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PART F : PROVISIONS FOR THE WESTERN CAPE REGION (CLOTHING)**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 the employers and the employees who are members of the employers' organisations and the trade union respectively;
 - (b) in the Magisterial Districts of:
 - (i) The Cape, Simon's Town, Goodwood and Bellville, including those portions of the Magisterial Districts of Simon's Town, Goodwood and Bellville that were used to create the Magisterial District of Mitchell's Plain on 2 March 1992, Somerset West and Strand by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement;
 - (ii) Wynberg, including that portion of the Magisterial District of Wynberg that was used to create the Magisterial District of Mitchell's Plain on 2 March 1992, by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) and/or (b) and/or (c) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement; and
 - (iii) Malmesbury, including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice 2649, by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) (excluding belts made from leather or synthetic material) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall:
- (a) apply only in respect of employees for whom wages are prescribed in this part of the Agreement.
 - (b) not apply to employees and working directors whose wages are more than R48 386,00 per annum;
 - (c) not apply to employers and employees engaged or employed in the Knitting Division.
- (3) Clauses 1(1)(a), 2, 11(4)(b), 14(2), 19B, 26(13)(a) to (13)(g)(v), and 37(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 Labour Relations Act, 1995, shall have the same meaning as in that 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 females and the singular shall include the plural and vice versa; further, unless inconsistent with the context:

"Act" means the Labour Relations Act, 1995;

"blocker (clothing)" means an employee who blocks men's and boys' hats or caps;

"blocker (millinery)" means an employee who is engaged in the processing of the raw materials into shapes either by hand or by machine and includes a stiffener;

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

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities:

- (a) general gardening work;
- (b) loading or unloading;
- (c) cleaning bush;
- (d) washing vehicles or windows;

"chopper-out (millinery)" means an employee who is engaged in one or more of the following operations:

- (a) Cutting ribbons, trimmings and linings;
- (b) laying up materials preparatory for cutting;

"clerk" means an employee who is engaged in:

- (a) writing, typing and filing;
- (b) operating a calculating or punch card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work study clerk 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 cuts parts of garments from dies using a mechanical or hydraulic press;

"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 of 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

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- (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;

"clothing machine mechanic" means an employee who is engaged in servicing, repairing or adjusting machinery, equipment or installations in any establishment;

"clothing technician" means an employee who is employed for the purposes of being trained in all aspects of the Industry, who is registered as such with the Regional Chamber and who may perform any of the duties of the different classes of employees for whom wages are specified in clause 4 of this part of the Agreement;

"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;

"conveyor" means any type of moving mechanical apparatus which feeds work to employees at a pre-determined rate or at a pre-determined interval;

"Council" means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

"cutter" means an employee, other than an interlining cutter, trimmer, leather cutter or tie cutter, engaged in cutting material with any power driven cutting machine, knife or shears, but excluding any cutting operations referred to in the definitions of "Grade A and B employee", and "Grade C employee";

"day worker" means an employee who is not a shift worker;

"dealer" or "general dealer" means a person or persons holding a licence under item 3 of the First Schedule to the Registration and Licensing of Business Ordinance;

"dependant" means, for the purpose of the Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;
- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;

"general worker (millinery)" means an employee who is engaged in one or more of the following operations within a Millinery Establishment:

- (a) Cleaning premises, utensils or other articles;
- (b) loading and/or unloading vehicles;
- (c) carrying, moving or stacking goods;
- (d) making and/or maintaining fires or removing refuse or ashes;
- (e) delivering or conveying letters, messages or other articles on foot or by means of a bicycle or propelled vehicle;
- (f) opening and/or closing packages;

"Grade I employee (millinery)" means an employee who is engaged in one or more of the following operations:

- (a) Writing out labels and tickets;
- (b) issuing trimmings, ribbons, linings and miscellaneous materials, e.g. artificial flowers;
- (c) checking finished hats for flaws;
- (d) preparing linings;
- (e) checking wires of brims;
- (e) damping and preparing materials for blocking;
- (g) preparing and sorting sample ranges;
- (h) carrying messages or hats or parts of hats from one operation to another within an establishment;
- (i) applying lacquer to hats, and includes a sheener and/or polisher;
- (j) assisting at the blocking machine;
- (k) making tea or similar beverages;

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

- (a) **"belt shaper"** means an employee engaged in:
 - (i) cutting belt blanks from any type of material;
 - (ii) trimming and shaping of belt blanks after glueing;
- (b) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (c) **"embroidery artist"** means an employee designing embroidery patterns;
- (d) **"fitter up"** means an employee who takes the outside of garments together with the cut out linings (called trimmings) and adjusts the outsides and

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insides together accurately so that the parts may go forward to the machine to be put together correctly;

- (e) **"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 material;
- (f) **"presser"** means an employee engaged in the pressing of finished garments by machine, but excluding the ironing of garments;
- (g) **"pleating machine setter"** means an employee who sets an automatic pleating machine;
- (h) **"shaper"** means an employee who shapes designs of lapels and collars of coats preparatory to underbasting;

Screen printing operations

- (i) **"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;
- (j) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (k) **"screen printer"** means an employee engaged in:
 - (i) carrying out checks for faults;
 - (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;
 - (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
 - (vii) setting up screens in sequence of colour to be printed on fabric;
 - (viii) squaring off and testing that screens fit according to master feeler;
 - (ix) supervising the handling of screens to and from wash bays;
 - (x) supervising the operations of the colour thrower;

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

- (a) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (b) **"Baster"**, including outbaster, means an employee engaged in handsewing in setting a coat or parts of a coat into position preparatory to other

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- (aF) **"steambox operator"** means an employee engaged in putting prepared formers in steambox and taking them out again in hand or loom pleating process;

Screen printing operations

- (aG) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (aH) **"assistant screen printer"** means an employee who assists a screen printer and who may screen print by hand;
- (aI) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aJ) **"mixing and filtering operator"** means an employee engaged in:
- (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) watching for malfunctions in mixing equipment;
 - (vii) operating a high speed stirrer;
 - (viii) operating a tub washer;
 - (ix) removing solid or foreign articles from print paste;
 - (x) supplying clean drums to colour weighers;
 - (xi) transferring identifying labels to drums of dye;
- (aK) **"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;
- (aL) **"screen controller"** means an employee engaged in:
- (i) applying masking tape set for automatic printing machines;
 - (ii) checking for faults and rectifying same;
 - (iii) clearing blockages by means of a high pressure gun;
 - (iv) painting in any open motif pinholes;
 - (v) painting in masking and making trial print proof;
 - (vi) placing screens in the rack ready for use;
 - (vii) putting end rings into rotary screens;
 - (viii) retouching screens;
- (aM) **"screen preparer"** means an employee engaged in:
- (i) coating screens;
 - (ii) fitting gauze to frames;
 - (iii) operating a stretching machine;
 - (iv) placing screens in conditioning chamber;
 - (v) preparing and checking screen frames;
 - (vi) removing grease from screens;
- (aN) **"squeegee preparer"** means an employee who makes and prepares squeegees,

and shall include an employee not elsewhere specified in this part of the Agreement;

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"Grade C employee" means an employee engaged in one or more of the following duties or capacities;

- (a) **"belt operator"** means an employee engaged in:
 - (i) bending belt buckles;
 - (ii) covering buckles by hand or machine;
 - (iii) ironing belts;
 - (iv) pressing buckle prongs onto buckles;
 - (v) punching holes for buckles and prongs;
 - (vi) riveting belt buckles;
 - (vii) stapling buckles onto belts;
 - (viii) trimming and cleaning of belts after machining;
- (b) **"bias binding cutter"** means an employee engaged in cutting bias binding;
- (c) **"bobbin winder"** means an employee engaged in winding bobbins;
- (d) **"box assembler"** means an employee engaged in folding cardboard into containers for garments;
- (e) **"bra fuser"** means an employee engaged in:
 - (i) spraying and fusing together two bra cup fibre fillers;
 - (ii) spraying fusing material on to bra cup fibre filler and fusing;
- (f) **"bra marker"** means an employee placing moulded bra cups on forms and patterns over cup and marking bra cup;
- (g) **"button coverer"** means an employee engaged in covering buttons by hand or machine;
- (h) **"cap fastener"** means an employee engaged in putting fasteners on caps;
- (i) **"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments or embroidery by previous operators;
- (j) **"collar/cuff trimmer"** means an employee engaged in trimming collars, cuffs, flaps and pockets by knife, scissors, guillotine or contour machine;
- (k) **"crimper"** means an employee engaged in crimping the seams of collars and cuffs prior to machining;
- (l) **"embroidery cleaner"** means an employee who cuts off threads from embroidery;
- (m) **"embroidery framer"** means an employee who inserts fabric into frames and removes embroidery from frames and who loads or unloads frames onto and from machine;
- (n) **"embroidery marker"** means an employee who marks embroidery designs on fabric;
- (o) eyelet punching and letting;
- (p) fitting garments on models but excluding marking, measuring or cutting off of material;

- (aK) **"stamper"** means an employee stamping sizes and/or identifying work numbers on garments or parts of garments;
- (aL) **"stapler"** means an employee engaged in stapling or pinning parts or garments together;
- (aM) **"steam press operator"** means an employee engaged in passing garments through steam press and receiving out at the other end;
- (aN) **"swatch cutter"** means an employee engaged in cutting travellers' swatches;
- (aO) **"tablehand"** means an employee engaged in:
- (i) cleaning off any excess rubber solution;
 - (ii) painting seams of oilskins and waterproof hats;
 - (iii) smearing rubber solution on seams or edges and rolling them over with small hand roller;
- (aP) **"ticket sewer"** means an employee engaged in stitching tickets on garments by machine;
- (aQ) **"transferer"** means an employee engaged in transferring or stenciling garments, parts of garments or panels by hand or machine;
- (aR) **"turner"** means an employee engaged in:
- (i) machine patent turning, i.e. operating any form of automatic or semi-automatic machine which turns out or turns over the edges or points of collars, bands, cuffs, tabs, pockets, or loops, including the semi-automatic machine making collar tabs;
 - (ii) turning garments by hand, trimming and turning garments or parts of garments;
- (aS) underpressing of men's and boys' melton and linen caps;
- (aT) **"welder"** means an employee engaged in operating an electric fabric welding machine;
- (aU) zip machine operator;

"head cutter" means a qualified cutter as defined in the Agreement who is in charge of and actively supervises the cutting department of an establishment;

"hourly rate" or **"hourly wage"** means the weekly wage prescribed in clause 4(1) read with clause 4(10), divided by:

- 60 in the case of a watchman or caretaker;
- 46 in the case of a boiler attendant;
- 42½ in the case of all other employees;

"incapacity" means inability to work owing to any sickness or injury of an employee, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

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"instructor" means an employee who is responsible for training employees in any 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;

"interlining cutter" in the shirt section means an employee employed solely in marking in and/or cutting linings for shirts, pyjamas and other nightwear;

"labourer" means an employee engaged in one or more of the following duties or capacities:

- (a) binding, wiring, or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts, cleaning, oiling and greasing machines, moving tools, equipment and machines, changing needles, cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

"laymaker" means an employee, other than an interlining cutter, trimmer or tie cutter, who positions patterns for a lay;

"layer up" means an employee engaged in laying up material and may include slitting the ends and sides and/or who sorts parts from the cut lay;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the wage specified in this part of the Agreement for a qualified employee of his class;

"leather cutter" means an employee, other than a lay-maker, engaged in cutting parts of leather garments;

"milliner" means an employee other than a trimmer (millinery), blocker (millinery) or Grade I employee (millinery) who is engaged in the making of ladies' and/or girls' hats and includes a setter in a Millinery Establishment;

"milliner machinist" means an employee who performs any operation by sewing machine within a Millinery Establishment;

"monthly wage" means the weekly wage multiplied by four and a third;

"motor vehicle driver (clothing)" means an employee engaged in driving a motor vehicle, scooter or fork lift, 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 vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"motor vehicle driver (millinery)" 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 vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"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;

"packer (millinery)" means an employee who is engaged in packing goods for transport or delivery within a Millinery Establishment;

"patent machine" means a button, buttonhole, padding or felling machine;

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

"pattern grader" means an employee 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 engaged in designing and/or making master patterns;

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

"plain sewer (millinery)" means an employee who performs operations on a flat sewing machine within a Millinery Establishment;

"qualified" means that an employee has completed his learnership in terms of this part of the Agreement;

"quality controller" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e. ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"Regional Chamber", for purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"set leader" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"set of workers" (sometimes referred to as a "set") means a team of employees numbering three or more, engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"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 a temporary reduction in the number of ordinary weekly hours of work in an establishment due to slackness of work or other exigencies of trade;

"storeman" means an employee in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

"supervisor (clothing)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory in the Clothing and/or Garment Knitting Sectors of the Industry;

"supervisor (millinery)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory in the Millinery Sector of the Industry;

"task-work" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

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"tie-cutter" means an employee engaged in marking-in and/or cutting ties by hand or machine;

"tracer" means an employee who traces master lays or traces around patterns which have already been positioned by the lay-maker;

"trade union funds", without limiting the generality of its meaning, includes trade union subscriptions and levies;

"traveller's driver" means an employee accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying of samples;

"trimmer (clothing)" in the clothing section means an employee engaged in marking-in and/or cutting linings and/or canvases;

"trimmer (millinery)" means an employee who is engaged exclusively in the application of trimming to a ready blocked, wired and shaped hat and who may cut materials by hand or machine in a Millinery Establishment;

"trimming", for the purposes of the Millinery Sector of the Industry, means the application of lining, elastic, ribbon, flowers and veiling in accordance with a given model;

"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, employed in pressing processes, including the pressing of pockets and seams of crutch linings of completed trousers, but excluding ironing processes;

"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 the unladen mass shall be deemed not to exceed 1 360kg;

"wage" means the amount of money paid to an employee in terms of clause 4(1), read with clause 4(10), in respect of his ordinary hours of work as specified in Clause 9: Provided that

- (i) 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), read with clause 4(10), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration which an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"watchman or caretaker (clothing)" means an employee who is engaged in guarding premises, buildings or other property in the Clothing and/or Garment Knitting Sectors of the Industry;

"watchman or caretaker (millinery)", means an employee who is engaged in guarding premises, buildings or other property in the Millinery Sector of the Industry.

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	Wage per Week
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(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
Part D - General	
Boiler attendant	493.50
Despatch packer	509.50
General Worker	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 controller 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

- (1) (b) 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 Establishments shall be as follows:

	Wage per week
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Blocker	
(a) Qualified	502.00
(b) Learner	
First year	
First six months of experience	347.50
Second six months of experience	387.50
Second year	
First six months of experience	424.50

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		Wage per week
	Second six months of experience	464.00
	Thereafter, the wage specified in (a), i.e.	502.00
Chopper-Out (Millinery)/Trimmer (Millinery)/Packer (Millinery):		
(a)	Qualified	414.50
(b)	Learner	
	First year	
	First six months of experience	347.50
	Second six months of experience	361.00
	Second year	
	First six months of experience	374.00
	Second six months of experience	388.00
	Third year	
	First six months of experience	401.00
	Thereafter, the wage specified in (a), i.e.	414.50
General Worker (Millinery)		410.00
Grade 1 Employee (Millinery):		
(a)	Qualified	405.50
(b)	Learner	
	First year	
	First six months of experience	347.50
	Second six months of experience	362.00
	Second year	
	First six months of experience	382.50
	Thereafter, the wage specified in (a), i.e.	405.50
Milliner		
(a)	Qualified	439.00
(b)	Learner	
	First year	
	First six months of experience	347.50
	Second six months of experience	369.00
	Second year	
	First six months of experience	370.00
	Second six months of experience	387.00
	Third year	
	First six months of experience	404.50
	Second six months of experience	424.50
	Thereafter, the wage specified in (a) i.e.	439.00
Millinery Machinist:		
(a)	Qualified	443.50
(b)	Learner	
	First year	
	First six months of experience	347.50
	Second six months of experience	378.50
	Second year	
	First six months of experience	402.00
	Thereafter, the wage specified in (a), i.e.	443.50
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 is as follows -		
(a)	does not exceed 2268 kg	526.00
(b)	exceeds 2268	555.50

		Wage per week
Plain Sewer (Millinery):		
(a)	Qualified	414.50
(b)	Learner	
	First year	
	First six months of experience	347.50
	Second six months of experience	366.00
	Second year	
	First six months of experience	389.50
	Thereafter, the wage specified in (a), i.e.	414.50
Supervisor (Millinery)		594.00
Watchman or Caretaker (Millinery)		599.00

- (2) **Set leaders:** In addition to the wages computed in term of sub - clause (1) of this clause, any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R4 per week whilst so employed.
- (3) **Basis of contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (6) and subclause (10) for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30 of this part of the Agreement, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (4) **Incremental dates:** 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 the respective periods.
- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, 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 Regional Chamber within 14 days of the employee's resuming work.
- (5) Except with the approval of the Regional Chamber or unless otherwise provided for herein, an employee transferred from one occupation to another for which wages are prescribed in this part of the Agreement, either with the same employer or if

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commencing service with another employer, shall be paid the wages prescribed in respect of the experience such an employee has had in the Industry, irrespective of the occupation in which such experience has been obtained.

- (6) **Differential rates:** An employer who requires or permits a member of one class of his employees 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 either:

- (a) a wage higher than that of his own class; or
- (b) a rising scale of wages terminating in a wage higher than that of his own class;

is prescribed in subclause (1) shall pay such employee in respect of that day:

- (i) in the case referred to in paragraph (a), not less than one-fifth of the higher weekly wage prescribed in subclause (1); and
- (ii) in the case referred to in paragraph (b), not less than one-fifth of the highest weekly wage prescribed in subclause (1) for the higher class;

Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.

- (7) Subject to the provisions of clauses 5(4) and 12, an employee, other than a casual employee and a twilight shift worker, shall be paid the full weekly wage prescribed in subclause (1), read with subclause (10), for an employee of his class, whether he has worked full time or less.
- (8) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one fifth of the weekly wage prescribed for a labourer in subclause (1) read with subclause (10).
- (9) **Shift Allowance:** In addition to the wage specified in sub-clause (1), read with sub-clause (10), a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (10) **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 1,87% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer and 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.

- (11) Notwithstanding anything to the contrary contained herein, the wage of an employee who is employed at a Clothing and/or Garment Knitting Establishment and who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that prescribed for the class of work in 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 prescribed in the Agreement published Government Notice No. R.1185 of 15 October 2004 and the wage prescribed in clause 6(1) of this part of the Agreement for the class of work in which he is engaged: Provided that this subclause shall not apply to an employee who, by virtue of the operation of clause 1 (2) (b), previously fell outside the provisions of the Agreement published under Government Notice No. R. 1185 of 15 October 2004.

- (12) **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 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.
- (13) **2001 Allowance:** In addition to the wage specified in subclause (1) (a) each employee employed at Clothing and/or Garment Knitting Establishments and for whom wages are prescribed in this part of the Agreement shall be paid an allowance equal to 1,28% of the wage prescribed in the Agreement published under Government Notice No R.85 of 26 January 2001 plus an amount of 20 cents: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No R.85 of 26 January 2001 and provided further that in the event of an employee who has been exempted from contributing to the Cape Clothing Industry Provident Fund, this allowance will be reduced to an amount of 20 cents i.e. discarding the 1,28% portion thereof.

5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, 'Agreement' shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

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.

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.

- (b) Employees engaged upon a monthly basis shall be paid not later than the last day in each calendar month, or on the termination of employment if this should take place before the ordinary pay-day of the employee.
- (c) Where the contract of employment is terminated on any working day other than the ordinary pay-day in the establishment, all wages or other moneys due to the

employee shall be paid immediately upon termination of employment, and where this is not done the employee shall also be entitled to his normal wages for any period up to the time at which payment is made.

- (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** Any wages must be handed to employees in sealed envelopes which bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e. short-time), and the period in respect of which payment is made.
- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for savings and/or holiday funds: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust fund under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and provident fund contributions in terms of clause 6 of the Provident Fund Agreement;
 - (d) any amount paid by an employer compelled by law, ordinance or legal process to make payment on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
 - (f) deductions in respect of tea (or other beverage) in terms of clause 13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional Chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;

- (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages must at all times be paid in full except as is provided for in subclause (4) and clause 12 and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.
- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium, monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement; Provided further that where work in a part or the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.
- The provisions of this subclause shall also apply to any employee who as at the date of such fire, storm or flood is employed on trial in terms of clause 18 (8) of this part of the Agreement.
- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205(1) and (2) of the Act, be kept for a period of three years subsequent to

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the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECE-WORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piece-work or incentive system as provided for in this clause.
- (2) No employer shall employ any employee on piece-work or any other form of wage incentive except in accordance with the following conditions:
 - (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a time-worker.
 - (b) The Regional Secretary of the Regional Chamber must within seven days of the introduction of any piece-work or other form of wage incentive be notified of the introduction thereof.
 - (c) A schedule of the piece-work rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, must forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
 - (d) The employees affected by any wage incentive scheme other than straight piece-work shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
 - (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values, must be maintained by the employer, and where any changes are effected the record of the previous system must be retained for a period of one year after such change.
 - (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if any), and in the event of any dispute arising, the matter shall be referred to the Regional Chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piece-work rates shall not be reduced without the consent of the Regional Chamber.
 - (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

8: PROPORTION OR RATIO OF EMPLOYEES

- (1) Where an employer employs four or more cutters in any establishment he shall employ one head cutter at a wage of not less than the wage prescribed in clause 4(1).

- (2) Where an employer is limited liability company or a close corporation or is a partnership, no director or member or other officer of such company or close corporation or partnership shall be deemed to be an employee for ratio purposes.

**9: ORDINARY HOURS OF WORK, MEAL INTERVALS
AND REST INTERVALS**

- (1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than:

- (a) In the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker:

- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
- (ii) 8½ hours on any day between 07h30 and 18h00.

- (b) In the case of a normal shift worker:

- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
- (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily;

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals, but including rest intervals, in any week from Monday to Thursday (four-day week).

Provided further that no employer may require employees to work as normal shift workers without giving the Council at least 15 working days notice of his intention to work shifts, and without consulting the Trade Union in this regard.

- (c) In the case of boiler attendants, the weekly hours may be 46 and the daily hours nine and a quarter.
- (d) In the case of watchmen or caretakers, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 hours (six-day week).
- (e) In the case of casual employees, the weekly hours may be 25½ and the daily hours 8½.
- (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.

- (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:**

- (a) **Employees not engaged upon a conveyor apparatus:** Every employer shall grant to each of his employees a rest interval of not less than:

- (i) 15 minutes as near as practicable to the middle of each morning work period;
- (ii) 10 minutes as near as practicable to the middle of each afternoon work period;

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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.

- (b) **Employees engaged on a conveyor apparatus:** Employees engaged on work in conjunction with a conveyor apparatus shall be given suitable rest intervals during working hours, amounting in all to not less than 30 minutes daily. All such rest periods shall be reckoned as part of the employee's working hours but no work whatever shall be performed during such rest intervals by any employee engaged upon this type of operation.

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer; Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (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:

- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
- (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
- (c) where two or three shifts are employed daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift during which intervals such employee shall not be required or permitted to perform any work;
- (d) with regard to employees other than normal shift workers an employer may conclude an arrangement with his employees to shorten such employees' meal intervals to not less than 30 minutes daily;
- (e) this sub-clause shall not apply to a twilight shift worker.

- (5) **Savings:** The provisions of this clause shall not apply to traveller's drivers and watchmen or caretakers: Provided that in the case of a watchman or caretaker he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclause (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery which cannot be performed during the regular working hours.

(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

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers:
- (a) in excess of the ordinary daily hours specified in clause 9(1); or
 - (b) before 07h30 and after 18h00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises;
- shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours specified in Clause 9(1)(b) shall be deemed to be overtime.
- (d) **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

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of this Agreement 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 first five days of sick leave as provided for in clause 26 (13) (g) (vi) of this part of the Agreement, and such Sick leave shall include illness of a dependant child and the death of an immediate member of the family.

(2) **Limitation of overtime:**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than:
 - (i) 10 hours in any week;
 - (ii) three hours on any day.
- (b) **Notice of working overtime to be given to employees:** No overtime in excess of one hour in any day may be required or permitted of an employee unless the employer:
 - (i) has given notice thereof to such employee the previous day; or
 - (ii) provides such employee with an adequate meal before he has to commence overtime; or
 - (iii) pays such employee an allowance of R5.00 to enable the employee to obtain a meal before the overtime is due to commence.
- (c) Overtime shall be voluntary.
- (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10 minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes duration, depending on the wishes of the majority of the employees concerned.
- (e) 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.

