of the employee, the date of commencement of employment and the prescribed wage of such employee, and within three days forward the service card to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000.
- (3) Such information as is required by the Regional Chamber shall be taken from the service card as soon as reasonably possible after which the card shall be returned to the employer who shall retain it until the employee leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his medical benefit card in exchange for his service card: Provided that if the employee is unable to surrender his medical benefit card the employer shall immediately forward the service card to the Regional Chamber's office, where the employee may make application for the service card.

#### 11. COUNCIL FUNDS

- (1) (a) Every employer shall, on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct an amount of R1,00 from the wages of each of his employees for whom minimum wages are prescribed in this part of the Agreement: Provided that no deductions

shall be made from the wage of an employee who has worked for less than 20 hours in the week in which the deductions fall due.

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of R1,10 per week.
- (2) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due.
- (3) Where an employer has failed to deduct contributions from his employees he shall not be permitted to deduct arrear contributions, but shall make good these contributions himself.
- (4) Should any amount due in terms of subclause (1) not be received by the Regional Chamber by the 10th day after the date on which it is payable, the employer shall pay weekly interest on such amount or such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two % per annum: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Regional Chamber, the interest may accrue to the general Funds of the Regional Chamber.

## 12. EXTRACTS FROM WAGE REGISTERS

Every employer shall, in respect of each calendar month, forward a return in the form and manner specified by the Council or Regional Chamber to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, showing in respect of each employee, the Regional Chamber number, clock number (if any), the weekly amounts deducted in terms of clauses 11, 19, 20, 21 and 22 of this part of the Agreement and the date of engagement (if the employee was engaged during the calendar month to which the return relates), the occupation, and the date of termination (if the employee's services were terminated during the calendar month to which the return relates). This return shall be submitted to the Regional Chamber not later than the 10th day of the month following the calendar month to which the return relates.

## 13. TRADE UNION LABOUR

### A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of the employers' organisation shall continue to employ an employee-
  - (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the

week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.

- (4) For the purposes of this part of the Agreement no union membership subscriptions
- (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### **B. RIGHTS AND ACCESS TO PREMISES**

- (1) Any office-bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
  - (a) Such facilities shall be available during the normal working hours of the business and while normal output is maintained, including lunch and tea breaks.
  - (b) The granting of facilities shall be available subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry related matters. Such industry-related matters shall be defined by the Council or Regional Chamber from time to time.
  - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

#### **C. TRADE UNION REPRESENTATIVES-TIME OFF**

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:

- (a) Nine (9) days per annum per trade union representative, pooled for each workplace and divided between various trade union representatives at the discretion of the union: Provided that-
  - (i) all such leave shall be subject to the operational requirements of the workplace;
  - (ii) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
  - (iii) in the case of employers not referred to in paragraph (ii), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
  - (iv) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

#### **D. MEMBERSHIP FEES**

Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the end of the month in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward to the General Secretary of the Trade Union the amounts, together with such analysis of the amounts as are received from the employers.

#### **E. SACTWU EDUCATION BURSARY SCHEME**

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 20 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount per month shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within 10 days of the month in which the contributions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward such contribution to the General Secretary of the Trade Union, together with an analysis of the amounts as received from employers.

#### **F. SACTWU HIV/AIDS PROJECT**

- (1) There is hereby a HIV/AIDS Project established, known as the SACTWU HIV/AIDS PROJECT.
- (2) Every employer to whom this part of the Agreement applies shall each week contribute an amount of 10 cents for each employee in his employ to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the contributions fall due.
- (3) The total amount so collected by the Regional Chamber shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

**G. TRADE UNION AGENCY SHOP**

- (1) **Scope-** Agency fees will apply to employees who –
  - (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
  - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (b) shall pay such monies to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the contributions fall due.
  - (c) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be –
  - (a) paid to a political party as an affiliate fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

**14. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR**

- (1) No person may employ a child-
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 years or older.
- (2) No person may employ a child in employment
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk a child's well-being, education, physical and mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour shall be prohibited.



- (4) No person may for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclauses (1) to (4) shall be guilty of an offence.