(3) An employee shall be deemed to be working in the employment of an employer in addition to any period during which he is actually working:

- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;

- (b) during any period during which he is present upon or in any such premises; and
- (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven:

Provided that if it is proved that during any part of any such period as is referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.

- (4) Overtime accrues daily and shall be reckoned as time worked outside of the ordinary working hours as specified in Clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
- (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in Clause 9(1)(b).
- (6) Overtime shall apply to all employees in an establishment, except travellers' drivers.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:
 - (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
 - (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
 - (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
 - (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.
- (2) **Saturday work:**
 - (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
 - (b) Subject to paragraph (c), any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
 - (i) all work performed in excess of 4,25 hours or after 12:00 at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
 - (ii) all other work in accordance with subclause (1).

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- (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a traveling allowance of not less than R1,75.
 - (d) The provisions of this subclause shall not apply to normal shift workers.
 - (e) A twilight shift worker may not be required to work on a Saturday.
 - (f) A twilight shift worker may not be required to work on a Sunday.
- (3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either:
- (a) 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 weekday; or
 - (ii) if he so works for a period exceeding four hours, wages, at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a weekday, whichever is the greater; or
 - (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work day, i.e. a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours' remuneration: Provided that for the purposes of this subclause, a piece-worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.
- (4) **Public Holidays:**
- (a) An employee other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid in addition to his normal wage in respect of such holiday wages at straight time in respect of the hours so worked:

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.
 - (b) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the pay-day next succeeding the period in respect of which such remuneration becomes payable.
- (6) **Easter weekend:** No work shall be performed after 13:00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off as a paid half-holiday.
- The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid

half-holiday, the employee shall, in addition to payment for such half-holiday, receive payment for time worked after 13h00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee.

- (7) The provisions of subclause (3) shall *mutatis mutandis* apply to a normal shift worker who works on his day of rest.
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT TIME

- (1) An employer shall, prior to the day on and from which he intends to work short-time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned.
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof.
- (3) An employee, who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4(1) read with clause 4(10).
- (4) Consultation with the Trade Union shall take place prior to the introduction of short-time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or other beverages) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment has agreed to accept tea (or other beverages).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or other beverages).

- (2) Where tea (or other beverages) is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: 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.

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- (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 within fourteen days of month-end 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 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.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall between 15 December of each year and 14 January of the following year be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave, be paid as follows:
 - (a) in the case of an employee who on the latest day on which he can commence leave has completed at least one year's continuous employment with his employer:
 - (v) 15 ordinary working days at full wage;
 - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of the Agreement;

- (iii) when Day of Reconciliation falls within the period of annual leave it shall in accordance with clause 11 (4) of the Agreement also be observed as a paid public holiday thus extending the annual leave period by one day;
- (b) in the case of an employee who on the date of closing of the establishment for the specified annual leave period has not completed one year's continuous employment with his employer and whose employment has not been terminated:
 - (i) for each completed month of employment in that year an amount equal to one day's pay; plus
 - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period: Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day - an amount equal to one day's pay in respect of each such holiday;

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows:

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period: Provided further that an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of day's paid leave he was required to pay the employee in terms of this subclause.

(2) Paid public holidays:

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e. Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation.
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided they fall within an extended period calculated as follows:

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holidays falls within such added period it shall be paid for: Provided that:

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18(1)(a), such employee shall be paid one day's pay in respect of each of the public holidays referred to in subclause (1)(a) which falls after the date of termination of employment;

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- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays mentioned in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein.
 - (c) Whenever an employee works on 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 or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
 - (d) In the event of a paid holiday falling upon a Sunday, it shall be observed the following day.
 - (e) In the event of any of the paid holidays referred to in subclause (1)(a)(ii) and paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours wage in addition to the remuneration which is due to him for time worked from the Monday to Friday immediately preceding such Saturday.
 - (f) Whenever an employee works on a paid holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of wage for each hour worked on such Saturday.
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1), his pay in respect of leave not later than the last working day before the commencement of the said period, and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be; and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid.
- (4) For the purposes of this clause, 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 an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, became entitled to such leave in terms of such Agreement, whichever may be the later.
- (5) Short-time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1).
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered as employment in terms of subclause (1).

- (7) **Annual leave at periods other than the specified leave period:** An employer may make mutual arrangements with his:

- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive weeks' leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates;

('Maintenance staff' means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings.);

- (b) employees engaged in making samples, to take not more than 10 days' annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than two consecutive weeks' leave, or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the Year immediately succeeding the year of employment to which it relates:

Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater.

- (c) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.

- (8) **Leave and notice not to be concurrent:**

- (a) Notice of termination of a contract of employment given by an employer shall

- (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
- (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.

- (b) Nothing in this section affects the right -

- (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
- (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

- (c) **Payment instead of notice:** Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.

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- (9) Any period during which an employee:
- (a) is on leave in terms of subclause (1); or
 - (b) is absent on military service, not exceeding four months, undergone in that year; or
 - (c) is absent from work on the instructions or at the request of the employer; or
 - (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth, the provisions of this subclause shall cease to apply as from the date fixed by the Regional Chamber);
- shall be deemed to be employment for the purposes of subclauses (1) and (2): Provided that:
- (i) the provisions of paragraph (d) 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 proviso (ii) fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
 - (ii) 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 proviso (i).
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees.
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

- (1) **Service record cards to be produced on engagement:**
- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional Chamber shall issue a certificate of service reflecting the employee's employment history.

- (b) The employer shall forthwith upon engagement enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safe-keeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
 - (c) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
 - (d) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
 - (e) The employer shall forthwith upon engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
 - (f) Upon termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
 - (g) If the service record card shows that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).
- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** Upon termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e. date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialled and handed to the employee on termination of service.
- If the employee is ceasing employment due to confinement, this shall be endorsed on the card by the words "Due to Confinement" being written on the line on which the "Date of Leaving" is recorded.
- If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of Leaving" is recorded and the card retained by the employer.
- (3) **Procedure when employee does not produce a service record card:** The employer shall forthwith upon engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).
- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than on Friday of each week the employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in

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occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the Dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to the Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee:**

- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
- (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.

- (7) **Procedure where employee proceeds on maternity leave or leaves employment due to confinement and on re-employment thereafter:**

- (a) Where an employee resigns when proceeding on maternity leave, this fact must be recorded on her service record card as provided for in subclause (2) above.
- (b) Where an employee leaves work due to confinement, the employer must still record the date of ceasing work due to confinement.
- (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed "post-natal examination certificate" of her fitness for employment.
- (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund must be notified thereof and the certificate forwarded to him by registered post.
- (e) Supplies of the blank "post-natal examination certificates" may be obtained from the Secretary of the Fund.

- (8) **Procedure where an employee withdraws notice:** An employee may only withdraw notice of his intention to terminate his contract of employment within two (2)

working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.

- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Regional Chamber upon the payment of an amount determined by the Regional Chamber from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employees other than casual employees showing the following particulars:
- (a) factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates;
 - (l) transfers in occupation and dates.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided further that every employer on whom the collective agreement, arbitration award, or determination is binding must -
- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
 - (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to:
- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;

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(b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;

(c) the provisions of subclause (8);

an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate the contract of employment.

(2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer:

(a) in the case of a weekly-paid employee, one week's wages;

(b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless within six days the employee has furnished to this employer a medical certificate certifying his inability to perform his usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice.

Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purpose of this sub-clause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e. the intervening Saturday and Sunday shall be ignored in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

(3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1), (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

(4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

- (5) **Date of coming into operation of notice to terminate employment:**
- (a) **Weekly-paid employees:** Notice shall be given on any working day and shall operate from the following day.
 - (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.
- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same proviso shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).
- (7) Where short-time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof:
- (a) an employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and
 - (b) an employer working short-time shall give like notice to an employee to terminate his contract of employment.
- (8) **Trial Periods:**
- (a) **Weekly employees:** The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be period of trial during which the employment may be terminated by the employer or the employee at 24 hours notice.
 - (b) **Monthly employees:** The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee at 24 hours' notice.
- (9) This clause shall not apply to a casual employee.

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;

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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 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
 - (e) 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 a 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 moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions

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- 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.
 - (e) 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:

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- (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.
- (e) 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: SEATING ACCOMMODATION

Seats with suitable back rests, approved of by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

- (1) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount of 88 cents per week. To the amount so deducted, the employer shall add a like amount and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (2)
 - (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
 - (b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
 - (c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (3) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

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 or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24 : POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber as agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.
- (2) The Council may, in terms of Section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council or Regional Chamber.
- (3) A designated agent shall have all the powers conferred on a Commissioner by Section 142 of the Act, except the powers conferred by Section 142(1)(c) and (d) of the Act.
- (4) 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 36 or the Disputes Procedure in terms of clause 37 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 object relevant to the resolution of the dispute, to appear before the agent or 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; - and
 - (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 : - and
 - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.

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- (5) A subpoena issued for any purpose in terms of subclause (4) shall be signed by a 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.
- (6) The written authorisation referred to in subclause (4) (d) -
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on the application of the agent and/or any appointed person 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.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person must issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) 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.
- (10) The agent and/or appointed person must pay the witness fee specified from time to time in terms of Section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) 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 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 agent and/or appointed person;
 - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;

- (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (8);
 - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
 - (f) if the person wilfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Act;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person'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 agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.
- (12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing:
- (a) the name and address of the person to whom the work has been given out;
 - (b) a description of the type and quantity of work given out; and
 - (c) the dates upon which the work was given out and the dates upon which it was received back.
- For the purposes of this subclause, 'giving out work' shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.
- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e. for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a Management Committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, *as ex officio* members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, Clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.
- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose 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 and who has worked during any week irrespective of the time so worked (hereinafter referred to as a 'contributor'), the following amount:
 - Group 1 In the case of a contributor earning a wage of less than R540,01 per week:
without dependants: R 7.40
with dependants: R12.10
 - Group 2 In the case of a contributor earning a wage of R540,01 per week and more:
without dependants: R 9.40
with dependants: R16.10
- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:
 - Group 1 In the case of a contributor earning a wage of less than R540,01 per week: R4.90;
 - Group 2 In the case of a contributor earning a wage of R540,01 per week and more: R5.90.
- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar, but not less favourable, to the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee is subject to and conditional upon the employee having complied with the following:
- (a) By completing a form as specified for such purpose by the Regional Chamber, at least one month before the date of commencement of her maternity leave: Provided that this requirement shall not apply in the event of the employee having to stop work, due to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or by delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgment of receipt therefor; and
 - (c) returning to work and resuming her normal duties on the date stipulated in the form referred to in subclause 3(a), or by showing good cause why it was not possible to return to work on the stipulated date; and
 - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, by returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
- (5) An employer shall be entitled to fill a position which has become vacant due to an employee having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
- (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause 3(a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the Trade Union, negotiate with the Trade Union at his establishment on procedures relating to-
- (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and Safety.

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- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade Union officials shall be entitled to be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the Trade Union and the individual employer concerned.
- (4) 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.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the Trade Union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the Trade Union or the employer, be negotiated between the Trade Union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each such training course has been lodged with Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) 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 five 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.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, shall be obtained from management.

34: RETRENCHMENT BENEFITS

- (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, unless the employer has been exempted from the provisions of this clause.

- (2) An employee who unreasonably refuses 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 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 according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

35: 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 shall be entitled to require proof of paternity.

36. 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 through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement has been breached then the following procedure shall apply to enforce compliance:
 - (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and / or refer the matter to the Regional Chamber's Disputes Committee.
 - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with the agreement through conciliation.
 - (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the 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) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General 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.

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- (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General 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 Regional Secretary or relevant official of the Regional Chamber and/or the General 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
 - (ab) an office bearer or official of his registered 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 deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service, provided that :

where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37(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 and/or Regional Chamber'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 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 Labour Relations Act. This shall in no way limit the rights of any Party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

37: 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.

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- (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.

(5) *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

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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

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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.

38 : 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 Western Cape Sub-Chamber of the Cape 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 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4), contribute an amount of 13 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (7) The monies 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 will be administered by the Regional Chamber.
- (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 sub-clause (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 Cape Clothing Association (CCA) 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 sub-clause (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 CCA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the CCA, 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 CCA 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 CCA 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 CCA.

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 CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, 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 CCA 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 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.

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39 : TRADE UNION CAPACITY BUILDING FUND

- (5) Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (6) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar : Labour.
- (7) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 25 cents per week.
- (8) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (9) All monies received by the Regional Chamber for and on behalf of the Fund, shall be paid monthly by the Regional Chamber into a banking account styled, the "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of reimbursing it to the Union in terms of the rules of the Fund.
- (10) Monies in the Fund's banking account not required to meet the current reimbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (11) Any interest that is earned on Fund monies shall accrue to the Fund and be used in terms of the rules of the Fund.
- (12) The accounts of the Fund shall be annually audited in terms of generally accepted auditing standards by the Council's auditors.
- (13) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorized reimbursements made to the Union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The Union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (14) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant Union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar : Labour upon approval of the Fund's rules, or from time to time.

40 : COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (5) The parties to this part of the Agreement recognise that the Cape Clothing Association ("the CCA") is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the clothing manufacturing industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly the parties agree that every employer in the region, who is subject to this part of the Agreement, shall pay a monthly fee in an amount calculated in terms of sub clause (2) hereunder, on the following basis -
 - (e) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;

- (f) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee, that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (6) The amount of the monthly levy shall be as determined at a the general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
- (7) The Regional Secretary of the Regional Chamber shall deposit all monies received in terms of this clause into a separate, dedicated banking account in the name of the "CCA levy account".
- (8) The Regional Chamber shall disburse monies from the account to the CCA on receipt of acceptable proof by the CCA of disbursements incurred by it as contemplated by clause 5 below.
- (9) The monies received in terms of the provisions of this clause may be used only for expenditure incurred by the CCA in respect of:
 - (e) collective bargaining; and
 - (f) dispute resolution,and may not be:
 - (e) paid to a political party as an affiliation fee; or
 - (e) contributed in cash or kind to a political party or a person standing for election to any political office.
- (10) The CCA shall arrange for an annual audit of the "CCA levy account" within six months of its financial year by an auditor who:
 - (e) shall be independent;
 - (f) shall conduct the audit in accordance with generally accepted auditing standards;
 - (g) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of sub clause (5).
- (11) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of sub clause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
- (12) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (13) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.
- (14) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute. Provided that if no agreement is reached within 30 days of the lodging of

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the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators / arbitrators.

- (15) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (16) Despite the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the "CCA levy account" may continue to be disbursed until they have been exhausted.

41: 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.

42 : 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.

43 : EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

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

44 : 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 Agreementthis 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 within fourteen days of month-end 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.
 - (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 –
 - (e) paid to a political party as an affiliate fee;
 - (f) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (g) used for any expenditure that does not advance or protect the socio-economic interests of employees.

45. PRODUCTIVITY

- (5) An employer shall be entitled to initiate plant level discussions with employees for the introduction of a productivity scheme.
- (6) Should such discussions lead to an agreement, the terms of such agreement shall be introduced at the establishment where it has been agreed.
- (7) Should such discussions not lead to an agreement, the matter shall be so concluded.
- (8) 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.
- (9) 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 G : PROVISIONS FOR THE WESTERN CAPE REGION
(COUNTRY AREAS)

1: SCOPE OF APPLICATION OF AGREEMENT OF THIS PART OF THE AGREEMENT

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by the employers and the employees who are members of the employers' organisations and the trade union, respectively;
 - (b) in the Magisterial Districts of George and Worcester.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall-
- (a) apply only in respect of employees for whom wages are prescribed in this part of the Agreement;
 - (b) not apply to employees and working directors whose wages are more than R36 426 per annum;
- (3) Clauses 1 (1) (a), 2, 11 (4) (b), 14 (2), 19B, 26 (13) (a) to (13) (g) (v) and 37 (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 Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment to such Act, and, unless the contrary intention 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;

"blocker" means an employee who blocks men's and boys' hats or caps;

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

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities:

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;
- (d) washing vehicles or windows;

"clerk" means an employee who is engaged in-

- (a) writing, typing and filing;
- (b) operating a calculating or a punch-card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work-study clerk 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 cuts parts of garments from dies using a mechanical or hydraulic press;

"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

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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;

"clothing machine mechanic" means an employee who is engaged in servicing, repairing or adjusting machinery, equipment or installations in any establishment;

"clothing technician" means an employee who is employed for the purpose of being trained in all facets of the Industry, who is registered as such with the Regional Chamber and who may perform any of the duties of the different classes of employees for whom wages are specified in clause 4 of this part of the Agreement;

"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;

- (a) **"belt shaper"** means an employee who is engaged in-
 - (i) cutting belt blanks from any type of material;
 - (ii) trimming and shaping belt blanks after glueing;
- (b) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (c) **"embroidery artist"** means an employee who designs embroidery patterns;
- (d) **"fitter up"** means an employee who takes the outside of garments together with the cut-out linings (called trimmings) and adjusts the outsides and insides together accurately so that the parts may go forward to the machine to be put together correctly;
- (e) **"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 material;
- (f) **"presser"** means an employee who is engaged in the pressing of finished garments by machine, but who is not engaged in the ironing of garments;
- (g) **"pleating-machine setter"** means an employee who sets an automatic pleating machine;
- (h) **"shaper"** means an employee who shapes designs of lapels and collars of coats preparatory to underbasting; and includes those screen printing operations defined below;

Screen Printing Operations

- (i) **"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;
- (j) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (k) **"screen printer"** means an employee who is engaged in-
 - (i) carrying out checks for faults;
 - (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen-printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;
 - (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
 - (vii) setting up screens in sequence of colour to be printed on fabric;
 - (viii) squaring off and testing that screens fit according to the master feeler;

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(ix) supervising the handling of screens to and from wash bays;

(x) supervising the operations of the colour thrower;

"Grade B employee", for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

- (a) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (b) **"baster"**, including outbaster, means an employee who is engaged in handsewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e., handsewing linings of coats into position preparatory to sewing to edge seams;
- (c) **"bowmaker"** means an employee who makes bows for dresses;
- (d) **"bra moulder"** means an employee who operates a bra-moulding machine and performs one or more of the following operations:
 - (i) Selects, inserts or fits appropriate bra-cup mould into machine;
 - (ii) sets heat and dwell time;
 - (iii) sets depth of mould;
 - (iv) places material in position;
- (e) **"bra shaper"** means an employee who shapes moulded bra cups singly or in quantity;
- (f) **"cap framer"** means an employee who puts stiffener, wire and pad or lining into cap;
- (g) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (h) **"conveyor-feeder"** means an employee who is responsible for feeding prepared parts of garments onto a conveyor for further operations and who may be assisted by one or more sorters;
- (i) **"cook"** means an employee who is engaged in preparing meals and cooking;
- (j) cutting individual ties by hand;
- (k) **"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.
- (l) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension and checks and/or examines work under needles;
- (m) embroidering and/or beading by hand.

- (n) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (o) **"finisher"** means an employee who performs one or more of the following operations by hand:
 - (i) Putting pads or wadding into shoulders of coats;
 - (ii) fastening or "serging" sleeve-heads;
 - (iii) wadding sleeve-heads;
 - (iv) felling silk facing already basted in position;
 - (v) making buttonholes by hand;
 - (vi) felling sleeve-head linings, holding in such position with fingers;
- (p) **"hand-patent turner"** means an employee who is engaged in turning out or turning over the edge of collars, bands, cuffs, tabs or pockets with the use of a hand-iron;
- (q) **"ironer"** means an employee who is engaged in-
 - (i) ironing and folding garments;
 - (ii) ironing and folding and pinning garments;
 - (iii) ironing jackets and fly linings;
 - (iv) steaming garments on dummy;
 - (v) ironing embroidered T-shirts by means of a domestic-type ironing machine;
- (r) **"laboratory assistant"** means an employee who prepares samples and who may make initial and routine tests and record the results thereof;
- (s) **"lace cutter"** means an employee who is engaged in laying up and cutting lace according to a pattern;
- (t) **"lace machinist"** means an employee who operates an automatic lace-sewing machine;
- (u) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (v) **"matcher"** means an employee who matches and marks pocket flaps and patches according to fabric pattern;
- (w) **"measurer and marker"** means an employee who measures and marks trouser waists;
- (x) **"measurer and trimmer"** means an employee who measures and trims linings of coats and jackets;
- (y) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (z) **"order checker"** means an employee who checks assembled orders;

- (aa) **"passer"** means an employee who examines the finished garments or parts thereof for flaws;
- (ab) **"pattern copier"** means an employee who copies master patterns, excluding the construction thereof, in pleating process;
- (ac) powdering lays from perforated master lays and perforating lays with a tracing wheel;
- (ad) **"re-cutter"** means an employee who is engaged in-
 - (i) cutting repairs and/or replacements, including time spent in searching for and matching up cloth;
 - (ii) re-cutting dress fronts after embroidery;
- (ae) **"shrinking press operator"** means an employee who operates a shrinking press to keep the same pattern;
- (af) **"steambox operator"** means an employee who is engaged in putting prepared formers in a steambox and taking them out again in a hand or loom-pleating process; and includes those screen printing operations defined below;

Screen Printing Operations

- (ag) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (ah) **"assistant screen printer"** means an employee who assists a screen printer and who may screen print by hand;
- (ai) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aj) **"mixing and filtering operator"** means an employee who is engaged in-
 - (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) operating a high-speed stirrer;
 - (vii) operating a tub washer;
 - (viii) removing solid or foreign articles from print paste;
 - (ix) supplying clean drums to colour weighers;
 - (x) transferring identifying labels to drums of dye;
- (ak) **"oven-curing operator"** means an employee who is engaged in drying and curing parts of garments after the printing operation;
- (al) **"screen controller"** means an employee who is engaged in-

- (i) applying masking tape set for automatic printing machines;
- (ii) checking for faults and rectifying same;
- (iii) clearing blockages by means of a high-pressure gun;
- (iv) painting in any open motif pinholes;
- (v) painting in masking and making trial print proof;
- (vi) placing screens in the rack ready for use;
- (vii) putting end rings into rotary screens;
- (viii) retouching screens;

(am) "**screen preparer**" means an employee who is engaged in-

- (i) coating screens;
- (ii) fitting gauze to frames;
- (iii) operating a stretching machine;
- (iv) placing screens in conditioning chamber;
- (v) preparing and checking screen frames;
- (vi) removing grease from screens;

(an) "**squeegee preparer**" means an employee who makes and prepares squeegees; and includes an employee not elsewhere specified in this part of the Agreement;

"**Grade C employee**", for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

(a) "**belt operator**" means an employee who is engaged in-

- (i) bending belt buckles;
- (ii) covering buckles by hand or machine;
- (iii) ironing belts;
- (iv) pressing buckle prongs onto buckles;
- (v) punching holes for buckles and prongs;
- (vi) riveting belt buckles;
- (vii) stapling buckles onto belts;
- (viii) trimming and cleaning belts after machining;

(b) "**bias-binding cutter**" means an employee who is engaged in cutting bias binding;

(c) "**bobbin winder**" means an employee who is engaged in winding bobbins;

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- (d) **"box assembler"** means an employee who is engaged in folding cardboard into containers for garments;
- (e) **"bra fuser"** means an employee who is engaged in-
 - (i) spraying and fusing together two bra-cup fibre fillers;
 - (ii) spraying fusing material on to bra-cup fibre filler and fusing;
- (f) **"bra marker"** means an employee who places a moulded bra cup on a form and pattern over a cup and marks the bra cup;
- (g) **"button coverer"** means an employee who is engaged in covering buttons by hand or machine;
- (h) **"cap fastener"** means an employee who is engaged in putting fasteners on caps;
- (i) **"cleaner"** means an employee who is engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments or embroidery by previous operators;
- (j) **"collar/cuff trimmer"** means an employee who is engaged in trimming collars, cuffs, flaps and pockets by knife, scissors, guillotine or contour machine;
- (k) **"crimper"** means an employee who is engaged in crimping the seams of collars and cuffs prior to machining;
- (l) **"embroidery cleaner"** means an employee who cuts off threads from embroidery;
- (m) **"embroidery framer"** means an employee who inserts fabric into frames and removes embroidery from frames and who loads or unloads frames onto and from a machine;
- (n) **"embroidery marker"** means an employee who marks embroidery designs on fabric;
- (o) eyelet punching and letting;
- (p) fitting garments on models but excluding marking, measuring or cutting off of material;
- (q) **"folder"** means an employee who is engaged in folding and/or buttoning up garments, placing a shirt on a frame, inserting neck stiffener and folding the shirt;
- (r) **"foundation-garment operator"** means an employee who is engaged in-
 - (i) assembling inner and outer bra cups by hand;
 - (ii) assembling suspenders or shoulder straps by hand;
 - (iii) cutting and capping steels, bones or wires;
 - (iv) cutting individual girdle blanks;
 - (v) cutting lace, elastic, ribbon or shoulder straps into required lengths (excluding cutting from lays or according to pattern);
 - (vi) folding and rolling bias binding by means of automatic machine;
 - (vii) inserting bones or wires by hand;
 - (viii) ironing girdle or corset panels;