#### 15. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Council or Regional Chamber.
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars set out in the form and manner specified by the Council or Regional Chamber, shall be provided in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Regional Secretary of the Regional Chamber notice of the change, in writing, setting out full particulars of such change within seven days of its taking place:
  - (a) Change of name;
  - (b) change of address;
  - (c) change in the composition of its members or partners or directors;
  - (d) sequestration or liquidation of the business;
  - (e) transfer or abandonment of the business;
  - (f) acquisition of another business which is covered by this part of the Agreement;
  - (g) commencement of any other business covered by this part of the Agreement.

#### 16. EXEMPTIONS

- A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**
- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
  - (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
  - (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
    - (a) The period for which the exemption is sought;
    - (b) the number of employees affected and how many of such employees are members of a registered trade union;

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- (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
  - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
- (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
  - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
  - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an

interest in the matter.

- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
  - (i) the cost incurred for the hearing of the appeal;
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
  - (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding monies. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions that remain unpaid as at the last day of the month following the month in respect of which the payment is due.

- (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.

- (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement shall be granted in the following circumstances:
- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards set out in this part of the Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
    - (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.



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(b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.

(c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### 17. POWERS OF DESIGNATED AGENTS

(1) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this part of the Agreement in terms of clause 27 of the Agreement or the Dispute Procedure in terms of clause 28 of this part of the Agreement may-

(a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;

(b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the designated agent or be questioned or produce that book, document or object;

(c) administer an oath or accept affirmation from any person called to give evidence or be questioned;

(d) at any reasonable time, but only after obtaining the necessary written authorization-

(i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found;

(ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and

(iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;

(e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to or seized by the designated agent.

(2) A subpoena issued for any purpose in terms of subclause (1) shall be signed by the General Secretary of the Council or Regional Secretary of the Regional Chamber or the designated agent and shall-

(a) specifically require the person named in it to appear before the designated agent;

(b) sufficiently identify the book, document or object to be produced; and

(c) state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in subclause (1) (d)-

- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on application by the designated agent setting out under oath or affirmation the following information-
    - (i) the nature of the dispute;
    - (ii) the relevance of any book, document or object to the resolution of the dispute;
    - (iii) the presence of any book, document or object on the premises; and
    - (iv) the need to enter, inspect or seize the book, document or object; and
  - (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier shall provide any facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
  - (5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
  - (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, shall apply equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
  - (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.
  - (8) A person shall be guilty of contempt of the designated agent-
    - (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
    - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
    - (c) by refusing to take the oath or make an affirmation as a witness when a designated agent so requires;
    - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (6);
    - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
    - (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
    - (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;

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- (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.
- (9) The designated agent may, on recommendation of the Council or Regional Chamber, refer any contempt to the Labour Court for an appropriate order.

#### 18. FIXED-TERM CONTRACTS

- (1) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (2) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this part of the Agreement for other employees of the same class/job category.
- (3) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (4) Copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry shall be forwarded to Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, for registration and processing by no later than seven days after commencement of duty of such employee.

#### 19. MEDICAL BENEFIT SOCIETY

- (1) There is hereby continued a society known as the Knitting Industry Medical Benefit Society (Northern Areas), (hereinafter referred to as the "Society"), originally established on 4 June 1971 in terms of Government Notice No. R. 911.
- (2) The purpose of the Society shall be assist members and their spouses with medical, dental and specialists' attention, medicines, medical appliances, hospitalisation, and such other benefits as may be determined by the Management Committee.
- (3) Every employer shall on the pay day of each week deduct R5,80 from the wages of each of his employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (4) In addition to the amount prescribed in paragraph (3), for a member whose spouse is included in this scheme, an additional deduction of R5,80 shall be made from the wages of each of those employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (5) The employer shall pay the amounts so deducted, together with an amount added by the employer equal to R6,50, within seven days from the end of the month in which the deductions fall due in respect of employees and their spouses to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber.
- (6) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the date of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional

Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

## 20. SICK PAY FUND

- (1) The Knitting Industry Sick Pay Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911, is hereby continued.
- (2)
  - (a) Every employer shall on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct R1,50 from the wages of each of his employees for whom minimum wages as prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
  - (b) The employer shall pay the amounts so deducted from the wages of his employees, together with an amount of R1,80 in respect of each employee from whose wage deductions were made in terms of paragraph (a) above.
  - (c) The total sum representing the employer's contributions and the member's contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a return in the form and manner specified by the Council or Regional Chamber within 10 days of the end of the month in which the deductions fall due.
  - (d) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof, and at the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.
- (3) The moneys of the Fund shall, subject to the provisions of this clause, be applied to provide members of the Fund with sick pay in case of absence from work owing to illness and shall be administrated by a Management Committee appointed by the Council or Regional Chamber and consisting of four representatives of the employers' organisation and four representatives of the trade union in accordance with the rules of the Fund, as set out hereunder.
- (4) Should a dispute arise at any time as to the provisions of this clause, the rules, the administration of the Fund or any other matter in regard to which the members of the Management Committee are equally divided, the matter in dispute shall be referred to the Council or Regional Chamber for a decision.
- (5) Sick Pay benefits shall be paid to employees for whom minimum wages are specified in this part of the Agreement, subject to the following provisions:
  - (a) No sick pay shall be paid to any employee in respect of any day of illness falling on a public holiday as specified in clause 8(4).
  - (b) No sick pay shall be paid to any employee in respect of any day of illness in respect of which the employee has been paid holiday pay as specified in clause 8 (1) or in the case of employees referred to in clause 8 (2) (a) in respect of a period of 12 working days calculated from the first working day after the date on which the factory closed for annual leave,



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- (c) No sick pay shall be paid in respect of periods of illness resulting from obesity, sterility and cosmetic surgery or for injuries covered by the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or injuries in respect of which a claim may be made in terms of the provisions of the Road Accident Fund Act, 1996 (Act No. 56 of 1996).
- (d) Only members in good standing with the Fund shall be entitled to the benefits set out hereunder.
- (e) Any member whose payment of contributions to the Fund is more than 13 weeks in arrears shall not be entitled to any benefits provided by the Fund.
- (f)
  - (i) Notwithstanding the provisions of subclause (5)(a), during the first 6 months of employment, an employee shall be entitled to one day's sick leave on full pay in respect of each completed period of 26 days of employment.
  - (ii) After completion of 6 months of employment, an employee shall be entitled to 10 working days' sick leave on full pay in any calendar year reckoned from 1 January to 31 December.
- (6) Sick pay benefits shall be paid to all employees entitled thereto in terms of the provisions of subclause (5). A member who has been in the employ of the same employer for at least 10 months shall, on production of a medical certificate, be paid a maternity benefit equal to 20 days, wages.
- (7) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all moneys received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts shall be kept in the Regional Chamber's books for the Fund.
- (8) The Council or Regional Chamber shall appoint a public accountant as auditor whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the offices of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and to the General Secretary of the Council who shall transmit a copy thereof to the Registrar Labour, Relations.
- (9) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Council or Regional Chamber until it be either liquidated or transferred by the Council or Regional Chamber to any other fund or funds whose objects shall be solely to benefit the employees of the Knitting Industry (Northern Area): Provided that, if no new agreement providing for the continuation of the Fund is entered into within one year after the date of expiration of this part of the Agreement or the Fund is not transferred as aforesaid within such period, the Fund shall be liquidated.
- (10) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 32 (2) of the Act, the Fund shall be administered by a Committee consisting of three representatives of the employers' organisation and three representatives, of the trade union. In the event of such committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the committee. If there is no Council in existence, the Fund shall on the expiration of this part of the Agreement be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause (11): Provided that if on such expiration the affairs of the Council have



already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

- (11) On liquidation of the Fund in terms of subclauses (9) and (10), the monies remaining to the credit of the Fund after payment of all claims against the Fund, including the administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.
- (12) All administration and liquidation expenses shall be a charge against the Fund.
- (13) The disbursements from this Fund shall cease whenever the amount to the credit of the Fund falls below R10 000,00.
- (14) The Sick Pay Fund hereby assumes responsibility for the maternity benefits previously paid by the Maternity Benefit Fund.

## 21. SHORT TIME

- (1) Where short-time has been or is introduced in any workplace and the Regional Chamber has been notified in the form and manner specified by the Council or Regional Chamber, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short-time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.
- (3) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

## 22. KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS)

- (1) The Knitting Industry Provident Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911 for the purpose of providing benefits to members on leaving the industry as provided for in this clause, is hereby continued.
- (2) **The Fund shall consist of-**
  - (a) contributions paid into the Fund in terms of the provisions of subclause (5);
  - (b) interest derived from the investment of any moneys of the Fund;
  - (c) any other sums to which the Fund may become entitled or which may be donated to the Fund.
- (3) **Administration of the Fund:**
  - (a) The administration of the Fund shall be vested in an administrative committee consisting of three employers' representatives and three employees' representatives appointed by the Council or Regional Chamber. For each representative an alternate shall be appointed.
  - (b) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority vote.

- (c) All expenses of administration shall be a charge against the Fund.
  - (d) The Council or Regional Chamber shall appoint a public accountant or accountants whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the annual period ending 31 December. The audited statements and balance sheet shall thereafter lie for inspection at the office of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
  - (e) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all monies received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts for the Fund shall be kept in the Regional Chamber's books.
- (4) Membership: Membership of the Fund shall be compulsory for all employees for whom minimum wages are prescribed in this part of the Agreement.
- (5) **Contributions:**
- (a)
    - (i) Every employer shall on the pay day of each week and from the first pay day after the coming into operation of this part of the Agreement, deduct from the wage of each contributor in his employ, 5,75 per cent of the prescribed wage payable to such contributor, calculated to the nearest cent: Provided that no deduction shall be made from the wage of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.
    - (ii) To the aggregate amount deducted under subparagraph (i), every employer shall contribute an amount equal to 6,5% in respect of each employee. The employer shall forward the total amounts deducted under subparagraph (i), together with his own contributions in terms of this subparagraph to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber, within seven days from the date on which the deductions were made.
  - (b) Should an employer fail to make the required deduction from the wages of his employees, he shall not be entitled to recover the arrear amounts from said employees.
  - (c) Notwithstanding anything to the contrary which may be contained in this clause, deductions shall not be made from the wage of a worker who has been in the Industry for less than 20 days.
  - (d) Notwithstanding the provisions of paragraph (a) of this subclause, other employees in the employ of the employer who are members of the trade union and who elect to become contributors may at the discretion of the Administrative Committee contribute to the Fund, and the provisions of this clause shall mutatis mutandis apply in respect of such employee and the employer of such employees.
  - (e) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute

discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

**(6) Benefits:**

- (a) Benefits as are specified in subclause (7) shall be provided to members.
- (b) Members who have left the Industry may apply for a withdrawal of accumulated benefits. Payment shall not be made to a member before the expiration of three months, reckoned from the date of which he left the Industry (except at the discretion of the Administrative Committee). Application for benefits shall be made in writing in the form of and manner specified by the Council or Regional Chamber.
- (c) Every employee shall be required to nominate a beneficiary to whom, in the event of the death of the member, any benefits due to such member shall be paid. In the event of the Fund not being advised of such beneficiary, any benefits due at the time of a member's death shall be paid into the estate of such deceased member. The nomination of a beneficiary shall be made in the form specified in the rules of the Fund.
- (d) When a member returns to the Industry before payment has been made on an application for withdrawal of benefits, the application shall automatically lapse and contributions be resumed forthwith.

**(7) Amount of benefits:** The minimum benefits that shall be paid to a member shall be the total amount contributed by such member plus-

- (a) if the total period of his contributions is 46 weeks or more but less than 92 weeks, 10 per cent of the amount contributed on his behalf by his employer.
- (b) if the total period of his contribution is 92 weeks or more but less than 138 weeks, 25 per cent of the amount contributed on his behalf by his employer;
- (c) if the total period of his contributions is 138 weeks or more but less than 184 weeks, 50 per cent of the amount contributed on his behalf by his employer;
- (d) if the total period of his contributions is 184 weeks or more but less than 230 weeks, 75 per cent of the amount contributed on his behalf by his employer;
- (e) where the total period of contributions is 230 weeks or more, 100 per cent of the amount contributed on his behalf by his employer;
- (f) in the case of the death, retrenchment or retirement at the stipulated retirement age of a member, 100 per cent of the amount contributed on his behalf by his employer, plus any amounts that the member may be entitled to.