- (ix) ironing partly-assembled bra cups;
- (x) pasting, sticking or pinning panels on girdle blanks;
- (xi) riveting hooks and eyes and swedging buckles and press studs;
- (s) **"fuser"** means an employee who is engaged in-
 - (i) feeding parts into an automatic fusing press;
 - (ii) ironing on fusible interlining with a hand-iron;
 - (iii) loading and unloading racks;
 - (iv) operating a semi-automatic fusing machine or press;
 - (v) positioning and spot-fusing fusible interlining with a special machine;
- (t) **"label printer"** means an employee who is engaged in printing or writing labels;
- (u) **"lace burner"** means an employee who separates lace into two sections by means of a hot needle;
- (v) **"line feeder"** means an employee who is 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;
- (w) **"marker"** means an employee who is engaged in marking the position of pockets, flaps, vents, buttons or buttonholes and cuts the mouth of pockets;
- (x) **"mitre trimmer"** means an employee who is engaged in marking and trimming mitres on chokers or cravats;
- (y) **"packer"** means an employee who is engaged in-
 - (i) attaching belts to skirts or trousers;
 - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
 - (iii) attaching swing or identification tickets to garments;
 - (iv) bagging garments;
 - (v) packing garments into boxes or other suitable wrapping;
 - (vi) sorting garments;
- (z) **"parts examiner"** means an employee who is engaged in examining cut and/or uncut parts of lays;
- (aa) **"parts ironer"** means an employee who is engaged in-
 - (i) ironing crease lines on cuffs and fronts of shirts;
 - (ii) ironing cuffs and collars by means of a small pressing machine;
 - (iii) ironing loose collars;

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- (iv) ironing seams of ties, including bow ties;
 - (v) re-ironing garments which have already been folded and ironed;
- (ab) **"plain sewer"** means an employee who is engaged in performing the following operations by hand-
- (i) fastening catches in tops of trousers;
 - (ii) fastening facings inside already basted in position;
 - (iii) fastening edge stays;
 - (iv) fastening permanent turn-ups;
 - (v) felling, bindings;
 - (vi) felling bottoms;
 - (vii) felling bottoms of linings or seams of same already basted in position;
 - (viii) felling crutch linings in trousers;
 - (ix) felling necks or armholes of vests;
 - (x) felling waistband linings or parts thereof;
 - (xi) making and sewing on hangers;
 - (xii) making canvases;
 - (xiii) paddling collars or lapels;
 - (xiv) putting on bridles by hand;
 - (xv) sewing on buttons by hand;
 - (xvi) sewing on hooks and eyes;
 - (xvii) sewing operations on ties;
 - (xviii) sewing shoulder pads into dresses and/or unlined coats;
- and includes various odds and ends of sewing;
- (ac) **"pinner"** means an employee who is engaged in-
- (i) making and pinning underwear bows;
 - (ii) pinning garments;
 - (iii) pinning underwear motifs and trimmings;
- (ad) **"pleater"** means an employee who is engaged in-
- (i) guiding material with paper through an automatic pleating machine;
 - (ii) putting material between two paper looms (formers) and preparing for steambox in hand or loom-pleating process;

- (iii) taking material out of looms in hand or loom-pleating process;
- (ae) **"press stud machine operator"** means an employee who is engaged in operating a semi-automatic press stud machine; putting hooks and bars on top of the flies of trousers and extending flaps of trousers;
- (af) **"scalloper"** means an employee who is engaged in cutting cloth from scallops;
- (ag) **"skiver"** means an employee who is engaged in operating a skiving machine which reduces the thickness of leather;
- (ah) **"sloper"** means an employee who is engaged in marking and trimming the shape of necks of garments;
- (ai) **"sorter"** means an employee who is engaged in-
 - (i) sorting and bagging dye-lots prior to dyeing;
 - (ii) sorting out for various operations; but excludes sorting parts from the cut lay;
- (aj) **"spotter"** means an employee who removes spots and stains;
- (ak) **"stamper"** means an employee who stamps sizes and/or identifying work numbers on garments or parts of garments;
- (al) **"stapler"** means an employee who is engaged in stapling or pinning parts of garments together;
- (am) **"steam press operator"** means an employee who is engaged in passing garments through a steam press and receiving out at the other end;
- (an) **"swatch cutter"** means an employee who is engaged in cutting traveller's swatches;
- (ao) **"tablehand"** means an employee who is engaged in-
 - (i) cleaning off any excess rubber solution;
 - (ii) painting seams of oilskins and waterproof hats;
 - (iii) smearing rubber solution on seams or edges and rolling them over with a small hand roller;
- (ap) **"ticket sewer"** means an employee who is engaged in stitching tickets on garments by machine;
- (aq) **"transferer"** means an employee who is engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
- (ar) **"turner"** means an employee who is engaged in-
 - (i) machine patent turning, i.e., operating any form of automatic or semi-automatic machine which turns out or turns over the edges of points of collars, bands, cuffs, tabs, pockets, or loops, including the semi-automatic machine making collar tabs;
 - (ii) turning garments by hand, trimming and turning garments or parts of garments;
- (as) underpressing men's and boys' melton and linen caps;

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(at) **"welder"** means an employee who is engaged in operating an electric fabric welding machine;

(au) zip machine operator;

"head cutter" means a qualified cutter as defined in this part of the Agreement who is in charge of and actively supervises the cutting department of an establishment;

"hourly rate" or "hourly wage" means the weekly wage prescribed in clause 4 (1) read with clause 4 (10), divided by-

60 in the case of a watchman or caretaker;

46 in the case of a boiler attendant;

42,5 in the case of all other employees;

"incapacity" means inability of an employee to work owing to any sickness or injury, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

"instructor" means an employee who is responsible for training employees in any 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;

"interlining cutter" in the shirt section means an employee who is employed solely in cutting linings for shirts, collars, pyjamas and other nightwear;

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

- (a) Binding, wiring, or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts, cleaning, oiling and greasing machines, moving tools, equipment and machines, changing needles, cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

"lay maker" means an employee, other than an interlining cutter, trimmer or tie cutter, who positions patterns for a lay;

"layer up" means an employee who is engaged in laying up material, which may include slitting the ends and sides and/or who sorts parts from the cut lay;

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

"leather cutter" means an employee, other than a laymaker, who is engaged in cutting parts of leather garments;

In classifying an employee for the purposes 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 undermentioned classes of employees shall be as follows:

		Wage per week
		R
Part A - Cutting Department		
Head Cutter		740.50
Pattern Maker:		
(a)	Qualified	740.50
(b)	Learner	
	First year	
	First six months of experience	409.50
	Second six months of experience	453.00
	Second year	
	First six months of experience	498.50
	Second six months of experience	544.00
	Third year	
	First six months of experience	594.00
	Thereafter, the wage specified in (a), i.e.	740.50
Pattern Grader		
(a)	Qualified	595.50
(b)	Learner	0.50
	First year	
	First six months of experience	380.50
	Second six months of experience	409.50
	Second year	
	First six months of experience	436.50
	Second six months of experience	466.00
	Third year	
	First six months of experience	498.50
	Second six months of experience	530.00
	Thereafter, the wage specified in (a), i.e.	595.50
Cutter, lay-maker:		
(a)	Qualified	573.00
(b)	Learner	
	First year	
	First six months of experience	341.00
	Second six months of experience	378.50
	Second year	
	First six months of experience	416.00
	Second six months of experience	456.00
	Third year	
	First six months of experience	501.50

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			Wage per week
			R
		Second six months of experience	573.00
Interlining cutter, trimmer, leather cutter and tie cutter			
(a)		Qualified	411.00
(b)		Learner	
		First year	
		First six months of experience	304.00
		Second six months of experience	321.50
		Second year	
		First six months of experience	340.00
		Second six months of experience	358.00
		Third year	
		First six months of experience	377.00
		Thereafter, the wage specified in (a) i.e.	411.00
(c)		If advanced to learner cutter:	
		First six months from date of advancement	446.50
		Second six months from date of advancement	501.50
		Thereafter, the wage specified for a qualified cutter, i.e.	573.00
Layer-up:			
(a)		Qualified	349.00
		First year	
		First six months of experience	294.00
		Second six months of experience	304.00
		Second year	
		First six months of experience	316.50
		Thereafter, the wage specified in (a), i.e.	349.00
(b)		If advanced to learner cutter:	
		First six months from date of advancement	349.00
		Second six months from date of advancement	416.00
		Third six months from date of advancement	456.00
		Fourth six months from date of advancement	501.50
		Thereafter, the wage specified for a qualified cutter, i.e.	573.00
Clicker:			
(a)		Qualified	424.00
(b)		Learner	
		First year of experience	313.00
		Second year of experience	358.00
		Thereafter, the wage specified in (a), i.e.	424.00
Tracer:			
(a)		Qualified	397.00
(b)		Learner	
		First year	
		First six months of experience	313.00
		Second six months of experience	335.00
		Second year	
		First six months of experience	356.00
		Thereafter, the wage specified in (a), i.e.	397.00

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			Wage per week
			R
Part B - Factory Operatives			
Clothing machine mechanic:			
(a)	Qualified		740.50
(b)	Learner		
	First year		
	First six months of experience		409.50
	Second six months of experience		453.00
	Second year		
	First six months of experience		498.50
	Second six months of experience		544.00
	Third year		
	First six months of experience		594.00
	Second six months of experience		643.00
	Thereafter, the wage specified in (a), i.e.		740.50
Grade A employee:			
(a)	Qualified		453.00
(b)	Learner		
	First year		
	First six months of experience		314.50
	Second six months of experience		339.50
	Second year		
	First six months of experience		362.00
	Second six months of experience		384.50
	Third year		
	First six months of experience		411.00
	Thereafter, the wage specified in (a), i.e.		453.00
Grade B employee:			
(a)	Qualified		380.50
(b)	Learner		
	First year		
	First six months of experience		308.50
	Second six months of experience		326.00
	Second year		
	First six months of experience		343.00
	Thereafter, the wage specified in (a), i.e.		380.50
(c)	If advanced to Grade A employee:		
	First six months from date of advancement		380.50
	Second six months from date of advancement		384.50
	Third six months from date of advancement		411.00
	Thereafter, the wage specified for a qualified Grade A employee, i.e.		453.00
Grade C employee:			
(a)	Qualified		339.50
(b)	Learner		
	First year		

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				Wage per week
				R
		First six months of experience		302.00
		Second six months of experience		312.00
		Thereafter, the wage specified in (a), i.e.		339.50
	(c)	If advanced to Grade B employee:		
		First six months from date of advancement		339.50
		Second six months from date of advancement		343.00
		Thereafter, the wage specified for a qualified Grade B employee, i.e.		380.50
Underpresser, blocker:				
	(a)	Qualified		343.00
	(b)	Learner		
		First year		
		First six months of experience		294.00
		Second six months of experience		304.00
		Second year		
		First six months of experience		316.50
		Second six months of experience		343.00
	(c)	If advanced to learner presser:		
		First six months from date of advancement		343.00
		Second six months from date of advancement		411.00
		Thereafter, the wage specified for a qualified Grade A employee, i.e.		453.00
Part C - Clerical employees				
Clerk				
	(a)	Qualified		501.50
	(b)	Learner		
		First year of experience		364.50
		Second year of experience		400.00
		Third year		
		First six months of experience		438.00
		Thereafter, the wage specified in (a), i.e.		501.50
Factory Clerk				
	(a)	Qualified		371.00
	(b)	Learner		
		First year of experience		293.00
		Second year of experience		313.50
		Third year		
		First six months of experience		338.00
		Thereafter, the wage specified in (a), i.e.		371.00
Part D - General				
Boiler attendant				350.50
Despatch packer				362.50
General Worker				338.00
Labourer				343.00

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 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: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, this part of the Agreement shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

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.

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.

- (b) Employees engaged on a monthly basis shall be paid not later than the last day in each calendar month, or upon the termination of employment if this should take place before the ordinary pay day of the employee.
- (c) Where the contract of employment is terminated on any working day other than the ordinary pay day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done, the employee shall, in addition, be entitled to his normal wages for any period up to the time at which payment is made.
- (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** All wages shall be handed to employees in sealed envelopes which shall bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e., short time), and the period in respect of which payment is made.

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- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) Except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for a savings and/or holiday fund: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and Provident Fund contributions in terms of clause 6 of the Provident Fund Collective Agreement;
 - (d) any amount that an employer is compelled by law, ordinance or legal process to make payment of on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
 - (f) deductions in respect of tea (or any other beverage) in terms of clause '13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of a breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
 - (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages shall at all times be paid in full except as is provided for in subclause (4) hereof and clause 12,

and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.

- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium or monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or in part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages for up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement: provided further that where work in a part or in the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.

The provisions of this subclause shall also apply to any employee who, at the date of such fire, storm or flood, is employed on trial in terms of clause 18 (8) of this part of the Agreement.

- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205 (1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECEWORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piecework or incentive system as provided for in this clause.
- (2) No employer shall employ an employee on piecework or any other form of wage incentive except in accordance with the following conditions:

- (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a timeworker.
- (b) The Regional Secretary of the Regional Chamber shall, within seven days of the introduction of any piecework or other form of wage incentive, be notified of the introduction thereof.
- (c) A schedule of the piecework rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, shall forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
- (d) The employees affected by any wage incentive scheme other than straight piecework shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
- (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values shall be maintained by the employer and where any changes are effected, the record of the previous system shall be retained for a period of one year after such change.
- (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if there is one), and in the event of any dispute arising, the matter shall be referred to the Regional chamber. Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.
- (g) Piecework rates shall not be reduced without the consent of the Regional Chamber.
- (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.
- 8: PROPORTION OR RATIO OF EMPLOYEES**
- (1) Where an employer employs four or more cutters in any establishment he shall employ one head cutter at a wage of not less than the wage prescribed in clause 4 (1).
- (2) Where an employer is a limited liability company or a close corporation or a partnership, no director or member or other officer of such company or close corporation or partnership shall be deemed to be an employee for ratio purposes.
- 9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS**
- (1) Ordinary hours of work: An employer shall not require or permit an employee to work more ordinary hours than the following:
- (a) In the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker-
- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
- (ii) 8½ hours on any day between 07:30 and 18:00.

(b) In the case of a normal shift worker-

- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
- (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily:

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals, but including rest intervals, in any week from Monday to Thursday (four-day week):

Provided further that no employer may require employees to work as normal shift workers without giving the Council at least 15 working days' notice of his intention to work shifts, and without consulting the trade union in this regard.

- (c) In the case of boiler attendants, the weekly hours may be 46 and the daily hours 9¼.
 - (d) In the case of watchmen or caretakers, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week).
 - (e) In the case of casual employees, the weekly hours may be 25½ and the daily hours 8½.
 - (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.
- (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-
- (a) 15 minutes as near as practicable to the middle of each morning work period;
 - (b) 10 minutes as near as practicable to the middle of each afternoon work period;

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (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-
- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
 - (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;

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- (c) where two or three shifts are worked daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift, during which intervals such employee shall not be required or permitted to perform any work;
 - (d) with regard to employees other than normal normal shift workers, an employer may conclude an arrangement with his employees to shorten such employees' meal intervals to not less than 30 minutes daily;
 - (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to travellers, drivers and watchmen or caretakers: Provided that in the case of a watchman or caretaker he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery, which cannot be performed during the regular working hours.
- (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.
 - (i) 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.
 - (ii) 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

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers -

- (a) in excess of the ordinary hours of work specified in clause 9 (1); or
- (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises; shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours of work specified in clause 9 (1) (b) shall be deemed to be overtime.
- (d) **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:

- (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 first five days of sick leave as provided for in clause 26 (13) (g) (vi) of this part of the Agreement, and such Sick leave shall include illness of a dependant child and the death of an immediate member of the family.

- (2) **Limitation of overtime:**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than-
 - (i) 10 hours in any week; or
 - (ii) three hours on any day.
- (b) **Notice of working overtime to be given to employees:** No overtime in excess of one hour in any day may be required of or permitted an employee unless the employer-
 - (i) gave notice thereof to such employee the previous day; or
 - (ii) provides such employee with an adequate meal before he commences overtime; or
 - (iii) pays such employee an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence.

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- (c) Overtime shall be voluntary.
 - (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10-minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes' duration, depending on the wishes of the majority of the employees concerned.
 - (e) 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.
- (3) An employee shall be deemed to be working in the employ of an employer, in addition to any period during which he is actually working-
- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
 - (b) during any period during which he is present upon or in any such premises; and
 - (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven:

Provided that if it is proved that during any part of any such period as referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.

- (4) Overtime shall accrue daily and shall be reckoned as time worked outside of the ordinary hours of work specified in clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
- (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in clause 9 (1) (b).
- (6) Overtime shall apply to all employees in an establishment, except travellers' drivers.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:
- (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
 - (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
 - (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
 - (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.

(2) **Saturday work:**

- (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (b) Subject to paragraph (c), any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
 - (i) All work performed in excess of 4¼ hours or after 12:00, at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
 - (ii) all other work in accordance with subclause (1).
- (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1,75.
- (d) The provisions of this subclause shall not apply to normal shift workers.
- (e) A twilight shift worker may not be required to work on a Saturday.
- (f) A twilight shift worker may not be required to work on a Sunday.

(3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either-

- (a) 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 weekday; or
 - (ii) if he so works for a period exceeding four hours, wages, at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a weekday, whichever is the greater; or
- (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work day, i.e., a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours' remuneration: Provided that for the purposes of this subclause, a piece-worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.

(4) **Public holidays:**

- (a) An employee, other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid in addition to his normal wage in respect of such holiday, wages at straight time in respect of the hours so worked:

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.

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- (b) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the payday next succeeding the period in respect of which such remuneration becomes payable.
- (6) **Easter weekend:** No work shall be performed after 13:00 on the day immediately preceding Good Friday and employees shall be granted the afternoon off as a paid half-holiday.
- The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday, receive payment for time worked after 13:00 at overtime rates.
- No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.
- This subclause shall not apply to a casual employee.
- (7) The provisions of subclause (3) shall, mutatis mutandis, apply to a normal shift worker who works on his day of rest.
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT TIME

- (1) An employer shall, prior to the day on and from which he intends to work short time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned.
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof.
- (3) An employee who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4 (1), read with clause 4 (10).
- (4) Consultation with the trade union shall take place prior to the introduction of short time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or any other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment have agreed to accept tea (or any other beverage).
- Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or any other beverage).
- (2) Where tea (or any other beverage) is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the

commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: 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 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 Regional Chamber within fourteen days of month-end 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 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.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall, between 15 December of each year and 14 January of the following year, be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave, be paid as follows:

- (a) In the case of an employee who, on the latest day on which he can commence leave, has completed at least one year's continuous employment with his employer-

- (i) 15 ordinary working days at full wage;
- (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this part of the Agreement;
- (iii) when the Day of Reconciliation falls within the period of annual leave, it shall, in accordance with clause 11 (4) of this part of the Agreement, also be observed as a paid public holiday, thus extending the annual leave period by one day.

- (b) In the case of an employee who, on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated-

- (i) for each completed month of employment in that year, an amount equal to one day's pay; plus
- (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period: Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's day, an amount equal to one day's pay in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows:

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period:

Provided further than an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of days' paid leave he was required to pay the employee for in terms of this subclause.

2) **Paid public holidays**

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e., Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation.
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided they fall within an extended period calculated as follows:

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of

engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that-

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee shall be paid one day's pay in respect of each of the public holidays referred to in subclause (1) (a) which fall after the date of termination of employment;
 - (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein.
- (c) Whenever an employee works on 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 or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
- (d) In the event of a paid public holiday falling upon a Sunday, it shall be observed the following day.
- (e) In the event of any of the paid public holidays referred to in subclause (1) (a) (ii) and paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday.
- (f) Whenever an employee works on a paid public holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of pay for each hour worked on such Saturday.
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1), his pay in respect of leave not later than the last working day before the commencement of the said period, and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be, and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid.
- (4) For the purposes of this clause, employment shall be deemed to commence from-
- (a) the date on which the employee enters the employer's service; or

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- (b) the date on which an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, becomes entitled to such leave in terms of such Agreement, whichever may be the later.
- (5) Short time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1).
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered employment in terms of subclause (1).
- (7) **Annual leave at periods other than the specified leave period:** An employer may make mutual arrangements with his-
 - (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive weeks' leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates, and for the purposes hereof-

"maintenance staff" means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings;
 - (b) employees engaged in making samples, to take not more than 10 days' annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than two consecutive weeks' leave, or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the Year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;
 - (c) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.
- (8) **Leave and notice not to be concurrent:**
 - (a) Notice of termination of a contract of employment given by an employer shall-
 - (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
 - (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
 - (b) Nothing in this clause shall affect the right-
 - (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
 - (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

- (c) **Payment instead of notice:** Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.
- (9) **Any period during which an employee-**
- (a) is on leave in terms of subclause (1); or
 - (b) is absent on military service, not exceeding four months, undergone in that year; or
 - (c) is absent from work on the instructions or at the request of the employer; or
 - (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth, the provisions of this subclause shall cease to apply as from the date fixed by the Regional Chamber);
- shall be deemed to be employment for the purposes of subclauses (1) and (2):
Provided that-
- (i) the provisions of paragraph (d) 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 proviso (ii) fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
 - (ii) 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 proviso (i).
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees.
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

- (1) **Service record cards to be produced on engagement**
- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional chamber shall issue a certificate of service reflecting the employee's employment history.

- (b) The employer shall forthwith on engaging the employee enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safekeeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
 - (c) No employer shall engage any employee who is, in terms of this part of the Agreement, entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
 - (d) No employer shall engage any employee who is, in terms of this part of the Agreement, entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
 - (e) The employer shall forthwith on engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
 - (f) On termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
 - (g) If the service record card indicates that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).
- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** On termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e., date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialled and handed to the employee on termination of service.

If the employee is ceasing employment owing to confinement, this shall be endorsed on the card by the words "Owing to confinement" being written on the line on which the "Date of leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of leaving" is recorded and the card retained by the employer.

(3) **Procedure when employee does not produce a service record card:**

The employer shall forthwith on engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).

- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than Friday of each week the employer shall complete and transmit to the Regional chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.
- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to the Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee**
- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
 - (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.
- (7) **Procedure where employee proceeds on maternity leave or leaves employment owing to confinement and on re-employment thereafter**
- (a) Where an employee resigns when proceeding on maternity leave, this fact shall be recorded on her service record card as provided for in subclause (2) above.
 - (b) Where an employee leaves work owing to confinement, the employer shall record the date of ceasing work owing to confinement.
 - (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave, as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed post-natal examination certificate of her fitness for employment.
 - (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund shall be notified thereof and the certificate forwarded to him by registered post.

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- (e) Supplies of the blank post-natal examination certificates may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may withdraw notice of his intention to terminate his contract of employment only within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.
- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Council upon the payment of an amount determined by the Council from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employee other than casual employees showing the following particulars:
 - (a) Factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates thereof;
 - (l) transfers in occupation and dates thereof.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided that every employer on whom the collective agreement, arbitration award, or determination is binding shall-
 - (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
 - (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination-
 - (i) to an employee who has paid the prescribed fee; and

- (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with the provisions thereof for the guidance of employers and their employees.