**(8) Payment of interest:** In addition to the refund of a member's own contributions and the payment of such benefits as may have accrued to him, a member shall be entitled to interest, the rate of which shall be determined by the Administrative Committee but which shall be not less than the rate paid by the Post Office Savings Accounts: Provided that-

- (i) interest shall be payable on completed rands only;
- (ii) members shall be paid interest only on their own contributions;

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- (iii) the interest accruing to members shall be credited to the members' accounts and paid to them, together with the refund of contributions and any other benefits which may be due.

**(9) Additional benefits:**

- (a) The Council or Regional Chamber may, from time to time, increase the benefits stated herein by declaration of a bonus in the light of improvement in the finances of the Fund through-

- (i) accrual of interest;
- (ii) contributors leaving the Industry before qualifying for the full 100 per cent of the employer's contributions: Provided that any such bonus shall be determined only after an investigation by a public accountant into the assets and liabilities of the Fund: Provided further that such bonus shall not be in excess of any amount recommended by such accountant. Any such bonus shall be credited to the member's account and shall be payable to such member at the same time as and in addition to the benefits specified in subclause (7) and (8).

- (b) The Council or Regional Chamber may use moneys arising out of subclause (9) (a) (i) and (ii) to augment the following benefits:

- (i) Retirement/Enhanced Benefit paid to contributors who leave the Industry from the age of 50 years, owing to retirement or retrenchment on the following basis:

Age	% of total benefit
50 years	5%
51 years	10%
52 years	15%
53 years	20%
54 years	25%
55 years	30%
56 years	35%
57 years	40%
58 years	45%
59 years	50%
60 years	55%

- (ii) payment of a death benefit of R5 000,00 to the estate, the beneficiary or beneficiaries, or any person defraying the funeral expenses of such deceased contributor.

**(c) Housing loans:**

- (i) The Administrative Committee may grant housing loans to contributors: Provided that loans granted in terms of this subclause shall be subject to such conditions as may be laid down by the Administrative Committee from time to time with the approval of the Registrar: Labour.
- (ii) Housing loans shall be repayable at such rates as the Administrative Committee may from time to time determine.
- (iii) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall deduct from his employee's wages the weekly amount stipulated in the stop order, and shall forward

the amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month.

- (10) Benefits not to be ceded or assigned: No benefit or right to a benefit shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or be subject to any form of execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or pledge or hypothecate any benefit or right to a benefit, payment of benefits may be withheld, suspended or entirely discontinued if the Administrative Committee so determines.
- (11) Transfer of Fund: Notwithstanding anything to the contrary herein contained, the Council or Regional Chamber may formally dissolve the Fund as constituted and transfer all funds, assets and liabilities of this Fund to another fund or society duly constituted for substantially the same purposes for which this Fund was created. In the event of such decision, all amounts standing to the personal credit of members of the Fund shall be transferred to their credit under the new fund or society and the benefits due to members, as at the date of such transfer, shall in no way be diminished by virtue of such transfer.
- (12) **Dissolution of Fund:**
- (a) In the event of the Council being dissolved during the currency of this part of the Agreement or any extension thereof, then, notwithstanding anything to the contrary contained in this part of the Agreement, contributions to the Fund shall cease as from the day following the date of coming into operation in the Gazette of the dissolution of the Council in terms of section 59 of the Act. The Fund shall be administered by a committee consisting of three representatives of the employers' organisation and three representatives of the trade union. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the Committee for such purpose until expiration of this part of the Agreement by effluxion of time or cessation for any other cause, upon which the Fund shall be liquidated *mutatis mutandis* as though the employees had left the industry; Provided that the duties in connection with such liquidation shall be performed by such other body or persons as the Registrar: Labour may appoint.
- (b) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Administrative Committee until it be either liquidated or transferred by the Council or Regional Chamber to another Fund in terms of subclause (11): Provided that if no new agreement providing for the continuation of the Fund is entered into within one year after the expiration of this part of the Agreement or the Fund not being transferred as aforesaid within such period, the Fund shall be liquidated by the Council or Regional Chamber in the manner set forth in paragraph (a) and in subclause (13).
- (13) **Liquidation:** On liquidation of the Fund in terms of subclause (12) and payment of money due to members in terms of that subclause, the monies remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.



**(14) Payment of benefits in the event of death:**

- (a) Every contributor shall, on joining the Fund, appoint a beneficiary and shall advise the Provident Fund of the address of such beneficiary. In the event of the contributor wishing to change his beneficiary at a later date, he shall advise the said Fund, in writing, of such change of name and address. Every contributor shall further furnish the said Fund with the name and address of dependants and any change of address of dependants.
- (b) In the event of a contributor failing to appoint a beneficiary in terms of paragraph (a) hereof, or of the beneficiary predeceasing the contributor, the Administrative Committee shall pay the benefits to such dependants of the contributor as it may in its discretion deem fit.
- (c) Every employer shall notify the Regional Secretary of the Regional Chamber of the death of any contributor in his employ and the Regional Secretary shall, as soon as possible, on receiving information from any source of the death of a contributor, notify the dependants or beneficiary, as the case may be, by letter or circular stating the name and last-known place of work of the deceased contributor and the fact that benefits may be claimed at an address specified by the Administrative Committee.
- (d) In the event of the Regional Secretary not having been notified of the latest address of a dependant or appointed beneficiary, the Administrative Committee shall take such measures as it may deem expedient to trace such dependant or appointed beneficiary.
- (e) If within 12 months after the death of a contributor no claim is made by a dependant or beneficiary, or the Administrative Committee has, in terms of this subclause, been unable to trace any dependants or beneficiaries, it shall be assumed that there are no dependants or beneficiaries, and the benefits shall revert to the Fund for the benefit of the remaining contributors and there shall thereafter be no further claim against the Fund in respect of that contributor: Provided that the Administrative Committee shall, in the event of a claim being received within a period of three years after the death of a contributor, be entitled, in its entire and absolute discretion, to make payments to the dependants or beneficiaries concerned out of the moneys which have reverted to the Fund.

**23. SAFEGUARD OF WORKERS' EARNINGS**

- (1) Every employer shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory, give a banker's guarantee or other guarantee acceptable to the Regional Chamber, to be completed in the form and manner specified by the Council or Regional Chamber, payable on demand on the employer's insolvency or otherwise. Such guarantee shall be used to cover the payment of holiday pay and wages due to the employers' employees: Provided that the money so guaranteed shall be equal to five week's wages for every employee.
- (2) Should any employer fail to provide an acceptable guarantee to the Regional Chamber in terms of the above paragraph, he shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory deposit a sum of money with the Regional Chamber equal to five weeks' basic wages.

## 24. SEVERANCE PAY

- (1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer: Provided that previous employment with the same employer shall be taken into account if the break between the period of employment is less than one year.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Where an employee who is 50 years of age or older, subject to subclause (5) below, is retrenched, such employee shall receive the stipulated enhanced benefits due in terms of clause 22 (9) (b) (i) of this part of the Agreement. The employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in subclause (1) above where the enhanced Provident Fund benefit is less than the severance benefit.
- (5) Where an employee has reached the stipulated retirement age of 60 years of age or older, the employer shall have no liability for severance pay.

## 25. OVERALLS

The employer shall within three months of the commencement of employment of an employee, or within three months of the date of coming into operation of this part of the Agreement, issue every employee with one new overall/protective garment of the required size and as approved by the Council or Regional Chamber. Thereafter, one overall shall be issued to every employee every 1 July.

## 26. AGENCY SHOP: EMPLOYERS' ORGANISATION

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
  - (i) an employer employing 60 or fewer employees, a total of R219.30 per month (exclusive of VAT);
  - (ii) an employer employing 61 or more employees, R3.73 (exclusive of VAT) per employee times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P.O. Box 5101, Johannesburg, 2000, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.

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- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
- (a) pay all membership fees received to the employers' organisation; and
  - (b) deposit all the levies received into a separate account administered by
- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the Industry and may not be-
- (a) paid to a political party as an affiliation fee; or
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
- (a) conducts the audit in accordance with generally accepted auditing standards;
  - (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).
- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.
- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

## **27. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT**

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether owing to its own investigations or owing to any other source, it appears that the provisions of this part of the Agreement have been breached, then the following procedure shall apply to enforce compliance:
- (a) The General Secretary of the Council or Regional Secretary of the Regional Chamber shall request a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber.