18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to-
 - (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
 - (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
 - (c) the provisions of subclause (8);

an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate a contract of employment.
- (2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer -
 - (a) in the case of a weekly-paid employee, one week's wages;
 - (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless, within six days, the employee has furnished to his employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purposes of this subclause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e., the intervening Saturday and Sunday shall be disregarded in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

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- (3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1) (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

(5) **Date of coming into operation of notice to terminate employment:**

- (a) **Weekly-paid employees:** Notice shall be given on any working day and shall operate from the following day.
- (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.

- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same principle shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).

- (7) Where short time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof.

- (a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and
- (b) an employer working short time shall give like notice to an employee to terminate his contract of employment.

(8) **Trial periods:**

- (a) **Weekly employees:** The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (b) **Monthly employees:** The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.

- (9) This clause shall not apply to a casual employee.

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.
- (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 lodgment 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:

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- (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 a 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 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 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

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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) (b) (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: SEATING ACCOMMODATION

Seats with suitable back rests, approved by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

- (1) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount of 88 cents per week. To the amount so deducted, the employer shall add a like amount and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (2)
 - (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
 - (b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
 - (c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber

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shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

- (3) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

Every employer shall give to any of his employees who are trade union representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24: POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber to be agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.
- (2) The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any person to be a designated agent of the Council or Regional Chamber.
- (3) A designated agent shall have all the powers conferred on a Commissioner by section 142 of the Act, except the powers conferred by section. 142 (1) (c) and (d) of the Act.
- (4) 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 36 or the Disputes Procedure in terms of clause 37 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 agent or be questions 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 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 there; and
 - (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; and

- (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.
- (5) A subpoena issued for any purpose referred to in subclause (4) shall be signed by a 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.
- (6) The written authorisation referred to in subclause (4) (d)-
 - (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on application by the agent and/or any appointed persons 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.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) 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.
- (10) The agent and/or appointed person shall pay the witness fee specified from time to time in terms of section-208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) A person is in 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 agent and/or appointed person;

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- (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
 - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (9);
 - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
 - (f) if the person wilfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this part of the Agreement;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person'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 agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.
- (12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS, ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing-
- (a) the name and address of the person to whom the work has been given out;
 - (b) a description of the type and quantity of work given out; and
 - (c) the dates upon which the work was given out and the dates upon which it was received back.
- For the purposes of this subclause, "giving out work" shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.
- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e., for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No. 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a management committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as ex officio members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.
- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose every employer shall each week deduct from the wages of each of his employees for whom wages are prescribed in this Agreement and who has worked during any week, irrespective of the time so worked (hereinafter referred to as a "contributor"), the following amount:
 - Group 1:** In the case of a contributor earning a wage of less than R540,01 per week-
without dependants: R7,40;
with dependants: R12,10.
 - Group 2:** In the case of a contributor earning a wage of R540,01 per week and more-
without dependants: R9,40;
with dependants: R16,10.
- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:
 - Group 1:** In the case of a contributor earning a wage of less than R540,01 per week: R4,90.
 - Group 2:** In the case of a contributor earning a wage of R540,01 per week and more: R5,90.
- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.
- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by

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the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

(iii) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

(d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting-

- (i) the full name of the employer;
- (ii) the full name of the contributor;
- (iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the Fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

(e) All moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management committee may from time to time authorise investments of funds in terms of the Act.

(f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.

(g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.

(h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay weeks in the manner specified in clause 16 (4) of this part of the Agreement.

(5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.

- (b) If a contributor leaves his employment in the industry for the purpose of taking up employment outside the industry, he shall forfeit all claims to the Fund.
 - (c) Maternity benefits
 - (i) Subject to the provisions of this part of the Agreement a female contributor who-
 - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
 - (ab) has continuously been employed in the industry for no less than one year;as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
 - (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and
 - (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
 - (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
 - (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-
 - (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
 - (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
 - (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
 - (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid."
- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:
 - (a) The services of a medical officer appointed by the Fund;
 - (b) consultations with specialists appointed by the Fund;
 - (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
 - (d) the benefits provided for in subclauses (7), (8) and (9);

- (e) medical and related benefits, as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the management committee in respect of a contributor shall be paid by the Fund, which shall also pay the cost of operating the assisted optical scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made owing to the employee's leaving the industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the industry.

Pregnancy shall not be regarded as an "illness" for the purpose of calculating benefits and only one visit to the doctor shall be allowed at the expense of the Fund

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.
- (9) **Dental surgeries**
- (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.
- (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:

- (i) Contributors who have completed 10 years' membership of the Fund, 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (ii) contributors who have completed five years' membership of the Fund, 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (iii) contributors who have completed less than five years' membership of the Fund, 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.
- (10) 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 Management Committee until it be either liquidated or transferred by the Council or Regional Chamber 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 by a person appointed by the Council or Regional Chamber 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 expiration of this part of the Agreement.
- (11) In the event of the dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however, that any vacancy occurring on the Management Committee may be filled by the Registrar from employers or employees as the case may be, in the Industry, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Management Committee. In the event of such Management 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 who shall carry out the duties of the management Committee and who shall possess all the powers of the Management Committee for such purpose.
- In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in section 59 (5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council or Regional Chamber.
- (12) Upon liquidation of the Fund in terms of subclause (10), the moneys 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.

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- (13) (a) An employer shall grant an employee who is absent from work through incapacity-

- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days', or
- (ii) in the case of any other employee, not less than 12 working days'.

sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997, and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle'): Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common industry anniversary date of 1 July for sick leave.

- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.
- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity: Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.
- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.
- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.
- (f) For the purposes of this subclause-
 - (i) any period during which an employee-
 - (aa) is on leave by virtue of clause 15;
 - (ab) is on sick leave by virtue of paragraph (a);
 - (ac) is absent from work on the instruction or at the request of his employer; or

(ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;

(ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).

(g) For the purposes of this subclause-

- (i) the proviso in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days, as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous Agreement;
- (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days, as the case may be) entitlement in terms of this part of the Agreement;
- (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days, as the case may be) may not be taken in advance; however, this does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days, as the case may be) per year limit has been exceeded;
- (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days, as the case may be) in any period of 36 consecutive months' employment with an employer, commencing on 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: Provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave and this provision shall be referred to as the "Serious Illness or Injury Provision";
- (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same and these dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason;
- (vi) all parents employed in the Industry shall be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment act, 1997 (Act No. 75 of 1997), whichever may

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be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that-

- (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
- (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification has been given to the principal member's employer and/or where the principal member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment and that all certificates are to be issued at the sole discretion of the Medical Officer or other professional staff of the Fund and in such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund:

Provided further that a principal member parent who presents a certificate for a child, which has been issued by a public funded hospital, shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision and for the purposes hereof, a "public funded hospital" shall mean any of those larger State Hospitals which usually provide a 24-hour service:

Provided further that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child, however, such an arrangement shall not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by reason of any act in their bona fide administration of the Fund or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund, although the employment of such agent or employee was not strictly necessary, or by reason of any act or omission made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual wilful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgement is given in his favour or in which he is acquitted.
- (15) **Millinery Industry (Cape):** The provisions of this clause shall, mutatis mutandis, apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice No. R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.
- (17) This clause shall not apply to a casual employee.

27: TRADE UNION SUBSCRIPTIONS

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, unless an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys 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, for transmission to the union.
- (2) Each month the total amount of such deductions, together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee, shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which the deductions were made.
- (3) Every employer shall, in respect of each trade union member employed by him, contribute towards the trade union bursary fund at the rate of 20c per employee per week.
- (4) Every employer shall, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 22 of this part of the Agreement, contribute towards the trade union's HIV/AIDS project at the rate of 10 cents per employee per week.
- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22 (2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

28: REGISTRATION OF EMPLOYERS

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a 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 Regional Chamber.
- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days, notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

29: WAGE GUARANTEE

- (1) (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.

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- (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
 - (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
- (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilise any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved: Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

30: MATERNITY LEAVE

- (1) Subject to the provisions of this part of the Agreement a female employee who-
- (a) has continuously worked for the same employer for not less than one year; and
 - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

as and at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who has less than one year's continuous service with the same employer or whose employer has not been registered with the Regional Chamber, or has been operating in the Industry for less than one year shall not qualify for the maternity leave set out in this subclause but shall instead be entitled to the maternity leave provisions as provided for in section 25 (1) of the Basic Conditions of

Employment Act, No. 75 of 1997, and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
- (a) provided she has complied with subclause (3) (a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
 - (b) the employer shall continue to pay, in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the Collective Agreement of the Provident Fund of the Regional Chamber in respect of himself and of any employee on maternity leave while such employee is on such leave until-
 - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3) (b) below, unless good cause for such failure is shown; or
 - (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3 (a) and (b) below, unless good cause for such failure is shown; or
 - (iii) the employee returns to work;

whichever occurs first:

Provided that an employer shall not be required to make the contributions outlined in subclause (2) (b) above for an employee who has worked for the same employer for less than one continuous year or whose employer has not been registered with the Regional Chamber or has been operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled in terms of the Provident Fund Collective Agreement of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar to, but not less favourable than the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee is subject to and conditional upon the employee having complied with the following:
- (a) Completing a form as specified for such purpose by the Regional Chamber at least one month before the date of commencement of her maternity leave; provided that this requirement shall not apply in the event of the employee having to stop work, owing to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgement of receipt therefore; and
 - (c) returning to work and resuming her normal duties on the date stipulated and in the form referred to in subclause (a) above, or showing good cause why it was not possible to return to work on the stipulated date; and

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- (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six-month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
- (5) An employer shall be entitled to fill a position which has become vacant owing to an employee's having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
- (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause (3) (a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the trade union, negotiate with the trade union at his establishment on procedures relating to:
 - (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade union officials shall be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld, is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer, the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the trade union and the individual employer concerned.

- (4) 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.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the trade union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the trade union or the employer, be negotiated between the trade union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each shop stewards' training course has been lodged with the Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) 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 five 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.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, is obtained from management.

34: RETRENCHMENT BENEFITS

- (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, unless the employer has been exempted from the provisions of this clause.
- (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 according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

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35: 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 shall be entitled to require proof of paternity.

36: 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 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 General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber's Disputes Committee.
 - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with this part of the Agreement through conciliation.
 - (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the 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) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General 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 Regional Secretary or relevant official of the Regional Chamber and/or the General 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 Regional Secretary or relevant official of the Regional Chamber and/or the General 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
 - (ab) an office bearer or official of his registered 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 this part of the Agreement;
- (ii) to make any appropriate award that gives effect to this 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 deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service: Provided that-

where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37 (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 and/or Regional Chamber's cost of dealing with the dispute;

- (v) to make an award in the absence of a party who is alleged to have breached this part of 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) to 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 extent of that ambiguity, error or omission;
 - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.

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- (j) Any award made by the arbitrator, together with any reasons therefor, 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 Labour Relations Act. This shall in no way limit the rights of any party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

37: 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;
 - (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.

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- (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 panels 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

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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

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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 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 a 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-

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- (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.

38: 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, where such programmes are aimed at protecting the Industry in the Western Cape Sub-Chamber of the Cape 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 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an amount of 13 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.

- (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 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 Cape Clothing Association (CCA) 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 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 CCA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the CCA, as, the case may be, may request confirmation in advance from 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 CCA 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 CCA 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 shall 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 CCA.

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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 CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, 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 the 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 CCA 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 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.

39: TRADE UNION CAPACITY BUILDING FUND

- (1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar: Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 25 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.
- (5) All moneys received by the Regional Chamber for and on behalf of the Fund shall be paid monthly by the Regional Chamber into a banking account styled "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of disbursing it to the union in terms of the rules of the Fund.
- (6) Moneys in the Fund's banking account not required to meet the current disbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund moneys shall accrue to the Fund and be used in terms of the rules of the Fund.

- (8) The accounts of the Fund shall be audited annually in terms of generally accepted auditing standards by the Council's auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorised disbursements made to the union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar: Labour upon approval of the Fund's rules, or from time to time.

40: COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association (CCA) is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the Clothing Manufacturing Industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly, the parties agree that every employer in the region who is subject to this part of the Agreement shall pay a monthly fee in an amount calculated in terms of subclause (2) hereunder, on the following basis:
 - (a) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
 - (b) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
- (3) The Regional Secretary of the Regional Chamber shall deposit all moneys received in terms of this clause into a separate, dedicated banking account under the name "CCA levy account".
- (4) The Regional Chamber shall disburse moneys from the account to the CCA on receipt of acceptable proof from the CCA of expenditure incurred by it as contemplated under clause 5 below.
- (5) The moneys received in terms of this clause may be used only for expenditure incurred by the CCA in respect of-
 - (a) collective bargaining; and
 - (b) dispute resolution,
and may not be
 - (c) paid to a political party as an affiliation fee; or

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- (d) contributed in cash or kind to a political party or a person standing for election to any political office.
- (6) The CCA shall arrange for an annual audit of the CCA levy account within six months of its financial year by an auditor who-
 - (a) shall be independent;
 - (b) shall conduct the audit in accordance with generally accepted auditing standards;
 - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (5).
- (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of subclause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
- (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.
- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute: Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators/arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Notwithstanding the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the CCA levy account may continue to be disbursed until they have been exhausted.

41: 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.

42: 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.

43: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

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

44: 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 within fourteen days of month-end 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.
 - (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;

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- (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.

45. 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 H : PROVISIONS FOR THE WESTERN CAPE REGION (KNITTING)**1: SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Knitting Division of the Clothing Industry -
 - (a) by the employers and the employees who are members of the employers' organisations and the trade union respectively;
 - (b) in the Magisterial Districts of The Cape, Wynberg, Simon's Town, Goodwood and Bellville, including those portions of the Magisterial Districts of Wynberg, Simon's Town, Goodwood and Bellville that were used to create the Magisterial Districts of Mitchell's Plain on 2 March 1992, Somerset West, Strand, Malmesbury and George.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall -
 - (a) only apply in respect of employees for whom wages are prescribed in this part of the Agreement;
 - (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1(2)(b) of the Main Collective Agreement of the Council.
- (3) Clauses 1(1)(a), 2, 11(4)(b), 14(2), 19B, 26(13)(a) to (13)(g)(v) and 37(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 Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females 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 engaged in firing a boiler and maintaining the water level and steam pressure;

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities;

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;

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- (d) washing vehicles or windows;

"clerk" means an employee who is engaged in -

- (a) writing, typing and filing;
- (b) operating a calculating or a punch card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work study clerk 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;

"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 National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

"day worker" means an employee who is not a shift worker;

"dealer" or **"general dealer"** means a person or persons holding a licence under item 3 of the First Schedule to the Registration and Licensing of Businesses Ordinance;

"dependant" means, for the purposes of the Cape Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;

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- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring, stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

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

"despatch packer" means an employee engaged in making up parcels, cartons or bales in readiness for transport, delivery or posting;

"establishment" means any premises in or in connection with which one or more employees are employed in the Knitting Division;

"experience" means -

- (a) category (1) - in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) category (2) - in relation to employees other than clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry and/or Knitting Division in any capacity other than that of clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) category (3) - in relation to supervisors, quality controllers and instructors, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as supervisors, quality controllers and instructors;
- (d) category (4) - in relation to pattern graders and pattern makers, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as pattern graders and pattern makers;

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the Industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (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;

"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;

"general worker" means an employee engaged in one or more of the following duties or capacities:

- (a) Carrying, moving or stacking articles;
- (b) delivering letters, messages or goods outside the factory premises on foot or by means of a bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing post stamps or labels for posting;
- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stenciling or affixing labels on boxes, bales or other containers by hand;
- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

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

- (a) **"batching machine operator"** means an employee who rolls fabric onto roller at correct tension in preparation for dyeing by high temperature pressure machine;
- (b) **"bonding machine operator"** means an employee who operates a bonding machine (bonding fabric by fusing two or more pieces of fabric);

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- (c) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (d) **"embossing machine operator"** means an employee who operates an embossing machine;
- (e) **"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;
- (f) **"head warper"** means an employee who exercises control and supervision over two or more warpers;
- (g) **"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;
- (h) **"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;
- (i) **"presser"** means an employee engaged in the pressing of finished garments by machine, but excludes the ironing of garments;
- (j) **"stenter machine operator"** means an employee who operates a stenter machine (drying and setting of fabric);
- (k) **"warp knitter"** means an employee operating one or a set of warp knitting machines and capable of correcting faults, changing and/or straightening needles, filling bars, making minor adjustments and shall include a threader and needle fixer;
- (l) **"mercerizing machine operator"** means an employee who operates a mercerizing machine.

Screen printing operations

- (m) **"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;
- (n) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (o) **"screen printer"** means an employee engaged in -
 - (i) carrying out checks for faults;
 - (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;

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- (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (vii) setting up screens in sequence of colour to be printed on fabric;
- (viii) squaring off and testing that screens fit according to master feeler;
- (ix) supervising the handling of screens to and from wash bays;
- (x) supervising the operations of the colour thrower;
- (p) **"transfer printing machine operator"** means an employee who operates a transfer printing machine in the process of transferring designs from paper to rolls of material and checks the rolls of material during the operation;

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

- (a) **"assistant batching machine operator"** means an employee who assists a batching machine operator;
- (b) **"assistant bonding machine operator"** means an employee who assists a bonding machine operator;
- (c) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (d) **"assistant stenter machine operator"** means an employee who assists a stenter machine operator;
- (e) assistant to handyman;
- (f) **"assistant transfer printing machine operator"** means an employee who assists a transfer printing machine operator;
- (g) **"assistant warp knitter"** means an employee who watches fabric for flaws, feeds machines with yarn, removes fabric from machines, and can stop and start a machine, all under the general supervision of a knitter and shall include a threaderhand and doffer;
- (h) **"brusher"** means an employee who operates one or more raising or teasing machines;
- (i) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (j) **"cook"** means an employee engaged in preparing meals and cooking;
- (k) **"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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- (l) **"dry-cleaning machine operator"** means an employee who operates a dry-cleaning machine;
- (m) **"dye-house machine operator"** means an employee who operates a dye-house machine;
- (n) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension, checks and/or examines work under needles;
- (o) embroidering and/or beading by hand;
- (p) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (q) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (r) **"ironer"** means an employee engaged in ironing and folding garments;
- (s) **"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;
- (t) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;
- (u) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (v) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (w) **"linker"** means an employee engaged in operating a linking machine;
- (x) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (y) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aA) **"padder machine operator"** means an employee who operates a padding machine (finishing fabric-hardening or softening by addition of chemicals);
- (aB) **"passer"** means an employee who examines the finished off garment or parts thereof for flaws and faults;
- (aC) **"re-cutter"** means an employee engaged in cutting of repairs and/or replacements, including time spent in searching for and matching up cloth;
- (aD) **"ringer"** means an employee who places a ring into a beret preparatory to drying in a steam box;
- (aE) **"seamer"** means an employee engaged in joining material by means of a seaming machine;

- (aF) **"shearer"** means an employee shearing away the teased fibre to give a velvet or felt finish to a beret or to a continuous length of fabric;
- (aG) **"shrinking press operator"** means an employee who operates a shrinking press;
- (aH) sorting, mass-measuring, marking, stacking bales of fabric or knitting yarn, all under the general supervision of a clerical employee;
- (aI) **"tumbling machine operator"** means an employee who operates a tumbling machine;
- (aJ) **"assistant mercerizing machine operator"** means an employee who assists a mercerizing machine operator;

Screen printing operations

- (aK) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (aL) **"assistant screen printer"** means an employee who assists a screen printer, and who may screen print by hand;
- (aM) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aN) **"mixing and filtering operator"** means an employee engaged in -
 - (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) operating a high speed stirrer;
 - (vii) operating a tub washer;
 - (viii) removing solid or foreign articles from print paste;
 - (ix) supplying clean drums to colour weighers;
 - (x) transferring identifying labels to drums of dye;
- (aO) **"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;
- (aP) **"screen controller"** means an employee engaged in -
 - (i) applying masking tape set for automatic printing machines;
 - (ii) checking for faults and rectifying same;
 - (iii) clearing blockages by means of a high pressure gun;
 - (iv) painting in any open motif pinholes;
 - (v) painting in masking and making trial print proof;
 - (vi) placing screens in the rack ready for use;
 - (vii) putting end rings into rotary screens;
 - (viii) retouching screens;
- (aQ) **"screen preparer"** means an employee engaged in -
 - (i) coating screens;
 - (ii) fitting gauze to frames;
 - (iii) operating a stretching machine;
 - (iv) placing screens in conditioning chamber;
 - (v) preparing and checking screen frames;

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- (vi) removing grease from screens;
- (aR) **"squeegee preparer"** means an employee who makes and prepares squeegees;
- (aS) **"steamer operator"** means an employee engaged in -
 - (i) preparing fabric ready for fixation;
 - (ii) carrying out checks to establish the fixation of dyes;
 - (iii) controlling fabric flow through steamer;
 - (vi) operating a steamer;

and shall include an employee 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:

- (a) Bar filler;
- (b) bar transferer;
- (c) **"bias binding cutter"** means an employee engaged in cutting bias binding;
- (d) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (e) **"box assembler"** means an employee engaged in folding cardboard into containers for garments;
- (f) **"button coverer"** means an employee engaged in covering buttons by hand or machine;
- (g) **"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;
- (h) draw-thread operator;
- (i) drawn-thread mender;
- (j) **"fabric slitter"** means an employee engaged in slitting open continuous lengths of fabric on a pre-determined line;
- (k) **"folder"** means an employee engaged in folding and/or buttoning up garments;
- (l) **"folding machine operator"** means an employee who operates a folding machine;
- (m) forming (including boarding, calendaring and setting);
- (m) hand sewer;
- (o) **"label printer"** means an employee engaged in printing or writing labels;
- (p) **"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;
- (q) **"make-up sorter"** means an employee who moves semi-processed cloth from one point to another and joins cloth together to dyelots;

- (r) **"marker"** means an employee engaged in marking the position of pockets, flaps, vents, buttons or button holes;
- (s) mending berets, i.e. darning holes in berets;
- (t) **"packer"** means an employee engaged in -
 - (i) attaching belts to garments;
 - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
 - (iii) attaching swing or identification tickets to garments;
 - (iv) bagging garments;
 - (v) packing garments into boxes or other suitable wrapping;
 - (vi) sorting garments;
- (u) **"parts examiner"** means an employee engaged in examining cut and/or uncut parts of lays;
- (v) re-ironing ribbons and light pressing of bulky knits;
- (w) **"sloper"** means an employee engaged in marking and trimming the shape of necks of garments;
- (x) sock trimmer;
- (y) **"sorter"** means an employee engaged in -
 - (i) sorting and bagging dye-lots prior to dying;
 - (ii) sorting out for various operations;but excluding sorting parts from the cut lay;
- (z) **"spotter"** means an employee who removes spots and stains;
- (aA) **"stamper"** means an employee stamping sizes and/or identifying work numbers on garments or parts of garments;
- (aB) **"swatch cutter"** means an employee engaged in cutting travellers' swatches;
- (aC) **"ticket sewer"** means an employee engaged in stitching tickets on garments by machine;
- (aD) toe-closing by machine;
- (aE) **"transferer"** means an employee engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
- (aF) **"turner"** means an employee engaged in turning garments or parts of garments;
- (aG) **"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and prepares the beam;

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- (aH) wax-ring maker;
- (aI) **"winder"** means an employee engaged in operating a yarn winding machine;
- (aJ) zip machine operator;
- (aK) glueing cover over hat band after joining by means of thermal glue gun;
- (aL) glueing hat band on to hat by means of thermal glue gun;
- (aM) glueing pompons on to caps by means of thermal glue gun;
- (aN) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;
- (aO) **"fuser"** means an employee who fuses motifs onto garments'

"hourly rate" or "hourly wage" means the weekly wage prescribed in clause 4(1) read with clause 4(10), divided by -

- 60 in the case of a watchman or caretaker;
- 46 in the case of a boiler attendant;
- 42½ in the case of all other employees;

"Incapacity" means the inability to work owing to any sickness or injury of an employee, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

"Instructor" means an employee who is responsible for training employees in any 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;

"labourer" means an employee engaged in one or more of the following duties or capacities;

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts; cleaning, oiling and greasing machines; moving tools, equipment and machines; changing needles; cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

"layer-up" means an employee engaged in laying up material and may include slitting the ends and sides and/or who sorts parts from the cut lay;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the wage specified in this part of the Agreement for a qualified employee of his class;

"main collective agreement" means the Main Collective Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry, other than in the Magisterial Districts of George and Worcester and those employed in the Knitting Division;

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

"motor vehicle driver" means an employee engaged in driving a motor vehicle, scooter or fork lift, 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 vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"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;

"patent machine" means a button, buttonhole, padding or felling machine;

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

"pattern grader" means an employee 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 engaged in designing and/or making master patterns;

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

"qualified" means that an employee has completed his learnership in terms of this part of the Agreement;

"quality controller" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e. ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"Regional Chamber", for purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"set leader" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"set of workers" (sometimes referred to as a "set") means a team of employees numbering three or more, engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"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 a temporary reduction in the number of ordinary weekly hours of work in an establishment due to slackness of work or other exigencies of trade;

"storeman" means an employee in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

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"supervisor" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory;

"task-work" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

"trade union funds" includes, without limiting the generality of its meaning, trade union subscriptions and levies;

"traveller's driver" means an employee 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;

"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 license in respect of motor vehicles: Provided that in the case of two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine the unladen mass shall be deemed not to exceed 1 360 kg;

"wage" means the amount of money paid to an employee in terms of clause 4(1), read with clause 4(10), in respect of his ordinary hours of work as specified in Clause 9:

Provided that -

- (i) 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), read with clause 4(9), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration which an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"watchman or caretaker" means an employee engaged in guarding premises, buildings or other property;

In classifying an employee for the purposes 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 undermentioned classes of employees employed at Garment Knitting Establishments shall be as follows:

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		Wage per week
		R
Part A - Cutting Department		
Pattern Maker		
(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	
	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
Pattern Grader		
(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
Football Jersey Cutter		
(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
Layer-up		
(a)	Qualified	492.00
(b)	Learner	
	First year	
	First six months of experience	414.00
	Second six months of experience	428.50
	Second year	

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			Wage per week
			R
		First six months of experience	447.50
		Thereafter, the wage specified in (a), i.e.	492.00
Part B - Factory Operatives			
Grade A employee			
	(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
		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
Part C - Clerical employees			
Clerk			
	(a)	Qualified	692.50
	(b)	Learner	

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			Wage per week
			<i>R</i>
	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
Part D - General			
Boiler attendant			493.50
Despatch packer			509.50
General Worker			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 controller 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

- (2) **Set Leaders:** In addition to the wages computed in terms of subclause (1), any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R4 per week whilst so employed.
- (3) **Basis of Contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (5) and subclause (9) for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (4) **Incremental Dates:** An employer shall pay increases due to his employees during each calendar year on the following basis:

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- (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 the respective periods.
 - (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, 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 Regional Chamber within 14 days of the employee's resuming work.
- (5) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefore, work of another class for which either-
- (a) a wage higher than that of his own class; or
 - (b) a rising scale of wages terminating in a wage higher than that of his own class:
- is prescribed in subclause (1), shall pay such employee in respect of that day-
- (i) in the case referred to in paragraph (a), not less than the daily wage calculated on the higher weekly rate: and
 - (ii) in the case referred to in paragraph (b), not less than the daily wage calculated on the basis of the highest weekly wage prescribed in subclause (1) for the higher class:
- Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.
- (6) **Shift Allowance:** In addition to the wage specified in sub-clause (1), read with sub-clause (10), a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (7) In an establishment where a supervisor is not employed any employee (other than a set leader) who is responsible for the work performed by other employees, shall be entitled to and be paid not less than the wage prescribed for a supervisor in subclause (1) read with subclause (9).
- (8) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one fifth of the weekly wage prescribed for a labourer in subclause (1) read with subclause (9).
- (9) **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 1,87% of his annual basic prescribed wage (excluding overtime earnings and production bonuses)

calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer and 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.

- (10) Notwithstanding anything to the contrary contained herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that prescribed for the class of work in 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 prescribed in the agreement published under Government Notice No. R.1190 of 15 October 2004, and the wage prescribed in this part of the Agreement for the class of work in which he is engaged: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No. R.1190 of 15 October 2004.
- (11) **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 not 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 specified in this part of the Agreement, calculated from 1 July 2005 until the implementation date.
- (12) **2001 Allowance:** In addition to the wage specified in sub-clause (1), each employee for whom wages are prescribed in this part of the Agreement, shall be paid an allowance equal to 1,28% of the wage prescribed in the Agreement published under Government Notice No R.112 of 9 February 2001 plus an amount of 20 cents: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No R.112 of 9 February 2001 and provided further that in the event of an employee who has been exempted from contributing to the Cape Clothing Industry Provident Fund, this allowance will be reduced to an amount of 20 cents i.e. discarding the 1,28% portion thereof.

5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, 'Agreement' shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a

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public holiday, payment shall be made during working hours on the day preceding such holiday.

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.

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.

- (b) Employees engaged upon a monthly basis shall be paid not later than the last day in each calendar month, or on the termination of employment if this should take place before the ordinary pay-day of the employee.
 - (c) Where the contract of employment is terminated on any working day other than the ordinary pay-day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done the employee shall also be entitled to his normal wages for any period up to the time at which payment is made.
 - (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** Any wages must be handed to employees in sealed envelopes which bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e. short-time), and the period in respect of which payment is made.
- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for savings and/or holiday funds: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust fund under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and provident fund contributions in terms of clause 6 of the Provident Fund Agreement;
 - (d) any amount paid by an employer compelled by law, ordinance or legal process to make payment on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;

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- (f) deductions in respect of tea (or other beverage) in terms of clause 13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional Chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
 - (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages must at all times be paid in full except as is provided for in subclause (4) and clause 12 and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.
- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium, monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement; Provided further that where work in a part or the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.

The provisions of this subclause shall also apply to any employee who as at the date of such fire, storm or flood is employed on trial in terms of clause 18 (8) of this part of the Agreement.

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- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205(1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECE-WORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piece-work or incentive system as provided for in this clause.
- (2) No employer shall employ any employee on piece-work or any other form of wage incentive except in accordance with the following conditions:
 - (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a time-worker.
 - (b) The Regional Secretary of the Regional Chamber must within seven days of the introduction of any piece-work or other form of wage incentive be notified of the introduction thereof.
 - (c) A schedule of the piece-work rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, must forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
 - (d) The employees affected by any wage incentive scheme other than straight piece-work shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
 - (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values, must be maintained by the employer, and where any changes are effected the record of the previous system must be retained for a period of one year after such change.

- (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if any), and in the event of any dispute arising, the matter shall be referred to the Regional Chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piece-work rates shall not be reduced without the consent of the Regional Chamber.

- (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

8: PROPORTION OR RATIO OF EMPLOYEES

- (1) **Knitters** - An employer shall not employ an unqualified knitter unless he has in his employ a qualified knitter and for each qualified knitter not more than three unqualified knitters shall be employed.
- (2) For the purposes of subclause (1), an employer who is wholly or mainly engaged in the work of a knitter may be deemed to be a qualified knitter: Provided that an employer may not be so deemed in more than one establishment.

9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS

- (1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than -
- (a) in the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker -
- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
- (ii) eight and a half hours on any day between 07h30 and 18h00;
- (b) in the case of normal shift worker -
- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
- (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily;
- Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals but including rest intervals, in any week from Monday to Thursday (four-day week);
- (c) in the case of a boiler attendant, the weekly hours may be 46 and the daily hours nine and a quarter;
- (d) in the case of a watchman or caretaker, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week);
- (e) in the case of casual employees, the weekly hours may be 25½ and the daily hours 8½;

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- (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.
- (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 -
- (a) 15 minutes as near as practicable to the middle of each morning work period;
- (b) 10 minutes as near as practicable to the middle of each afternoon work period;

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (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 -
- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
- (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
- (c) where two or three shifts are employed daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift during which intervals such employee shall not be required or permitted to perform any work;
- (d) an employer may conclude an agreement with his employees, other than normal shift workers, to shorten such employees' meal intervals to not less than 30 minutes daily;
- (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to travellers' drivers and watchmen or caretakers: Provided that, in the case of a watchman or caretaker, he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further, that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery which cannot be performed during the ordinary working hours.

(6) 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:
- (i) Only unemployed people may be recruited for working this shift.
 - (i) 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.
 - (ii) 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 Agreement 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

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers -
- (a) in excess of the ordinary daily hours specified in clause 9(1); or
 - (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises;
- shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours specified in Clause 9(1)(b) shall be deemed to be overtime.
- (d) **Aggregation of Overtime:**

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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 Agreement 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 first five days of sick leave as provided for in clause 26 (13) (g) (vi) of this part of the Agreement, and such Sick leave shall include illness of a dependant child and the death of an immediate member of the family.

(2) **Limitation of overtime -**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than -

- (i) 10 hours in any week;
- (ii) three hours on any day.

- (b) **Notice of working of overtime to be given to employees:** No overtime in excess of one hour in any day may be required or permitted of an employee unless the employer -

- (i) has given notice thereof to such employee the previous day; or
- (ii) provides such employee with an adequate meal before he has to commence overtime; or
- (iii) pays such employee an allowance of R5.00 to enable the employee to obtain a meal before the overtime is due to commence.

- (c) Overtime shall be voluntary.

- (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10 minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes duration, depending on the wishes of the majority of the employees concerned.

- (e) 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.

(3) An employee shall be deemed to be working in the employment of an employer in addition to any period during which he is actually working -

- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
- (b) during any period during which he is present on or in any such premises; and

- (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven: Provided that if it is proved that during any portion of any such period as is referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.
- (4) Overtime accrues daily and shall be reckoned as time worked outside of the ordinary working hours as specified in Clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
- (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in clause 9 (1) (b);
- (6) Overtime shall apply to all employees in an establishment except travellers' drivers.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

**11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS,
SUNDAYS AND PUBLIC HOLIDAYS**

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:-
 - (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
 - (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
 - (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
 - (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.
- (2) **Saturday work:**
 - (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit;
 - (b) Subject to subclause (c) hereof, any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
 - (i) all work performed in excess of 4,25 hours or after 12:00 at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
 - (ii) all other work in accordance with sub-clause (1).
 - (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1.75.
 - (d) The provisions of this subclause shall not apply to normal shift workers.

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- (e) A twilight shift worker may not be required to work on a Saturday.
 - (f) A twilight shift worker may not be required to work on a Sunday.
- (3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either -
- (a) 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 at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
 - (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work-day, i.e. a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours remuneration: Provided that for the purposes of this subclause, a piece worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.
- (4) **Public holidays:**
- (a) An employee, other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid, in addition to his normal wage in respect of such holiday, wages at straight time in respect of the hours so worked:

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.
 - (b) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness;
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the pay-day next succeeding the period in respect of which such remuneration becomes payable.
- (6) **Easter week-end:** No work shall be performed after 13h00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday receive payment for time worked after 13h00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee;

- (7) The provisions of subclause (3) shall *mutatis mutandis* apply to a normal shift worker who works on his day of rest;
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT-TIME

- (1) An employer shall, prior to the day on and from which he intends to work short-time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned;
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof;
- (3) An employee, who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4(1) read with clause 4(9).
- (4) Consultation with the Trade Union shall take place prior to the introduction of short-time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment has agreed to accept tea (or other beverage).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or other beverage).

- (2) Where tea or other beverage is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: 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
 - (a) who does not become a member of the trade union within a period of 90 days from such date.
 - (b) 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

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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 within fourteen days of month-end 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 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.
- (2) 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.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall between 15 December of each year and 14 January of the following year be granted the following annual leave:
 - (a) In the case of an employee who on the latest day on which he can commence leave has completed at least one year's continuous employment with his employer-
 - (i) 13 ordinary working days leave and shall, in respect of such leave, be paid for 15 ordinary working days at full wage; plus
 - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this part of the Agreement published under Notice No. R. 627 of 28 May 1999; and
 - (iii) when Day of Reconciliation falls within the period of annual leave, it shall in accordance with clause 11 (4) of this part of the Agreement

published under Notice No. R. 627 of 28 May 1999, also be observed as a paid public holiday thus extending the annual leave period by one day;

- (b) in the case of an employee who on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated -
 - (i) for each completed month of employment in that year an amount equal to one day's pay; plus
 - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period - Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day - an amount equal to one day's pay in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows :

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period: Provided further that an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of day's paid leave he was required to pay the employee in terms of this subclause.

(2) **Paid public holidays:**

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e. Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation;
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided that they fall within an extended period calculated as follows :

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee, shall be paid one day's pay in respect of each of the public holidays referred to in subclause (1) (a) which falls after the date of termination of employment;
- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid

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public holidays fall within an extended period calculated in the manner set out herein;

- (c) Whenever an employee works on 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 or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
 - (d) In the event of a paid holiday falling upon a Sunday, it shall be observed the following day;
 - (e) In the event of any of the paid holidays referred to in subclause (1) (a) (ii) and in paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday;
 - (f) Whenever an employee works on a paid holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of wage for each hour worked on such Saturday;
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1) hereof, his pay in respect of leave not later than the last working day before the commencement of the said period and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be; and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid;
- (4) For the purposes of this clause, 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 an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, became entitled to such leave in terms of such Agreement, whichever may be the later;
- (5) Short-time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1);
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered as employment in terms of subclause (1);
- (7) **Annual leave at periods other than the specified leave period** - An employer may make mutual arrangements with his -

- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers, to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive week's leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates;

(Maintenance staff means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings);

- (b) employees engaged in making samples, to take not more than 10 days annual leave at a period other than between 15 December and the ensuing 14 January and in that event such employees shall be entitled to not less than two consecutive weeks leave or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;
- (c) shift workers engaged in knitting and finishing fabric to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than the leave due to them in terms of subclause (1), to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that the employer shall notify the Council in writing of his intention to work shift employees during the leave period specified in subclause (1);
- (d) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.

(8) Leave and notice not to be concurrent:

- (a) Notice of termination of a contract of employment given by an employer shall-
- (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
 - (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
- (b) Nothing in this section affects the right -
- (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
 - (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
- (c) Payment instead of notice: Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have

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received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.

- (9) Any period during which an employee -
- (a) is on leave in terms of subclause (1); or
 - (b) is absent on military service, not exceeding four months, undergone in that year; or
 - (c) is absent from work on the instructions or at the request of the employer; or
 - (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth, the provisions of this subclause shall cease to apply as from the date fixed by the Regional Chamber);

shall be deemed to be employment for the purposes of subclauses (1) and (2):

Provided that -

- (i) the provisions of paragraph (d) 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 proviso (ii), fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
 - (ii) 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 proviso (i);
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees;
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

- (1) **Service record cards to be produced on engagement:**
- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service

record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional Chamber shall issue a certificate of service reflecting the employee's employment history.

- (b) The employer shall forthwith upon engagement enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safe-keeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
 - (c) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
 - (d) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
 - (e) The employer shall forthwith upon engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
 - (f) Upon termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
 - (g) If the service record card shows that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).
- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** Upon termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e. date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialed and handed to the employee on termination of service.

If the employee is ceasing employment due to confinement, this shall be endorsed on the card by the words "Due to Confinement" being written on the line on which the "Date of Leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of Leaving" is recorded and the card retained by the employer.

- (3) **Procedure when employee does not produce a service record card:** The employer shall forthwith upon engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).

- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than on Friday of each week the employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the Dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee:**

- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
- (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.

- (7) **Procedure where employee proceeds on maternity leave or leaves employment due to confinement and on re-employment thereafter:**

- (a) Where an employee resigns when proceeding on maternity leave, this fact must be recorded on her service record card as provided for in subclause (2) above.
- (b) Where an employee leaves work due to confinement, the employer must still record the date of ceasing work due to confinement.
- (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed "post-natal examination certificate" of her fitness for employment.
- (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund must be notified thereof and the certificate forwarded to him by registered post.

- (e) Supplies of the blank "post-natal examination certificates" may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may only withdraw notice of his intention to terminate his contract of employment within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.
- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Regional Chamber upon the payment of an amount determined by the Regional Chamber from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employees, other than casual employees, showing the following particulars:
 - (a) Factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates;
 - (l) transfers in occupation and dates.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided further that every employer on whom the collective agreement, arbitration award, or determination is binding must -
 - (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
 - (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

18: TERMINATION OF EMPLOYMENT**(1) Period of notice:** Subject to -

- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
- (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
- (c) the provisions of subclause (8);

an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate the contract of employment.

(2) Payment or forfeiture in lieu of notice: In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer:

- (a) in the case of a weekly-paid employee, one week's wages;
- (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless within six days the employee has furnished to this employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purpose of this sub-clause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e. the intervening Saturday and Sunday shall be ignored in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

(3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1), (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.
- (5) **Date of coming into operation of notice to terminate employment:**
- (a) **Weekly paid employees:** Notice shall be given on any working day and shall operate from the following day.
- (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.
- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same proviso shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).
- (7) Where short-time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof :
- (a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and
- (b) an employer working short-time shall give like notice to an employee to terminate his contract of employment.
- (8) **Trial periods:**
- (a) **Weekly employees** - The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (b) **Monthly employees** - The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trail during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (9) This clause shall not apply to a casual employee.

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:

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- (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 lodgment 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 (l) 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
- 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 a 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

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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 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) (b) (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: SEATING ACCOMMODATION

Seats with suitable back rests, approved of by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

(1) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount of 88 cents per week. To the amount so deducted, the employer shall add a like amount and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.

(2) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.

(b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber. Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

(c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs.

collection commission and interest, and thereafter in reduction of the overdue capital amount.

- (3) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

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 or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24 : POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber as agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.
- (2) The Council may, in terms of Section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council or Regional Chamber.
- (3) A designated agent shall have all the powers conferred on a Commissioner by Section 142 of the Act, except the powers conferred by Section 142(1)(c) and (d) of the Act.
- (4) 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 36 or the Disputes Procedure in terms of clause 37 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 object relevant to the resolution of the dispute, to appear before the agent or 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; - and
 - (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

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- (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 : - and
 - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.
- (5) A subpoena issued for any purpose in terms of subclause (4) shall be signed by a 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.
- (6) The written authorisation referred to in subclause (4) (d) -
 - (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on the application of the agent and/or any appointed person 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.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person must issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) 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.
- (10) The agent and/or appointed person must pay the witness fee specified from time to time in terms of Section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) 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 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 agent and/or appointed person;
 - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
 - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (8);
 - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
 - (f) if the person willfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Act;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;
 - (h) by willfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings
 - (i) by doing anything else in relation to the agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.
- (12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing:
- (a) the name and address of the person to whom the work has been given out;
 - (b) a description of the type and quantity of work given out; and
 - (c) the dates upon which the work was given out and the dates upon which it was received back.
- For the purposes of this subclause, 'giving out work' shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.
- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e. for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.

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- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a Management Committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, *as ex officio* members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, Clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.

- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose 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 and who has worked irrespective of the time so worked (hereinafter referred to as a 'contributor'), the following amount:

Group 1 In the case of a contributor earning a wage of less than R540,01 per week:

without dependants: R 7.40

with dependants: R12.10

Group 2 In the case of a contributor earning a wage of R540,01 per week and more:

without dependants: R 9.40

with dependants: R16.10

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:

Group 1 In the case of a contributor earning a wage of less than R540,01 per week: R4.90;

Group 2 In the case of a contributor earning a wage of R540,01 per week and more: R5.90.

- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.

- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount

as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

- (iii) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting:
 - (i) the full name of the employer;
 - (ii) the full name of the contributor;
 - (iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

- (e) All the moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management Committee may from time to time authorise investments of funds in terms of the Act.
- (f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.
- (h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay-weeks in the manner specified in clause 16(4) of this part of the Agreement.
- (5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the

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incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.

- (b) If a contributor leaves his employment in the Industry for the purpose of taking employment outside the Industry, he shall forfeit all claims to the Fund.

- (c) Maternity benefits:

- (i) Subject to the provisions of this part of the Agreement a female contributor who-

(aa) has continuously contributed to the Health Care Fund for no less than one year; and

(ab) has continuously been employed in the Industry for no less than one year;

as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:

(A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and

(B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.

- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.

- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-

(aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or

(ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or

(ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or

(ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.

- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:

- (a) the services of a medical officer appointed by the Fund;

- (b) consultations with specialists appointed by the Fund;
- (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
- (d) the benefits provided for in subclause (7), (8) and (9).
- (e) medical and related benefits as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the Management Committee in respect of a contributor shall be paid by the Fund which shall also pay the cost of operating the Assisted Optical Scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made due to the employee leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an 'illness' for the purpose of benefits and only one visit to the doctor shall be allowed at the expense of the Fund.

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the Management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management Committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.
- (9) **Dental surgeries:**
 - (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.

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- (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:
- (i) contributors who have completed 10 years membership of the Fund: 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (ii) contributors who have completed five years' membership of the Fund: 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (iii) contributors who have completed less than five years' membership of the Fund: 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.
- (10) 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 Management Committee until it be either liquidated or transferred by the Council or Regional Chamber 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 by a person appointed by the Council or Regional Chamber 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 date of expiration of this part of the Agreement.
- (11) In the event of dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the Management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however that any vacancy occurring on the Management Committee may be filled by the Registrar 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 Management Committee. In the event of such Management 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 Management Committee and who shall possess all the powers of the Management Committee for such purpose.

In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in Section 59(5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council.

- (12) Upon liquidation of the Fund in terms of subclause (10), the moneys 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.
- (13) (a) An employer shall grant an employee who is absent from work through incapacity:
- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days; or
 - (ii) in the case of any other employee, not less than 12 working days;
- sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997 and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle'):
- Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common Industry Anniversary date of 1 July for sick leave.
- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.
- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity:
- Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.
- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.
- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.
- (f) For the purpose of this subclause:

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- (i) any period during which an employee:
 - (aa) is on leave by virtue of clause 15;
 - (ab) is on sick leave by virtue of paragraph (a);
 - (ac) is absent from work on the instruction or at the request of his employer; or
 - (ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in sub-items (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in sub-item (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;

- (ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).

(g) For the purpose of this subclause-

- (i) the provision in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days - as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous agreement;
- (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days - as the case may be) entitlement in terms of this part of the Agreement;
- (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days - as the case may be) may not be taken in advance. This, however, does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days - as the case may be) per year limit has been exceeded;
- (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days - as the case may be) in any period of 36 consecutive months employment with an employer, commencing 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave. The provision is referred to as the "Serious Illness or Injury Provision";

- (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same. These dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason.
- (vi) all parents employed in the Industry will be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment Act 1997 (Act No 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that -
 - (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
 - (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification to the principal member's employer and/or where the principle member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment. All certificates will be issued at the sole discretion of the Medical Officer or other professional staff of the Fund. In such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund.

Provided further that a principal member parent who presents a certificate for a child which has been issued by a Public Funded Hospital shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision.

For purposes hereof, a Public Funded Hospital shall mean any of those larger State Hospitals which usually provide a 24-hour service.

Provided also that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child. Such an arrangement however, shall, not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by any reason of any act in their bona fide administration of the Fund or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund although the employment of such agent or employee was not strictly necessary or by reason of any act or omission

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made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual willful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the Fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgment is given in favour or in which he is acquitted.

- (15) **Millinery Industry (Cape):** The provisions of this clause shall *mutatis mutandis* apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.
- (17) This clause shall not apply to a casual employee.

27: TRADE UNION SUBSCRIPTIONS

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, other than where an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys 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, for transmission to the Union.
- (2) Each month the total amount of such deductions together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which they were deducted.
- (3) Every employer must, in respect of each trade union member employed by him contribute towards the trade union bursary fund at the rate of 20c per week.
- (4) Every employer shall, in respect of each of his employees for whom contributions are paid in terms of clause 22 of this part of the Agreement, contribute towards the trade union's HIV/AIDS project at the rate of 10c per week.
- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22(2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

28: REGISTRATION OF EMPLOYERS

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a 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 Regional Chamber.
- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the

employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business carried on, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

29: WAGE GUARANTEE

- (1)
 - (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.
 - (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
 - (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (2)
 - (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
 - (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilize any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved. Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

30: MATERNITY LEAVE

- (1) Subject to the provisions of this part of the Agreement a female employee who -
- (a) has continuously worked for the same employer for not less than one year; and
 - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who, has less than one year's continuous service with the same employer and whose employer has not been registered with the Regional Chamber, nor operating in the Industry, for less than one year, shall not qualify for the maternity leave set out in this sub-clause but shall instead be entitled to the maternity leave provisions as provided for in Section 25(1) of the Basic Conditions of Employment Act No. 75 of 1997 and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
- (a) provided she has complied with subclause (3)(a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
 - (b) the employer shall continue to pay - in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the collective agreement of the Provident Fund of the Regional Chamber - in respect of himself and of any employee on maternity leave while such employee is on such leave until -
 - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3)(b) below, unless good cause for such failure is shown; or
 - (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3(a) and (b) below, unless good cause for such failure is shown; or
 - (iii) the employee returns to work;

whichever occurs first.