- (b) If, on completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
- (c) At the end of the conciliation process, the designated agent shall submit a report to the Regional Secretary of the Regional Chamber and/or General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
- (d) On receipt of the report, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council may-
  - (i) require the designated agent to make further investigation; or
  - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
  - (iii) take such other steps as may be deemed reasonable.
- (e) If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Regional Secretary of the Regional Chamber and/or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration hearing on all the parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
  - (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address concluding arguments to the arbitrator;
  - (v) be represented by-
    - (aa) a legal practitioner; or
    - (ab) an office-bearer or official of his registered trade union or registered employer's organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of the Agreement;
  - (ii) to make any appropriate award that gives effect to the Collective Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;

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- (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its cost of providing the arbitration service: Provided that where the Council's or Regional Chamber's accredited conciliator has made an advisory award in terms of clause 28(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make costs order, as set down by the Council or National Association of Bargaining Councils, against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's costs of dealing with the dispute;
- (v) to make an award in the absence of a party who is alleged to have breached the Agreement if-
  - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
  - (ab) proof is presented that such party has been notified of the proceedings and notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
  - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement;
- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; and without limiting the generality hereof, the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator, together with any reasons shall be served on all interested parties by the Council or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.
- (l) The provisions of this procedure, shall stands in addition to any other legal remedy which the Council or Regional Chamber or a party to the Council may have to enforce an agreement or a unilateral change to an employee's conditions of service and which is in contravention of the agreements of the Council and which is binding on a party or non-party to such an agreement. .

## 28. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:



- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
- (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators**

- (a) The Council shall appoint:
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the

union parties.

- (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.
  - (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

**(1) *Dispute involving non-parties to the Council***

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

**(a) *Referral and conciliation of disputes:***

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) *Adjudication of disputes referred to the Council for arbitration:***

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

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- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, the arbitrator shall have this power if:
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.

- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council -**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council -**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-



- (aa) publicising the contents of the agreement;
  - (bb) conducting inspections;
  - (cc) investigating complaints;
  - (dd) endeavouring to secure compliance with the agreement through conciliation; or
  - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to (4)(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
- (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in section 138(9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.

- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

### 29. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this part of the Agreement in one of the official languages.

### 30. INDUSTRY PROTECTION FUND

- (1) In terms of section 29(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an equal amount per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due. Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date in which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.
- (7) The monies collected by the Regional Chamber shall be paid monthly into the Regional Chamber's bank account and, for the purposes of receiving these funds and for disbursing them for the purpose for which they are intended, shall be accounted for separately.

- (8) The monies collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2)-
- (a) "Buy Local" campaigns;
  - (b) combating customs fraud and illegal imports.
- or for such other strategies that meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Transvaal Clothing Manufacturers' Association (TCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.
- (10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the TCMA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the TCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the TCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the TCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure
- (a) is in terms of the approved plan;
  - (b) is clearly classified by strategy, activity and the nature of the expense; and
  - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the TCMA.
- Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the TCMA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the

TCMA, may be recovered by the Regional Chamber from SACTWU or the TCMA, as the case may be.

- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every three months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the TCMA shall be obliged to report back to the Regional Chamber every three months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

### **31. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

- (1) This part of the Agreement shall remain in force until 31 August 2006: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2005.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

### **32. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING**

- (1) A survey shall be conducted under the auspices of the Council into the incidence of contract work in the Industry with the intention of making any agreement reached as a result of the survey effective from 1 July 2004.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

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**33. PRODUCTIVITY**

- (1) An employer shall be entitled to initiate plant level discussions with employees for the introduction of a productivity scheme.
- (2) Should such discussions lead to an agreement, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (3) Should such discussions not lead to an agreement, the matter shall be so concluded.
- (4) Discussions referred to in sub-clauses (1) to (3) shall not be subject to the declaration of disputes from either party, and neither party shall be entitled to pursue industrial action in support or in consequence of such discussions.
- (5) The provisions of this clause shall not detract from the union's right to table productivity demands at the level of the Council and to negotiate concerning these in terms of the normal negotiating procedure of the Council.