Provided that an employer shall not be required to make the contributions outlined in sub-clause (2)(b) above, for an employee who has worked for the same employer for less than one continuous year and whose employer has not been registered with the Regional Chamber, nor operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled to in terms of the Collective Agreement of the Provident Fund of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar, but not less favourable, to the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee shall be subject to and conditional upon the employee having complied with the following:
- (a) Completing a form as specified for such purpose by the Regional Chamber, at least one month before the date of commencement of her maternity leave: Provided that this requirement shall not apply in the event of the employee having to stop work, due to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or by delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgment of receipt thereof; and
 - (c) returning to work and resuming her normal duties on the date stipulated in the form referred to in subclause 3(a), or by showing good cause why it was not possible to return to work on the stipulated date; and
 - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, by returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
- (5) An employer shall be entitled to fill a position which has become vacant due to an employee having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
- (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause 3(a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the Trade Union, negotiate with the Trade Union at his establishment on procedures relating to-
- (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and Safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.

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- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade Union officials shall be entitled to be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the Trade Union and the individual employer concerned.
- (4) 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.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the Trade Union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the Trade Union or the employer, be negotiated between the Trade Union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each such training course has been lodged with Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) 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 five 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.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, shall be obtained from management.

34: RETRENCHMENT BENEFITS

- (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, unless the employer has been exempted from the provisions of this clause.
- (2) An employee who unreasonably refuses 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 subclause (1).

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- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

35: 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 shall be entitled to require proof of paternity.

36. 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 through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement has been breached then the following procedure shall apply to enforce compliance:
 - (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and / or refer the matter to the Regional Chamber's Disputes Committee.
 - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with the agreement through conciliation.
 - (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the 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) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General 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 Regional Secretary or relevant official of the Regional Chamber and/or the General 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.

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- (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 or relevant official of the Regional Chamber and/or the General 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
 - (ab) an office bearer or official of his registered 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 deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service, provided that :

where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37(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 and/or Regional Chamber'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 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 Labour Relations Act. This shall in no way limit the rights of any Party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

37: 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 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) *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;

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- (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

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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 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.

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

38 : 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 Western Cape Sub-Chamber of the Cape 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 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4), contribute an amount of 13 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (7) The monies 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 will be administered by the Regional Chamber.
- (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 sub-clause (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 Cape Clothing Association (CCA) 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 sub-clause (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 CCA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the CCA, 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 CCA 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 CCA 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 CCA.
- 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 CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, 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 CCA 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 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.

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- (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.

39 : TRADE UNION CAPACITY BUILDING FUND

- (1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar : Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 25 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (5) All monies received by the Regional Chamber for and on behalf of the Fund, shall be paid monthly by the Regional Chamber into a banking account styled, the "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of reimbursing it to the Union in terms of the rules of the Fund.
- (6) Monies in the Fund's banking account not required to meet the current reimbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund monies shall accrue to the Fund and be used in terms of the rules of the Fund.
- (8) The accounts of the Fund shall be annually audited in terms of generally accepted auditing standards by the Council's auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorized reimbursements made to the Union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The Union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant Union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar : Labour upon approval of the Fund's rules, or from time to time.

40 : COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association ("the CCA") is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the clothing manufacturing industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who

are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly the parties agree that every employer in the region, who is subject to this part of the Agreement, shall pay a monthly fee in an amount calculated in terms of sub clause (2) hereunder, on the following basis -

- (a) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
 - (b) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee, that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a the general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
- (3) The Regional Secretary of the Regional Chamber shall deposit all monies received in terms of this clause into a separate, dedicated banking account in the name of the "CCA levy account".
- (4) The Regional Chamber shall disburse monies from the account to the CCA on receipt of acceptable proof by the CCA of disbursements incurred by it as contemplated by clause 5 below.
- (5) The monies received in terms of the provisions of this clause may be used only for expenditure incurred by the CCA in respect of:
- (a) collective bargaining; and
 - (b) dispute resolution,
- and may not be:
- (c) paid to a political party as an affiliation fee; or
 - (d) contributed in cash or kind to a political party or a person standing for election to any political office.
- (6) The CCA shall arrange for an annual audit of the "CCA levy account" within six months of its financial year by an auditor who:
- (a) shall be independent;
 - (b) shall conduct the audit in accordance with generally accepted auditing standards;
 - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of sub clause (5).
- (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of sub clause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
- (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his

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religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.

- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute. Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators / arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Despite the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the "CCA levy account" may continue to be disbursed until they have been exhausted.

41: 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.

42: 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.

43: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

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

44: 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 within fourteen days of month-end in which the deductions fall due.
 - (a) 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.

45. 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 I : PROVISIONS FOR THE NON-METRO AREAS**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 employer organisations 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 said Industry and by any employers' organisation and its members which may be admitted to membership of the Bargaining Council during the currency of this part of the Agreement;

(b) in all areas of the Republic of South Africa excluding those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry, including which are detailed below and excluding also those garment knitting establishments which fall within the scope of the main collective agreement for the Northern Region (Knitting) as set out below and also those clothing establishments which fall within the scope of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region, as detailed below. The exclusions so referred to are as follows:

(i) In the Province of the Eastern Cape -

(aa) 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. R. 1974 of 26 September 1980 to Port Elizabeth; and

(bb) 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.

(ii) In the Province of Kwazulu-Natal -

The Magisterial Districts of Chatsworth, Durban, Inanda, Lower Tugela, Pietermaritzburg and Pinetown;

(iii) In the Province of the Free State -

The Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Parys and Vredefort;

(iv) In the Province of the Northern Cape -

The Magisterial District of Kimberley;

(v) In the Province of Gauteng -

- (aa) in respect of garment knitting establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Knitting) -

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;

- (bb) in respect of the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and Fund Collective Agreement for the Northern Region -

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), but only in respect of clothing establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region;

(vi) In the Province of the Western Cape -

The Magisterial Districts of Bellville, George, Goodwood, Malmesbury (including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice 2649), Simon's Town, Somerset West, Strand, The Cape, Worcester and Wynberg, including those portions of the Magisterial Districts of Bellville, Goodwood, Simon's Town and Wynberg that were used to create the Magisterial District of Mitchell's Plain on 2 March 1992.

- (c) Insofar as those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry are concerned, should one or more Magisterial Districts have been inadvertently omitted from sub-clause (b) (i) - (vii) above, the overriding test as to whether a particular Magisterial District is excluded from the provisions of this part of the Agreement or not, is whether such Magisterial District was covered by the geographical scope of the Bargaining Councils which amalgamated to form the National Bargaining Council for the Clothing Manufacturing Industry on 23 May 2002.

- (2) Notwithstanding the provisions of sub-clause (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) apply to every employer in the Clothing and Garment Knitting sectors as defined herein and to all employees in these sectors save that the terms of this part of the Agreement shall not apply to employees whose basic wages exceed two and a half times the wage rate for a qualified Category B employee or whose occupation is monthly paid and of a managerial, specialist technical or non-production related nature.
- (3) (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 fewer employees shall, upon application to the Council in terms of clause 31 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 unduly restrict 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 31 of this part of the Agreement.
- (4) Clauses 1 (1) (a), 2 and 34 (5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisations 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 -

In this part of the Agreement any word or expression to which a meaning has been assigned in the Basic Conditions of Employment Act, 1997, has the meaning so assigned, unless the context indicates otherwise -

"Act" means the Labour Relations Act, 1995;

"agreement" includes a collective agreement;

"Bespoke Tailoring Industry" means the making of outer garments for and to the measurements of individual persons but excludes the making of tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or are the responsibility of such dealers and the making of all classes of garments including quantity production tailoring made to the order of any department in the national or provincial sphere of government; Transnet and the South African Airways or local government;

"CCMA" means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of 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 employees are associated for the making of all classes of the under mentioned 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:

1. 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;
2. 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;
3. 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;
4. any part(s) of garments whether by means of a knitting process or otherwise;
5. 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;
6. fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
7. screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
8. 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;
9. 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;
10. 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;
11. 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;
12. the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
13. 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;
14. the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) 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
15. 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:

1. Belts, Braces, Garters, Suspenders and Armlets manufactured from leather;
2. Boxing Gloves.
3. retail dressmaking, i.e. the making of single garments to the measurement of individual persons;
4. 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;

5. Tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

"clothing sector" means the Clothing Industry excluding the Garment Knitting sector;

"commission work" means any system under which an employee receives additional remuneration calculated on the value or volume of sales effected or on the value or number of orders submitted to and accepted by the employer;

"complying employer", means an employer whose company or concern is fully registered with the Council or a Council which amalgamated to form the National Bargaining 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;

"council" or "Bargaining Council" means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of Section 29 of the Labour Relations Act, 1995;

"daily wage" means an employee's weekly wage divided by the number of days on which he or she ordinarily works in a week;

"day" means a period of 24 hours measured from the time when the employee normally commences work;

"emergency work" means work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work;

"employee" means an employee as defined in s213 read with s200A of the Act;

"establishment" means any premises or part thereof, on or in connection with which one or more employees are employed in the clothing and garment knitting sectors;

"Exemptions Committee" or "Regional Exemptions Committee" means, for the purposes of this part of the Agreement, the Executive Committee of the Council or the Exemptions Committee established for purposes of considering applications for exemption received in terms of clause 31 of this part of the Agreement;

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

- (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 presser or folder who has been in the laundry trade, seeking employment as a presser, ironer or folder in the clothing industry, half of his or her total experience in the laundry trade;
- (c) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are set out in this part of the Agreement;

"fully fashioned garment" means a garment of which the form or body, body and sleeve, or sleeves, back and front, are fully shaped on a knitting machine;

"garment knitting sector" means that sector of the industry in which employers and employees are associated for the making only of all classes of hosiery (including socks, ladies' stockings and pantihose), knitted outerwear and knitted underwear;

"hourly wage" means an employee's weekly wage divided by his weekly ordinary hours of work;

"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 or scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), shall only be regarded as incapacity during any period in respect of which no disability payment is payable in terms of that Act.

"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;

"law" includes the common law;

"medical practitioner" means -

- (a) a person entitled to practice as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No 50 of 1974); or
- (b) a traditional healer;

"midwife" means a person registered or enrolled to practice as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

"month" means a calendar month;

"monthly wage" means an employee's weekly wage multiplied by four and a third;

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

"new employer" means a business newly established in the clothing and garment knitting sector, during the first 12 months of its existence in the sector; Provided that if an existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer. [See also the proviso to clause 4(1)].

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

"non-metro" means all areas in the Republic of South Africa except those excluded in clause 1(1)(b) of this part of the Agreement;

"ordinary hours of work" means the hours of work prescribed in clause 8 but if by agreement between an employer and the employee the latter works a lesser number of ordinary hours, it means such shorter hours;

"overtime" means the time that an employee works during a day or a week in excess of ordinary hours of work, including overtime worked on a Sunday;

"public holiday" means all public holidays declared as such in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

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

"regional chamber" means a Chamber or Sub-Chamber appointed by the Council;

"remuneration" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning;

"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 are 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;

"short time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of raw materials, vagaries of the weather, a breakdown of plant or machinery or buildings that are unfit for use or is or are in danger of becoming unfit for use;

"wage" means that amount of money payable to an employee in terms of clause 4(1) in respect of his or her ordinary hours of work: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in clause 4, it means such higher amount, and "weekly wage" has a corresponding meaning;

"week" in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls;

"work place" means any place where employees work;

Definitions of the occupations, capacities and duties of employees in the Clothing Industry which encompasses the Clothing and Garment Knitting Sectors thereof:

(a) Definitions of the occupations, capacities and duties of employees in the Clothing Sector Only

(i) "Category A Employee" means an employee engaged in any one or more of the following duties or capacities in the clothing sector:

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

"belt operator" means an employee engaged in riveting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;

"belt person" 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 under the supervision of a foreperson or factory manager, who 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;

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

"buckle coverer" means an employee engaged in covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt have been machined together;

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

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

"despatch packer" means an employee who, under the supervision of a foreperson 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;

"eyelet puncher" means an employee engaged in eyelet punching and letting;

"former" means an employee engaged in putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process and shall include putting prepared formers in steam box and taking them out again in hand or loom pleating;

"general worker (Clothing)" 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) carrying or stacking goods;
- (c) delivering letters or messages or light parcels within the factory premises;
- (d) folding or inserting mail, affixing postage stamps or labels for posting;
- (e) general gardening work;
- (f) loading or unloading vehicles, trailers or international standard containers;
- (g) making and serving tea or similar beverages and washing crockery, cutlery and

- kitchen utensils;
- (h) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (i) mixing rubber solution for rubberised garments;
- (j) mopping or washing of toilet facilities;
- (k) operating a duplicating or addressograph or franking machine;
- (l) sweeping with a broom or dusting and wiping down chairs and tables;
- (m) washing or polishing of floors and staircases by machine or by hand.

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

"hat sprayer" means an employee engaged in spray painting hats;

"ironer" means an employee engaged in the ironing of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;

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

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

"operator" means an employee who operates a -

- (a) hand operated button-covering machine;
- (b) a shrinking press;
- (c) a semi-automatic or automatic fusing machine;
- (d) semi-automatic press stud-machine; or
- (e) zip machine.

"packer (Clothing)" 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 dispatch department;

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

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

"pleater" means an employee engaged in guiding material with paper through automatic pleating machine and shall include raking material out of looms in hand or loom pleating process;

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

- (a) tacking permanent turn-ups;
- (b) tacking waistband linings;
- (c) sewing on hooks and eyes, tickets or press studs;
- (d) fastening catch in tops of trousers;
- (e) sewing on buttons;
- (f) making and sewing on hangers;
- (g) felling crutch linings in trousers;
- (h) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (i) felling necks of vests;
- (j) fastening edge stays and odds and ends of sewing;
- (k) felling bottoms of linings or seams of same already basted into position;
- (l) felling bindings;
- (m) fastening facings inside already basted in position;

"rubberiser" means an employee engaged in rubberising, i.e. waterproofing processes or 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, and shall include spreading of P V C (plastic solution) in waterproofing

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process or on raincoats and protective wear and waterproofing seams;

"sorter (Clothing)" 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;

"swatch cutter" means an employee engaged in cutting travellers' swatches;

"winder (Clothing)" means an employee engaged in the winding or unwinding of lace, embroidery, braids, ribbons, bindings and elastic;

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

(ii) **"Category B Employee"** means an employee engaged in one or more but not limited to the following duties or capacities in the clothing sector:

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

"bowmaker" means an employee engaged in making bows for dresses;

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

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

"examiner (Clothing)" means an employee who examines finished garments for quality;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (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) checking invoices or other documents and copying same by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a 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 sub-store 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 as well as the filing of documents;

"finisher" means an employee who performs one or more of the following operations by hand:

- (a) putting pads or wadding into shoulders of coats;
- (b) fastening or serging sleeve-heads;

- (c) wadding sleeve-heads;
- (d) felling silk facings already basted into position;
- (e) making button-holes by hand;
- (f) felling sleeve-head linings, holding such in position with the fingers;
- (g) beader or embroiderer by hand.

"fitter-up" means an employee who takes the outside of 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;

"lace machinist" means an employee who operates an automatic lace, embroidery or monogramming machine;

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

"NES" means an employee not elsewhere specified in this part of the Agreement;

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

"presser (Clothing)" 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;

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

"shaper (Clothing)" means an employee engaged in shaping the lapels and collars of coats preparatory to under basting;

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

(b) Occupations, capacities and duties of employees in the Garment Knitting Sector Only:

- (i) **"Category C Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting Sector:

"assistant dyer" means an employee who, under the supervision of a dyer, is engaged in mass-measuring or mixing colour substances or attending or operating machines used in the dyeing or finishing processes;

"colouring measurer" means an employee who, under the supervision of a dyer, mass-measures dye-stuff or other chemicals;

"handyperson" means an employee in a garment knitting establishment who does minor repairs or adjustments to machinery or equipment, other than machinery or equipment directly used in the manufacture of the products of an establishment, and who may effect minor repairs or renovations to buildings but who does not perform work normally done by an artisan;

"knitter" means an employee who operates one or a set of knitting machines and who may change needles, sliders and sinkers and straighten tricks, including chain and card control and running on after press-offs;

"knitting cutter" means an employee who by means of a power-driven cutting machine, knife or shears is engaged in cutting garment lengths, fronts, backs or sleeves of fully fashioned garments or trimmings, who marks or cuts attachments, points of necks or armholes or trimmings and who may use a template for this purpose;

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"linker" means an employee who is engaged in operating a linking machine for toe-closing of stockings or socks or for joining parts of fully fashioned garments or attaching trimmings to fully fashioned garments or parts of garments;

"loader" means an employee engaged in the transferring of stitches onto the needles of a bar or magazine;

"mender" means an employee who is engaged in repairing knitting faults in garments or parts of garments, blanks, stockings or socks;

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

- (a) tacking permanent turn-ups; tacking waistband linings;
- (b) sewing on hooks and eyes, tickets and/or press studs;
- (c) fastening catch in tops of trousers;
- (d) sewing on buttons;
- (e) making and sewing on hangers;
- (f) felling crutch linings in trousers;
- (g) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (h) felling necks of vests;
- (i) fastening edge stays and odds and ends of sewing;
- (j) felling bottoms of linings or seams of same already basted into position;
- (k) felling bindings and fastening facings inside already basted in position.

"sewing machinist (Knitting)" means an employee who by means of a sewing machine is engaged in any operation in the making of clothing including button, buttonhole and hemming machinist and shall include an employee who operates an overlocking machine;

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

"warp knitter" means an employee operating one or a set of warp knitting machines and who may correct faults, change or straighten needles, fill bars or make minor adjustments to such machines.

- (ii) **"Category D Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting sector division:

"backwinder" means an employee who recovers yarn from a knitted article by winding it back onto a bobbin, comb, magazine or spool;

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

"cleaner (Knitting)" means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;

"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;

"draw threader" means an employee who separates knitted articles by removing the drawthread;

"examiner (Knitting)" means an employee who examines finished garments for quality;

"former" means an employee who is engaged in placing or removing stockings, socks or garments on or from forms;

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

- (a) binding, wiring or strapping boxes or bales or other containers;
- (b) carrying or stacking goods;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;

- (d) delivering letters or messages or light parcels within the factory premises;
- (e) folding or inserting mail, affixing postage stamps or labels for posting;
- (f) general gardening work;
- (g) lime-washing or colour-washing buildings or other structures;
- (h) loading or unloading vehicles, trailers or international standard containers;
- (i) making or maintaining fires, or removing refuse or ashes;
- (l) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (k) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (l) mixing rubber solution for rubberised garments;
- (m) mopping or washing of toilet facilities;
- (n) operating a duplicating or addressograph or franking machine;
- (o) sweeping with a broom or dusting and wiping down chairs and tables;
- (p) washing or polishing of floors and staircases by machine or by hand.

"operator" means an employee who is an operator of a -

- (a) calendar machine;
- (b) slitting machine;
- (c) brushing, raising or cropping;
- (d) dye machine;
- (e) dyeing or hydro-extracting machine.

"packer (Knitting)" means an employee engaged in closing or sealing parcels and cartons prior to despatch and delivery;

"presser (Knitting)" means an employee who is engaged in the ironing or pressing of finished garments by hand or machine, excluding open steam pressing or boarding of garments on automatic continuous steam belts;

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

"sampler" means an employee engaged in the making up of sample cards;

"seamer" means an employee who is engaged in joining seams in stockings or socks by means of a seaming machine;

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

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

"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 may stop the machine to change the yarn and may restart the machine only if he or she stopped the machine for the purpose of changing the yarn and shall not carry out any other functions of the knitting machine operator.

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

(c) Occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:

"Category E Employee" means an employee engaged in any one or more of the following duties or capacities:

"assistant foreperson" means an employee who under the supervision of a foreperson, is in charge of the employees, other than clerks, storepersons and dyers, in an establishment, who exercises control over such employees and who is responsible to the foreperson for the efficient performance by them and their duties;

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

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

"**pattern maker**" means an employee engaged in designing or making master patterns;

"**supervisor**" means an employee who, under the supervision of a foreperson is in charge of a group of employees in an establishment and who is responsible for the efficient performance by them of their duties and who may supervise set leaders or team leaders.

(d) Other occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:

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

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

"**clerk**" means an employee who is engaged in:

- (a) writing, typing and filing;
- (b) operating a calculating machine, computer terminal, punch-card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk, storeperson, shipping clerk, invoice clerk, workstudy clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, even though clerical work may form part of such an employee's work.

"**foreperson**" 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 of a factory;

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

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

"**watchperson**" means an employee engaged in guarding premises, buildings or other property.

4. REMUNERATION

- (1) **Minimum wages:** The minimum wages which an employer shall pay to employees shall be as specified herein: Provided that if a new employer, as defined in clause 3, has been engaged in the industry for a period of not more than 12 months, such wages may be reduced by not more than 10 per cent during such period, whereafter the minimum wages specified herein shall become payable:

	In the Magisterial Districts of Camperdown, uMzinto, Paarl, Stellenbosch and Uitenhage	In all other Areas
Category/Occupation	Wage Rate per week R	Wage Rate per week R
Category A		
0 - 6 months	303.65	241.22
Thereafter	337.00	265.36
Category B		
0 - 6 months	306.99	243.72
7 - 12 months	332.58	262.35
13 - 18 months	358.73	280.27
Thereafter	392.75	303.56
Category C		
0 - 6 months	340.43	267.73
7 - 12 months	383.84	297.48
13 - 18 months	427.26	327.22
19 - 24 months	470.16	359.40
Thereafter	513.57	392.12
Category D		
0 - 6 months	340.43	267.73
7 - 12 months	372.34	289.59
13 - 18 months	415.23	311.81
19 - 24 months	436.68	334.18
Thereafter	503.64	384.63
Category E		
0 - 6 months	362.40	282.78
7 - 12 months	413.14	317.55
13 - 18 months	470.68	359.81
19 - 24 months	528.76	403.55
Thereafter	590.48	450.07
Band Knife Cutter		
0 - 6 months	323.69	256.26
7 - 12 months	356.13	278.48
13 - 18 months	386.98	299.62
19 - 24 months	421.51	323.27
Thereafter	473.82	362.16
Clerical		
0 - 6 months	334.15	260.47
7 - 12 months	374.96	290.49
13 - 18 months	407.90	314.73
Thereafter	482.19	373.25
Assistant Head Cutter	570.60	435.09
Head Cutter	708.18	538.77
Foreperson	625.30	494.30
Watchperson	405.30	312.17
Driver 1 (454kg)	382.28	296.40
Driver 2 (454 - 2722kg)	416.28	319.69
Driver 3 (2722 - 4540kg)	481.68	368.09
Driver 4 (4540kg)	577.93	440.60

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- (2) Basis of contract - For the purposes of this clause the contract of employment of an employee shall be on a weekly basis, and except as provided for in clause 7(4) or where law otherwise permits, he or she shall be paid in respect of a week not less than the full weekly wage prescribed in sub-clause (1), read with the definition of "wage" in clause 3 and with sub-clause (3), for an employee of his or her category in the area in which he or she works. The provisions of this sub-clause are not intended to have the effect that permanent employees are deemed to be, or be regarded as, fixed term contract employees.
- (3) Differential wage - An employer who requires or permits a member of one category of employees to perform work for longer than one hour on any day, either in addition to his or her own work or in substitution therefore, in another category for which:
- (a) a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of that day, not less than the daily wage calculated at the higher rate; or
 - (b) a rising scale of wages terminating in a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of that day not less than the daily wage calculated on the notch in the rising scale immediately above the wage which the employee was receiving for his or her ordinary work: Provided that -
 - (i) this sub-clause shall not apply where the difference between categories in terms of sub-clause (1) is based on experience;
 - (ii) unless expressly otherwise provided in a written contract between an employer and an employee, nothing in this part of the Agreement shall be so construed as to preclude an employer from requiring an employee to perform work of another category for which the same or a lower wage is prescribed.
- (4) Calculation of wages- The hourly, daily or monthly wage of an employee shall be calculated as indicated in the definitions of these expressions in clause 3.
- (5) Dual Operations - Where an establishment performs operations in both the garment knitting and clothing sectors of the Industry, the wage schedule to be applied in respect of the following occupations namely-

(a) boiler attendant	:	Categories	A + D
(b) cleaner	:	"	A + D
(c) cutter	:	"	B + C
(d) examiner	:	"	B + D
(e) general worker	:	"	A + D
(f) packer	:	"	A + D
(g) plain sewer	:	"	A + C
(h) presser	:	"	B + D
(i) sewing machinist	:	"	B + C
(j) sorter	:	"	A + D

shall be that of the sector in respect of which the majority of employees are employed at the establishment.