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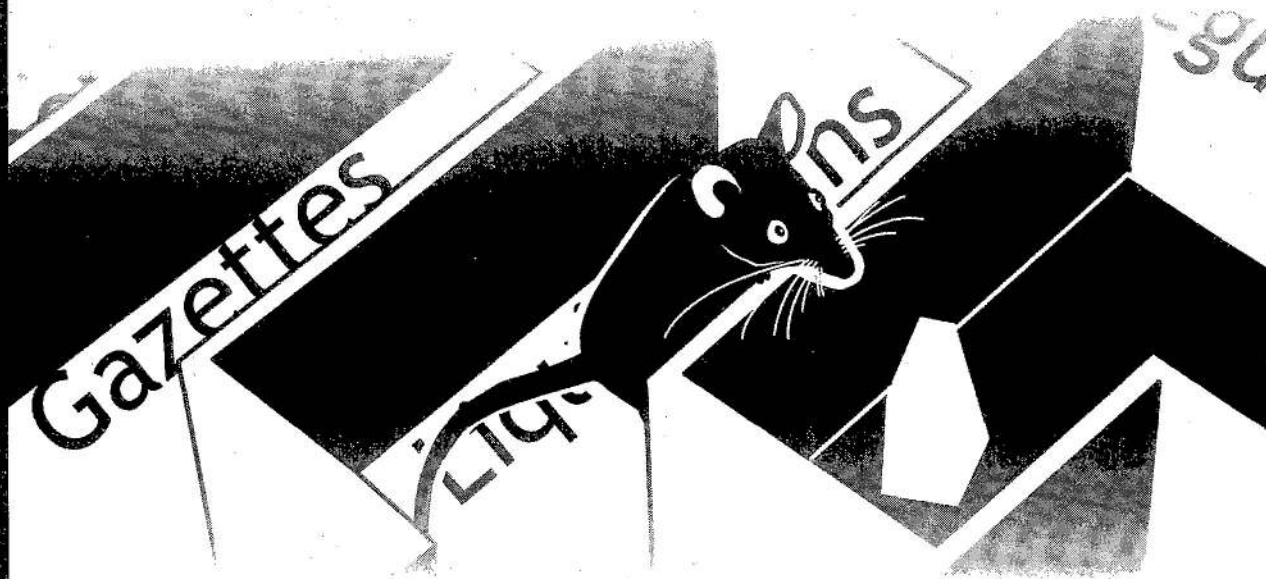
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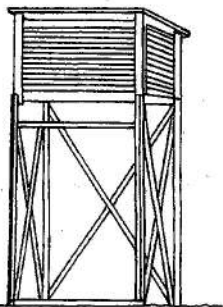
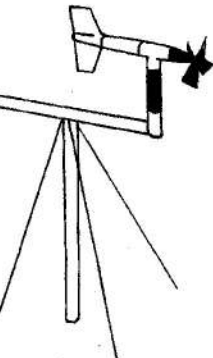
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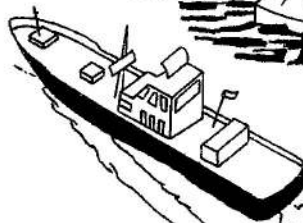
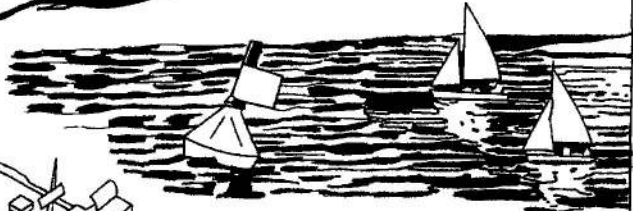
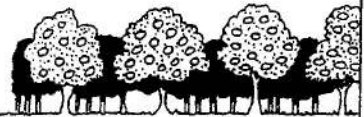
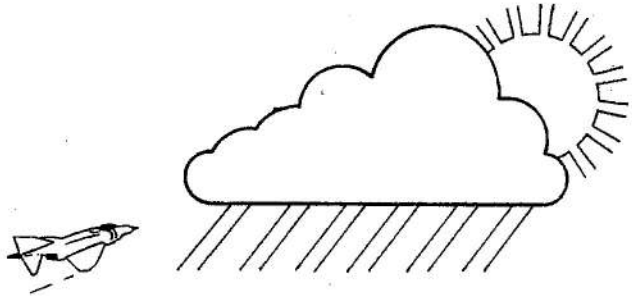
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