- (6) Notwithstanding anything to the contrary contained herein, the actual wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that prescribed for the class of work in 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 prescribed in the agreement published under Government Notice

No. R.1141 of 8 October 2004 and the wage prescribed in this part of the Agreement for the class of work in which he is engaged: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice R.1141 of 8 October 2004.

(7) **Annual Bonus -**

- (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December each year, equivalent to 1,0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.
- (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.
- (c) An employee shall not suffer a reduction in the amount of the annual bonus as a result of periods of authorised absence from work.

- (8) **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 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 REMUNERATION

- (1) An employee, except as provided for in clause 14(6) and (7) shall be paid:
 - (a) weekly, fortnightly or monthly;
 - (b) in cash, by cheque or by direct deposit into an account designated by the employee, and in South African currency;
 - (c) remuneration in cash or by cheque -
 - (i) at the workplace or at a place agreed to by the employee;
 - (ii) during the employee's working hours or within 15 minutes of the commencement or conclusion of such hours;
 - (d) remuneration not later than seven days after -
 - (i) the completion of a period for which the remuneration is payable;
 - (ii) the termination of the contract of employment.

6. INFORMATION CONCERNING REMUNERATION

- (1) The remuneration shall be in a sealed envelope which shall become the property of the employee, on which must be recorded or which must be accompanied by, a statement showing:
 - (a) the employer's name and address;

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- (b) the employee's name and occupation;
 - (c) the period in respect of which payment is made;
 - (d) the employee's rate of remuneration and overtime rate;
 - (e) the number of ordinary hours worked by the employee during that period;
 - (f) the number of overtime hours worked by the employee during that period;
 - (g) the number of hours worked by the employee on a paid holiday or on a Sunday;
 - (h) the employee's wage;
 - (i) details of any other remuneration arising out of the employee's employment;
 - (j) details of any deductions made; and
 - (k) the actual amount paid to the employee.
- (2) The particulars set out in sub-clause (1) may be coded on the envelope and such code shall be fully set out and explained in an accompanying notice or in a notice kept posted in a conspicuous place in the establishment, accessible to all employees affected thereby.
- (3) Where the remuneration is deposited into the employee's account the employer shall hand to him or her the statement referred to in sub-clause (1).

7. DEDUCTIONS AND OTHER MATTERS CONCERNING REMUNERATION

- (1) Training fee - Subject to any other law no payment by or on behalf of an employee shall be accepted by an employer, either directly or indirectly, in respect of the employment or training of that employee.
- (2) Purchase of goods - An employer shall not require his or her employee to purchase any goods from him or her or from any shop, place or person nominated by him or her.
- (3) Accommodation - Subject to any other law, an employer shall not require his or her employee to accept accommodation, meals or rations from him or her or from any person or at any place nominated by him or her.
- (4) Deductions - An employer shall not levy any fines against his or her employee nor make any deductions from the employee's remuneration other than the following:
- (a) With the written consent of the employee, a deduction for any holiday, sick, medical, insurance, savings, provident or pension fund, or in respect of subscriptions to a trade union;
 - (b) A deduction of any amount which an employer by law or order of any competent court is required or permitted to make;
 - (c) Whenever the ordinary hours of work are reduced because of short-time, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction: Provided that -
 - (i) no deduction shall be made in the case of short time arising from slackness of business or a shortage of raw materials or packing

materials unless the employer has given his or her employee notice on the previous work-day of his or her intention to reduce the ordinary hours of work;

- (ii) no deduction shall be made in the case of short time owing to vagaries of the weather or a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings, in respect of the first hour not worked, unless the employer has given his or her employee notice on the previous day that no work will be available;
- (d) with the written consent of an employee, a deduction of any amount which the employer has paid or has undertaken to pay to:
 - (i) any banking institution, building society, insurance business, registered financing institution, local authority in respect of a payment on a loan granted to such employee to acquire a dwelling;
 - (ii) any organisation or body in respect of the rent of a dwelling or accommodation in a hostel occupied by such employee if such dwelling or hostel is provided through the instrumentality of such organisation or body wholly or partly from funds advanced for that purpose by the State or a body referred to in subparagraph (i);
- (e) with the written consent of an employee, a deduction towards the repayment of any amount loaned or advanced to him or her by the employer: Provided that any such deduction shall not exceed one quarter of the total remuneration due to the employee on the pay-day concerned: Provided further that no such deduction shall be made in respect of any period during which the employee's wage is reduced in terms of paragraph (d).

8. HOURS OF WORK AND OVERTIME

(1) Exclusions -

- (a) Sub-clauses (3), (4) (5) and (6) shall not apply to an employee while he or she is engaged on emergency work.
- (b) Sub-clause (3) and (4) shall not apply to a watchperson: Provided that if a meal interval is granted to such an employee the time taken up by such interval shall be deemed to be time during which he or she worked;
- (c) Sub-clause (4) shall not apply to a driver or an employee who assists such driver on the vehicle;
- (d) Sub-clause (3), (4), (5) and (6) shall not apply to an employee who is remunerated according to an agreement under clause 19.

(2) Ordinary hours of work - An employer shall not require or permit an employee to work more ordinary hours of work than:

- (a) 45 in any week from Monday to Saturday, inclusive, and
- (b) subject to subparagraph (i), in the case of an employee who normally works on:
 - (aa) not more than five days in a week, nine on any day;
 - (bb) more than five days in a week, eight on any day, unless the hours on one day do not exceed five.

(3) Meal Intervals- An employer shall not require or permit an employee to work for more

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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, and such interval shall not form part of the ordinary hours of work or overtime: Provided that:

- (a) such interval may be reduced to not less than half an hour by written mutual agreement between an employer and an employee;
 - (b) periods of work interrupted by intervals of less than one hour, except when proviso (a) or (e) applies, shall be deemed to be continuous;
 - (c) if such interval is longer than one hour any period in excess of one and one quarter hours shall be deemed to be time worked;
 - (d) only one such interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work;
 - (e) when on any day by reason of overtime worked an employer is required to give an employee a second meal interval, such interval may be reduced to not less than 15 minutes;
 - (f) a driver who during such interval does not work other than being or remaining in charge of the vehicle or its load shall for the purpose of this sub-clause be deemed not to have worked during such interval;
 - (g) such interval need to be granted to a shift worker during his or her ordinary hours of work on any shift if he or she is given the opportunity during such hours of having a meal while at his or her post in terms of any law.
- (4) **Rest intervals** – An employer shall grant to each of his or her employees a rest interval of not less than 10 minutes as nearly as practicable in the middle of each first work period and second work period of the day, and during such interval 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 of such employee: Provided that where an employer grants his or her employee a rest interval of not less than 20 minutes during each morning work period, the afternoon rest interval may be dispensed with.

Except as provided for in sub-clause (3) and (4) all hours of work of an employee on any day shall be consecutive.

(5) **Daily and weekly rest periods -**

- (a) An employer must allow an employee:
 - (i) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
 - (ii) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.
- (b) A daily rest period in terms of sub-clause 5(a) may, by written agreement be reduced to 10 hours for an employee -
 - (i) whose meal interval lasts for at least three hours; or
 - (ii) who is a driver of a motor vehicle or an employee assisting on or accompanying a motor vehicle driven over a distance of more than 480 kms in one direction from the point of departure to the destination, if the ordinary hours of work of such a driver or other member of the vehicle

staff, together with any overtime worked, do not exceed 14 hours on any day.

- (c) Despite sub-clause (a)(ii), an agreement in writing may provide for -
- (i) rest period of at least 60 consecutive hours every two weeks; or
 - (ii) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.
- (6) **Overtime** - An employer shall not require or permit an employee to work overtime otherwise than in terms of an agreement concluded by him or her with the employee and such overtime shall not exceed:
- (a) three hours on any day; or
 - (b) 10 hours in any week;

Provided that this limitation shall not apply in respect of the employees referred to in sub-clause (5)(b)(ii).

- (7) **Payment for overtime** - An employer shall pay an employee, who works overtime, at a rate of not less than one and a half times his or her hourly wage.

9. NIGHT WORK

- (1) An employer may only require or permit an employee to perform night work, if so agreed and if:
- (a) the employee is entitled to and shall receive payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
 - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- (2) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must:
- (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands:
 - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
 - (ii) of the employee's right to undergo a medical examination in terms of paragraph (b);
 - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards:
 - (i) before the employee starts, or within a reasonable period of the employees starting, such work, and
 - (ii) at appropriate intervals while the employee continues to perform such work; and
 - (iii) transfer the employee to suitable day work within a reasonable time if
 - (iv) the employee suffers from a health condition associated with the

performance of night work; and

(v) it is practicable for the employer to do so.

- (3) For the purposes of sub-clause (2), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

10. COMPRESSED WORKING WEEK

- (1) An agreement in writing between an employer and an employee may require or permit the latter to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 8(3), without receiving overtime pay.
- (2) An agreement in terms of sub-clause (1) may not require or permit an employee to work -
- (a) more than 45 ordinary hours of work in any week;
 - (b) more than ten hours' overtime in any week; or
 - (c) on more than five days in any week.

11. AVERAGING HOURS OF WORK

- (1) Despite clause 8 (2) and clause 8 (7), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months.
- (2) An employer may not require or permit an employee to work more than:
- (a) an average of 45 ordinary hours of work in a week over the agreed period;
 - (b) an average of five hours' overtime in a week over the agreed period.

12. PAYMENT FOR WORK ON A SUNDAY

- (1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.
- (2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub-clause (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.
- (3) Despite sub-clause (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub-clause (1) and (2).
- (4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of clause 8, but is taken into account in calculating the overtime worked by the employee in terms of clause 8 (6),
- (5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been

worked on the other day.

- (6) An employer must grant paid time off in terms of subclause (3) within one month of the employee becoming entitled to it.
- (7) An agreement in writing may increase the period contemplated by sub-clause (6) to 12 months.

13. PUBLIC HOLIDAYS

- (1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.
- (2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay:
 - (a) an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;
 - (b) an employee who does work on the public holiday -
 - (i) at least double the amount referred to in paragraph (a); or
 - (ii) if it is greater, the amount referred to in paragraph (a) plus the amount earned by the employee for the time worked on that day.
- (3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to -
 - (a) the employee's ordinary daily wage; plus
 - (b) the amount earned by the employee for the work performed that day,
whether calculated by reference to time worked or any other method.
- (4) An employer must pay an employee for a public holiday on the employee's usual pay day.
- (5) If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

14. ANNUAL LEAVE

- (1) In this clause "annual leave cycle" means the period of 12 months employment with the same employer following -
 - (a) the employee's commencement of work; or
 - (b) the completion of that employee's prior leave cycle.
- (2) Subject to sub-clause (4), an employer shall grant to an employee, and the employee shall take, in respect of an annual leave cycle, leave as follows -
 - (a) a watchperson whose ordinary hours of work -
 - (i) exceeds 48 in a week and who normally works on -

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- (aa) not more than five days in a week, 20 consecutive work-days;
 - (bb) more than five days in a week, 24 consecutive work-days;
 - (ii) do not exceed 48 in a week and who normally works on -
 - (aa) not more than five days in a week, 15 consecutive work-days;
 - (bb) more than five days in a week, 18 consecutive work-days;
 - (b) any other class of employee who normally works on -
 - (i) not more than five days in a week, 15 consecutive workdays;
 - (ii) more than five days in a week, 18 consecutive work-days;
 - (c) an employee who works on an hourly or a daily basis, one hour for every 17 hours worked; Provided that an employee who normally works on -
 - (i) not more than five days in a week, one day for every 153 hours or 17 days worked;
 - (ii) more than five days in a week, one day for every 136 hours or 17 days worked.

Provided that an employee who before this part of the Agreement became binding had been entitled to a longer period of annual leave than that prescribed in this sub-clause, shall retain the right to such leave while employed by the same employer;
- (3) The employer shall pay an employee in respect of the leave mentioned in sub-clause (1), in the case of an employee referred to in -
- (a) sub-clause (2) (a) (i), an amount of not less than four times the employee's weekly wage;
 - (b) sub-clause (2) (a) (ii) or (2) (b), an amount of not less than three times the employee's weekly wage;
 - (c) sub-clause (2)(c), an amount proportional to the weekly wage which the employee was receiving immediately prior to the date on which the leave commenced.
- (4) The leave mentioned in sub-clause (2) shall be granted and be taken, as the case may be, at a time to be fixed by the employer: Provided that -
- (a) if such leave has not been granted and taken earlier, it shall be granted and be taken so as to commence within six months after the completion of the 12 months of employment to which it relates;
 - (b) the period of leave shall not be concurrent with any period:
 - (i) of sick leave in terms of clause 15(2) or with absence from work owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c); amounting in the aggregate in any period of 12 months to not more than 15 weeks;
 - (ii) during which the employee is under notice of termination of employment in terms clause 22, or
 - (c) an employer may set off against such period of leave any days of occasional

leave granted up to a maximum of 7 days per annum on full pay to his employee at such employee's written request during the period of employment to which the annual leave relates;

- (d) when an employer requires an employee to take leave before the expiration of the 12 months of employment to which such leave relates, the employer shall grant such employee the full period of leave accruable for 12 months of employment and, with due regard to the accrual of any increments in terms of clause 4, shall pay such employee in respect of such leave an amount of not less than that which the employee would have been entitled to at the date on which the leave would normally have accrued.
 - (e) If the employment of an employee referred to in paragraph (d) terminates before the expiration of 12 months in respect of which leave was granted in terms of that paragraph, the employer may set off the difference between the amount paid to the employee and the amount to which the employee would have been entitled in terms of sub-clause (7) had leave not been granted to him or her against the remuneration due to such an employee at the termination of the contract.
- (5) The remuneration in respect of the leave mentioned in sub-clause (2), shall be paid not later than the last work-day before the date of commencement of the leave or, at the written request of the employee, not later than the first pay-day after the expiration of the leave.
- (6) An employee whose employment terminates during an incomplete leave cycle and who has been in employment for longer than 4 months shall, upon such termination and in addition to any other remuneration which may be due to him or her, be paid one day's remuneration in respect of every 17 days on which he or she worked or was entitled to be paid;
- Provided that an employer may make a proportionate deduction in respect of any period of leave granted to an employee in terms of proviso (c) to sub-clause (4).
- (7) An employee who has become entitled to the period of leave mentioned in sub-clause (2), read with sub-clauses (4) (c) and whose employment terminates before such leave has been granted and been taken, shall and with due regard to sub-clause (9), upon such termination be paid the amount he or she would have received in respect of the leave had the leave been granted to and taken by him or her as at the date of the termination.
- (8) For the purposes of this clause:
- (a) the weekly wage at any date of an employee who is engaged in piecework or commission work shall be his or her average weekly remuneration for the preceding 13 weeks or, if a lesser period has been worked, for the number of completed weeks so worked;
 - (b) "employment" and "period of employment" shall be deemed to include:
 - (i) any period in respect of which an employer pays an employee in lieu of notice in terms of clause 22;
 - (ii) any period amounting in the aggregate in any period of 12 months, to not more than 15 weeks during which an employee is absent
 - (aa) on leave in terms of this clause;
 - (bb) on sick leave in terms of clause 15 (2) or owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c);

- (cc) at the instance of his or her employer;
 - (dd) with the consent or condonation of his or her employer;
 - (ee) for any other reason that is not in breach of the contract of employment.
- (iii) previous employment with the same employer if the break in employment is less than one year.
- (c) employment shall be deemed to commence:
 - (i) in the case of an employee who, before this part of the Agreement became binding, had become entitled to a period of annual leave in terms of any law, on the date on which he or she last became entitled to leave under that law;
 - (ii) in the case of an employee who was in employment before this part of the Agreement became binding and to whom any law providing for annual leave applied but who had not yet become entitled to a period of leave in terms thereof, on the date on which such employment commenced;
 - (iii) in the case of any other employee, on the date on which such employee entered the employer's service or the date on which this part of the Agreement became binding, whichever is the later;
- (9) (a) Despite anything to the contrary contained in this clause, an employer may for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close his or her establishment for 14 consecutive days or suspend an activity for 14 consecutive days and in that case he or she shall remunerate his or her employee in terms of sub-clause (2) or in terms of paragraph (c) hereof, as the case may be.
- (b) Whenever a paid holiday falls on a day which otherwise would be a work day for an employee and such paid holiday falls within the closed or suspension period referred to in paragraph, (a), another work-day shall be added to the said closed or suspension period as a further period of leave and the employee shall be paid an amount of not less than his or her daily wage in respect of each such day added.
- (c) An employee who, at the date on which an establishment or activity in which he or she is employed is closed or suspended, is not entitled to the full period of annual leave mentioned in sub-clause (2) shall, in respect of any leave due to him, be paid by his or her employer on the basis set out in sub-clause (7), and for the purposes of annual leave thereafter his or her employment shall be deemed to commence on the date of such closing of the establishment or suspension of the activity.
- (10) An employer may not pay an employee instead of granting paid leave in terms of this clause, except upon termination of employment and in accordance with sub-clauses (6) and (7).

15. SICK LEAVE

- (1) For purposes of this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following -
 - (a) an employee's commencement of employment; or

- (b) the completion of that employee's prior sick leave cycle.
- (2) An employee is entitled to an amount of paid sick leave, during every sick leave cycle, equal to the number of days the employee would normally work during a period of six weeks.
- (3) Despite sub-clause (2) during the first six months of employment, an employee is entitled to one day's sick leave for every 26 days worked.
- (4) An employer may, during the employee's first leave cycle, reduce the employee's entitlement to sick leave in terms of sub-clause (2) by the number of days' sick leave taken in terms of sub-clause (3).
- (5) If during the a sick leave cycle an employee is absent due to incapacity for longer than the number of days sick leave to which he or she is entitled in terms of sub-clause (2) the employer shall not be required to pay the employee for the excess sick leave taken.
- (6) Where an employer in terms of any law pays fees for hospital or medical treatment in respect of an employee, the fees so paid may be set off against the payment of sick leave.
- (7) Payment for any period of absence on sick leave to an employee who is employed on piecework or commission work shall be at the rate of not less than the employee's average remuneration for the last 13 weeks before the start of the sick leave or if a shorter period has been worked, for the number of completed weeks so worked.
- (8) Limitation -

An employer is not required to pay sick leave to an employee in terms of this clause:

- (a) If the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and the employee fails to produce a medical certificate stating the nature and duration of his or her incapacity, after having been requested to do so by the employer.

The medical certificate referred to in this sub-clause must be issued by a medical practitioner or any other person who is certified to diagnose and treat patients and is registered with a professional council established by an Act of Parliament.

- (b) If the employer, at the written request of an employee, makes a contribution that is at least equal to that made by the employee, to any fund or organisation nominated by the employee which in the event of the employee's incapacity in the circumstances set out in this clause would ensure the payment to the employee of an amount not less than the equivalent of his or her wage for any period of such leave in terms of sub-clause (2).
- (c) for any period of incapacity of an employee in respect of which the employer is required by any law to pay to the employee not less than his or her full wage.

Application to occupational accident or diseases -

- (9) This clause shall not apply to inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), except in respect of any period during which no compensation is payable in terms of that Act.

16. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive months' maternity leave.
- (2) An employee may commence maternity leave -
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) 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.
- (3) 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.
- (4) 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.
- (5) 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 -
 - (a) commence maternity leave; and
 - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (5) must be given -
 - (a) at least four weeks before the employee intends to commence maternity leave;
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) Protection of employees before and after birth of a child -
 - (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 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, as defined in clause 8 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.

17. FAMILY RESPONSIBILITY LEAVE

- (1) This clause applies to an employee -
 - (a) who has been in employment with an employer for longer than four months; and
 - (b) who works for at least four days a week for that employer.
- (2) An employer must grant an employee, during each annual leave cycle, at the request of

the employee, three days' paid leave, which the employee is entitled to take -

- (a) when the employee's child is born;
 - (b) when the employee's child is sick; or
 - (c) in the event of the death of -
 - (i) the employee's spouse or life partner; or
 - (ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (3) Subject to sub-clause (5), an employer must pay an employee for a day's family responsibility leave -
- (a) the wage the employee would ordinarily have received for work on that day; and
 - (b) on the employee's usual payday.
- (4) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in sub-clause (2) for which the leave was required.
- (6) An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.

18. PIECE-WORK

- (1) An employer may when engaging an employee or after at least one week's notice if the employee is already in his or her employ, introduce any piece-work system and, except as provided for in clause 7(4), such employer shall pay the employee who is employed on such piece-work system remuneration at not less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, plus the rates applicable under such system.
- (2) An employer shall keep posted up in a conspicuous place in his or her establishment a schedule reflecting the rates referred to in subclause (1) or he or she may in lieu thereof supply every employee engaged on piece-work with a letter signed by himself/herself, or on his or her behalf, setting out the said rates.
- (3) An employer shall not require or permit an employee to undertake any work for him or her solely on piece-work basis and any amount payable to an employee in terms of sub-clause (1) shall be aside from and in addition to his or her wage, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience.
- (4) An employer who intends to cancel or amend any piecework system in operation, or the rates applicable thereunder shall give an employee not less than one month's notice of such intention: Provided that an employer and an employee may agree on a longer period of notice, in which case the employer shall give notice for a period not shorter than that agreed upon.

19. COMMISSION WORK

- (1) An employee who by agreement with an employer undertakes commission work on a regular basis shall be supplied by the employer, before such work is commenced, with a true copy of the agreement or a statement setting out the terms of the agreement, which shall include -
 - (a) the wage payable to the employee, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, the rate of the commission and the conditions of entitlement thereto;
 - (b) the day of the week or month on which commission earned is due and payable;
 - (c) the type, description, number, quantity or value of sales or orders (individual, weekly, monthly or otherwise) which the employer is from time to time prepared to accept;
 - (d) the day of payment of commission earned by the employee before termination of the contract of employment: Provided that such day of payment shall be no later than the last work-day of the month succeeding the month during which employment was terminated; and
 - (e) where applicable, the area in which the employee is required or permitted to work.
- (2) Except as provided for in clause 7(4), an employer shall pay an employee at not less than the wage and rate of commission agreed upon between them.
- (3) The employee's wage and commission shall be paid on the day stipulated in the agreement referred to in sub-clause (1), and the provisions of clause 5(1) shall not apply in respect of such payment;
- (4) An employer shall not require or permit an employee to undertake any work for him or her on the basis of commission only and any amount payable to an employee as commission under an agreement entered into in terms of sub-clause (1) shall be aside from and in addition to the wage stipulated therein.
- (5) An employer or an employee who intends to cancel or to negotiate for an alteration of an agreement in regard to commission work shall give written notice of such intention, and the period of such notice shall not be less than nor run concurrently with that required to terminate the contract of employment of such employee in terms of clause 21.

20. PROHIBITION OF EMPLOYMENT

- (1) An employer shall not -
 - (a) employ any person under the age of 15 years; or
 - (b) a child who is under the minimum school leaving age in terms of any law, if he or she is 15 years or older.
- (2) An employer shall not employ a child in employment -
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's wellbeing, education, physical or mental health or spiritual, moral or social development.
- (3) All forced labour is prohibited.

21. TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) Despite clause 4(2), an employer or an employee who desires to terminate the contract of employment, shall give -
 - (a) during the first four weeks of employment, not less than one week's notice;
 - (b) after the first four weeks of employment, not less than two week's notice of termination of contract;
- (2) The notice of termination of a contract of employment must be given in writing except when it is given by an employee who is not able to write.
- (3) Where a notice of termination is given to an employee who is unable to read and understand it, the employer must arrange that the notice is explained to the employee in a language that the employee reasonably understands.
- (4) An employer or an employee may terminate the contract of employment without notice by paying the employee or paying the employer, as the case may be, in lieu of such notice not less than in the case of -
 - (a) one week's notice, the weekly wage the employee is receiving at the time of such termination;
 - (b) two weeks' notice, the wages the employee is entitled to in the two weeks.

Provided that this shall not affect -

 - (i) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
 - (ii) the right of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of the Labour Relations Act, 1995 or any other law.
- (5) The notice referred to in sub-clause (1) shall be given on a work-day:

Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence -

 - (a) on leave in terms of clause 14;
 - (b) on sick leave in terms of clause 15(2);
 - (c) owing to incapacity in the circumstances set out in clause 15(8)(b) or (c), amounting in the aggregate to not more than 15 weeks in a period of 12 months;
 - (d) on maternity leave in terms of clause 16.

22. SEVERANCE PAY

- (1) For the purposes of this section, operational requirements' means requirements based on the economic, technological, structural or similar needs of any employer.
- (2) 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, calculated in accordance with clause 4.

- (3) An employee who unreasonably refuses 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 sub-clause (2).
- (4) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Council.

23. CERTIFICATE OF SERVICE

- (1) On termination of employment an employee is entitled to a certificate of service stating-
 - (a) the employee's full name;
 - (b) the name and address of the employer;
 - (c) a description of any council or sectoral employment standard by which the employer's business is covered;
 - (d) the date of commencement and date of termination of employment;
 - (e) the title of the job or a brief description of the work for which the employee was employed at date of termination;
 - (f) the remuneration at date of termination; and
 - (g) if the employee so requests, the reason for termination of employment.

24. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

- (1) An employer shall supply, free of charge, any uniform, overall, gumboots, cap or other protective clothing which he or she is required by any law to provide to an employee or which the employee is required by any law to wear.
- (2) An employer to whom sub-clause (1) does not apply but nevertheless, explicitly or implicitly, requires an employee to wear any such protective clothing shall supply it free of charge.
- (3) Any such protective clothing which has been provided to an employee free of charge shall remain the property of the employer.

25. ATTENDANCE REGISTER

- (1) An employer shall provide in his or her establishment an attendance register substantially in the form and manner as specified by the Council from time to time in which he or she shall record in ink or indelible pencil the name and class of each of his or her employees, and if such employee is unable to write his or her employer shall on his or her behalf for each day worked and for that day make the necessary entries in respect of items (i) to (iv) inclusive of subclause (3) (a), and sign such entries in the presence of a person nominated by the employee.
- (2) An employer may, instead of an attendance register provide a semi automatic time recorder together with the necessary cards, which shall be as nearly as practicable in the form and manner as specified by the Council from time to time and supply to each

employee such a card indicating the name or number of the employee and the date of termination of the week in respect of which it is to be used.

- (3) Unless prevented from doing so by unavoidable circumstances, an employee shall in respect of each day worked by him or her and on that day -
- (a) record in ink or indelible pencil in the attendance register referred to in sub-clause (1):
 - (i) the day of the week;
 - (ii) the time he or she commenced work;
 - (iii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work;
 - (iv) the time of finishing work the day;
 - (v) the time of commencement and termination of overtime worked for the day;
 - (vi) the total number of hours worked for the day; and
 - (vii) his or her signature.
 - (b) in an establishment where a semi-automatic time recorder is provided, make an entry by means of such recorder on a card supplied in terms of sub-clause (2) to show the following:
 - (i) the time he or she commenced work;
 - (ii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work; and
 - (iii) the time of finishing work for the day.
- (4) An employer shall retain the attendance register referred to in sub-clause (2), as the case may be, for a period of not less than three years after the date of the last entry therein or thereon.

26. WRITTEN PARTICULARS OF EMPLOYMENT

- (1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing -
- (a) the full name and address of the employer;
 - (b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
 - (c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
 - (d) the date of employment;
 - (e) the employee's ordinary hours of work and days of work;
 - (f) the employee's wage or the rate and method of calculating wages;
 - (g) the rate of pay for overtime work;

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- (h) any other cash payments that the employee is entitled to;
 - (i) any payment in kind that the employee is entitled to and the value of the payment in kind;
 - (j) how frequently remuneration will be paid;
 - (k) any deductions to be made from the employee's remuneration;
 - (l) the leave to which the employee is entitled;
 - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
 - (n) any period of employment with a previous employer that counts towards the employee's period of employment;
 - (o) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- (2) When any matter listed in sub-clause (1) changes -
- (a) the written particulars must be revised to reflect the change; and
 - (b) the employee must be supplied with a copy of the document reflecting the change.
- (3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- (4) The employer must keep written particulars in terms of this clause for a period of 12 months after the termination of employment.

27. LOG BOOK

- (1) An employer shall provide his or her driver with a log-book as nearly as practicable in the form and manner as specified by the Council from time to time.
- (2) Every driver shall, in the log-book referred to in sub-clause (1), keep a daily log in duplicate in respect of each day's work and shall within 24 hours of the completion of the work to which it relates deliver a copy thereof to his employer and the employer shall retain such copy for a period of at least three years subsequent to such delivery.

28. KEEPING OF THIS PART OF THE AGREEMENT

- (1) Every employer on whom this part of the Agreement is binding must -
 - (a) keep a copy of the Agreement available in the workplace at all times;
 - (b) make the copy available for inspection by an employee; and
 - (c) give a copy of the Agreement -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union

representative or a member of a workplace forum.

29. 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, either electronically as provided on the Council's website, or forward to the General Secretary of the Council, P.O. Box 1142, Woodstock, 7915 or to the Regional Secretary of the Regional Chamber or Sub-Chamber in whose area of responsibility the employer's business falls, 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.
 - (f) the company's or corporation's registration number;
 - (g) the company's or corporation's or partnership's registration number with the South African Revenue Services (SARS);
 - (h) the company's or corporation's or partnership's registration number with the Unemployment Insurance Fund (UIF);
 - (i) a copy of the registration or incorporation certificate of the company or corporation, as the case may be.
- (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 sub-clauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.

30. REGISTRATION OF EMPLOYEES

- (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 29 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.
- (3) 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.
- (4) 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

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Clothing Industry or cannot produce a Council service card, the provisions of sub-clause (5) (c) below shall apply.

- (5) 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 sub-clause (7) upon termination of service of the employee; and
 - (b) complete a "Registration of Employee" form either electronically as contained on the Council's website, or in triplicate, forward the original to the Regional Chamber in whose area of responsibility the employer's business falls, 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 either electronically as contained on the Council's website, or in triplicate and send the original and duplicate copy together with a copy of the employee's identity document to the Regional Chamber in whose area of responsibility the employer's business falls, 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 sub-clause (4).
- (6) An employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, 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.
- (7) 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.
- (8) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, a report of termination of service stating the reason for the employee's termination of service.
- (9) 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.

31. EXEMPTIONS

- (1) Any business entity, whether a party or 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 must be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption must be motivated in accordance with the exemption criteria set out in sub-clause (7) below; must be supported by relevant documentation and in addition must 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 sub-clauses 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, such consultations to include a registered party trade union, where such union has members employed at the workplace, including 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 person 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 will be deemed to have been refused.
 - (i) The conditions, if any, of its approval of the application;
 - (c) The Exemptions Committee may call for any further information or submissions as it deems appropriate from the applicant, prior to making a decision. The time period stipulated in sub-clause (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 as 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 will be deemed to have been refused.
 - (e) Subject to the time period for considering the application as provided in sub-clause (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 committee who wish to reject the application, shall constitute the reasons of the Exemptions Committee for the purposes of sub-clause (j) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within 7 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:

- (ii) The period for which the exemption(s) will be valid;
 - (iii) The clauses or sub-clauses of the agreement in respect of which exemption was granted or partially granted;
 - (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 a 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 a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal; and/or
 - (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 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 sub-clause (4) above shall, read with the changes required by the context, apply equally to the appeal process;
- (d) The Exemption 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 that-
- (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; and 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 and, in such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the Exemptions Committee and the Exemptions Board, when determining applications for exemptions, shall take into account-
- (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, transferability, administration, management, costs, growth and stability; and 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 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 is entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the 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 sub-clause (7) above;
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of sub-clause (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.

32. COUNCIL FUNDS

- (1) Every employer shall deduct R1,00 per week from the earnings of each of his employees.
- (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 General Secretary of the Council, or Regional Secretary of the Regional Chamber of this Council in whose area of responsibility the employer's business falls to reach him no later than 14 days after the end of each calendar month.
- (3) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (4) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to

make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

33. 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) 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) 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
 - (vi) any other means the council may adopt.
 - (b) perform any other functions that are conferred or imposed on the agent by the Council.
- (3) A designated agent must report all disputes concerning compliance with any provision of this part of the Agreement to the General Secretary of the Council and to a 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 has 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 sub-clause (1) –
 - (i) with the consent of the owner or occupier; or
 - (ii) if authorised to do so by the Labour Court in terms of sub-clause (3).
 - (c) The Labour Court may issue an authorisation contemplated in sub-clause (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 must 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

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- 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 sub-clause (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 must -
- (i) produce on request a copy of the authorisation referred to in sub-clause (3);
 - (ii) provide a receipt for any record or document removed in terms of sub-clause (5)(e); and
 - (iii) return any removed record, document or item within a reasonable time.
- (h) Any person who is questioned by a designated agent in terms of sub-clause (5) must 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 item 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 each employee must 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 is 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.

34. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or this collective agreement, any dispute within the registered scope of the Council must be resolved as set out below.

- (a) The General Secretary of the Council must decide, after consultation with the Secretary of any relevant Regional Chamber, whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
- (b) The Council must, 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 will 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 must 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 must 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 interestrequires 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 must 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 must 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 must prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council must do likewise;
 - (ii) the lists prepared by the parties must be exchanged, and the union parties must rank the nominees of the employer parties in order of their

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preference, and the employer parties must 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 must 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 will 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 must attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies will be filled according to the method described in sub-clause 3(c) above.
- (e) Despite sub-clause 3(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
- (i) for serious misconduct; or
 - (ii) due 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 according to the method described in sub-clause 3(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to sub-clause 3(i), a person may be appointed to one or more of the panel of conciliators and the panel of 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 will not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the senior panel of 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 other designated official must 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 must be resolved by the Council according to 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 must 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 must appoint a member of the panel of conciliators who must attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council 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 must 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 sub-clause 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 must issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement prevents 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 must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

- (iii) Such written request for arbitration must be made within the time period prescribed in the Act, provided that the arbitrator may permit the late request for arbitration on good cause.
- (iv) The General Secretary or other designated official of the Council must 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 sub-clause 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 Section 138 and Section 140 of the Act.
- (vii) The arbitration proceedings must 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 will 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 has 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 is 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 must 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 must 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 must appoint a member of the panel of conciliators, who must 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, must be resolved by the Council in accordance with the procedure set out in sub-clause 4 above, subject to the proviso in sub-clause 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 must 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 must request the Minister to appoint certain identified persons as 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 a 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:

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- (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 must 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 must 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 must 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 must 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 sub-clauses 4(b)(v) to 4(b)(xii) above 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 sub-clause 6 is 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.

35. TRADE UNION ACCESS TO WORKPLACE

- (1) Any office-bearer or official of the trade union party to the Council is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) The trade union party to the Council, is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of the trade union party to the Council are entitled to vote at the employer's premises in any election or ballot contemplated in the trade union's constitution.
- (4) The rights conferred by this section are 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) 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.

36. DEDUCTION/PAYMENT OF TRADE UNION SUBSCRIPTIONS OR LEVIES

- (1) Any employee who is a member of the trade union party to the Council may authorise the employer in writing to deduct subscriptions or levies payable to the trade union from the employee's wages.
- (2) An employer who receives an authorisation in terms of subclause (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the Regional Chamber in whose area of responsibility the employer's business falls by not later than the 14th day of the month first following the date each deduction was made.
- (3) An employee may revoke an authorisation given in terms of subclause (1) by giving the employer and the trade union one month's written notice.
- (4) An employer who receives a notice in terms of subclause (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.
- (5) With each monthly remittance the employer must give the relevant Regional Chamber of the Council –
 - (a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;

- (b) details of the amounts deducted and remitted and the period to which the deductions relate; and
 - (c) a copy of every notice of revocation in terms of subclause (3).
- (6) HIV/AIDS Contribution -
 - (a) 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.
 - (b) The amount shall be submitted to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
 - (c) The total amount so collected by the Council shall be transferred to SACTWU's Finance Department.
- (7) Trade Union Agency Shop
 - (a) **Scope-** Agency fees will apply to employees who –
 - (i) are not members of the trade union party, but are eligible for membership thereof;
 - (ii) are not bound by the provisions of the closed shop clause; and
 - (iii) fall within the scope of this part of the Agreement.
 - (b) **Union membership:** Employees are not compelled to become members of the trade union party.
 - (c) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (i) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (ii) shall pay such monies to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
 - (iii) 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.
 - (d) **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.
 - (e) **Utilisation of agency fees:** No agency fee deducted may be -
 - (i) paid to a political party as an affiliate fee;
 - (ii) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (iii) used for any expenditure that does not advance or protect the socio-economic interests of employees.

37. TRADE UNION'S REPRESENTATIVES ON 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 establishments employing five or fewer employees the trade union shall give the employer five working days written notice of its request for time off in terms of this clause, for its representative to attend to such duties.

38. DISPUTES IN REGARD TO ORGANISATIONAL RIGHTS

- (1) If any dispute arises out of the interpretation or the application of clauses 35, 36 or 37 above, then such dispute must be dealt with in accordance with the dispute resolution procedures contained in this part of the Agreement.
- (2) An arbitration award regulating any of the matters referred to in these clauses remains in force until the expiration of this part of the Agreement.

39. TERMS AND CONDITIONS MORE FAVOURABLE

All terms and conditions of employment applicable to employees at the various companies or concerns covered by the scope of this part of the Agreement will, where they are more favourable than those concluded in this part of the Agreement, remain in full force and effect, unless otherwise agreed or determined through lawfully permissible means.

40. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This Amending Agreement shall remain in force until 31 August 2006, save that the parties to the Council shall annually negotiate through collective bargaining amendments to this Amending Agreement, unless they agree to negotiate at different intervals, provided that no amendment(s) shall take effect before 1 July 2005.
- (2) Either party 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 contemplated in sub-clause (2) above unprocedural.

41. 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 co-operate with the survey.

42. PROVIDENT FUND CONTRIBUTIONS

An employer shall each week, in the case of weekly paid employees, or each month, in the case of monthly paid employees, contribute an amount equal to 4,0% of the wage of each of his employees in respect of whom wages are prescribed in this Agreement and who has worked 9 ordinary hours or more during any pay week, towards a provident fund or a retirement fund administered by the Council.

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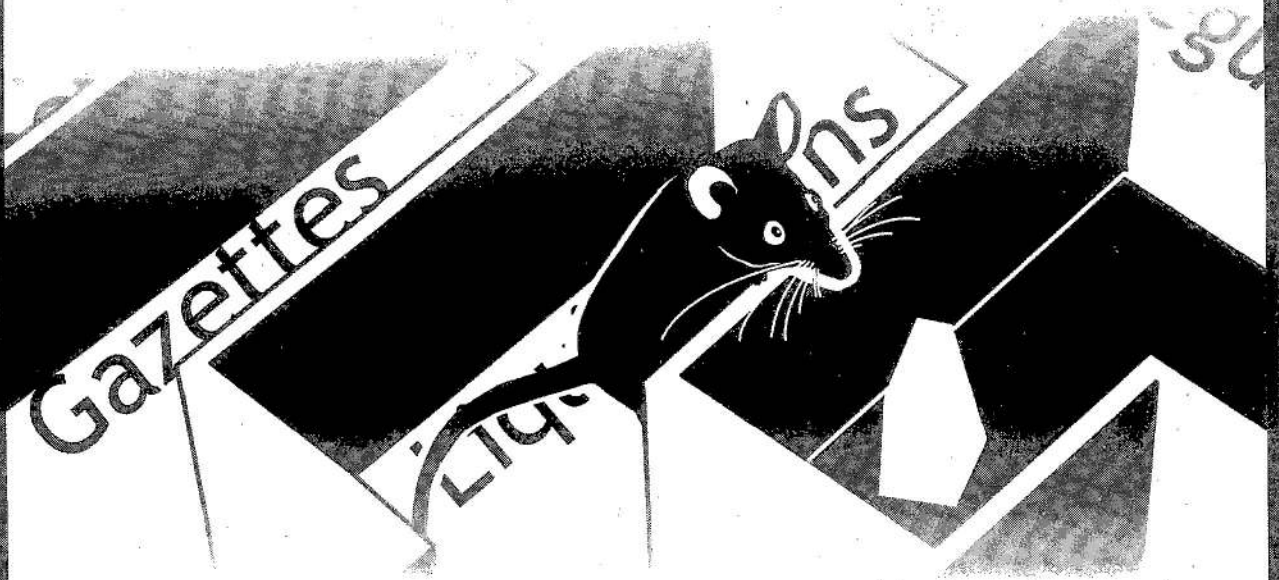
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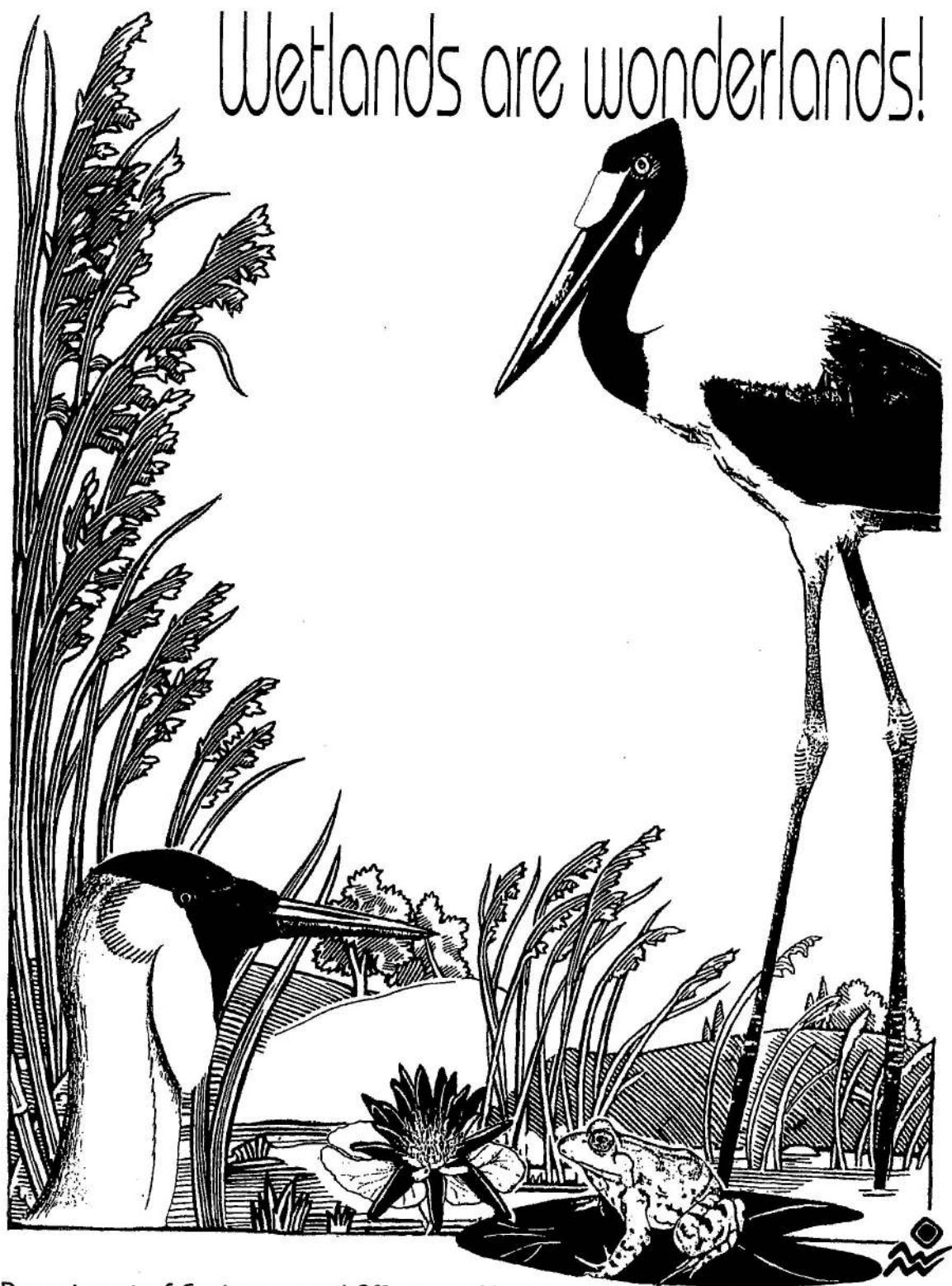
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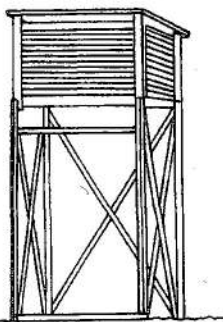
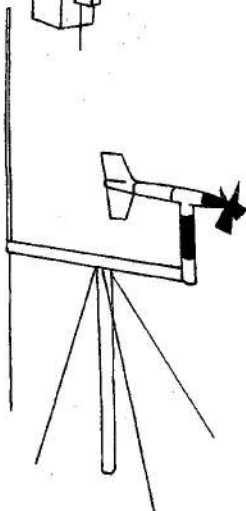


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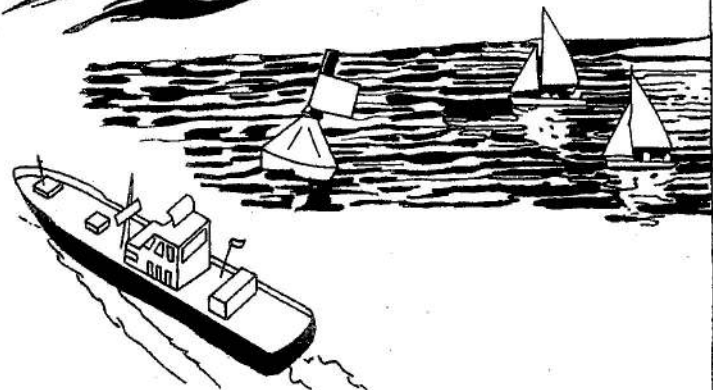
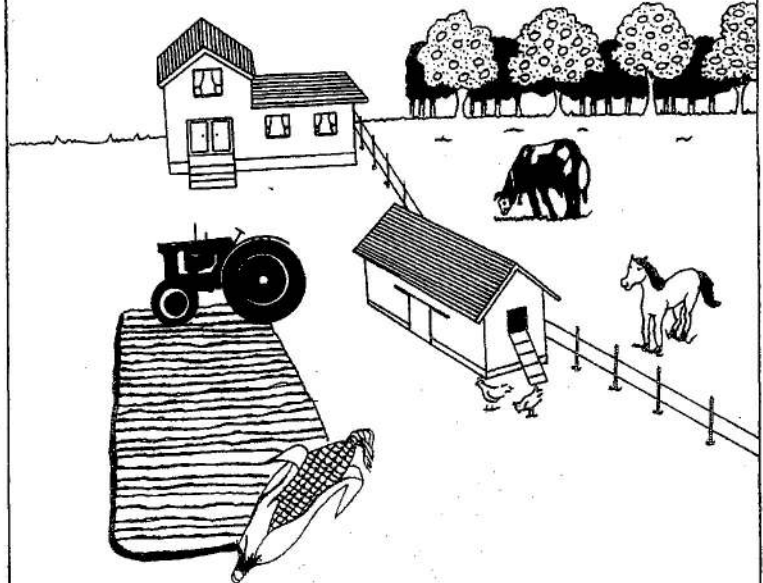
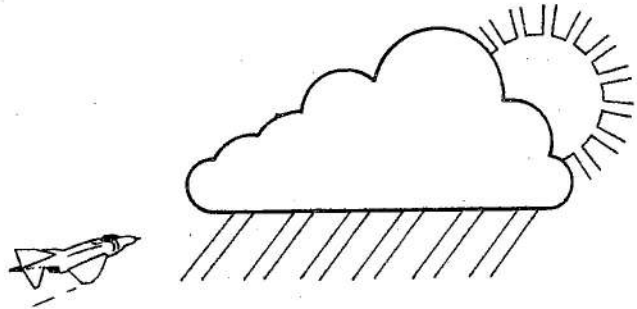


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