
GOVERNMENT NOTICE

DEPARTMENT OF LABOUR


No. R. 94

13 February 2015

LABOUR RELATIONS ACT, 1995

BARGAINING COUNCIL FOR THE CONTRACT CLEANING SERVICES INDUSTRY (KWA-ZULU NATAL): EXTENSION TO NON-PARTIES OF THE MAIN COLLECTIVE AGREEMENT

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) read with 32(3) (b) and (c) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Contract Cleaning Services Industry (Kwa- Zulu Natal) and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from ²⁰¹⁵⁻⁰²⁻²³ and for the period ending 28 February 2017.


MINISTER OF LABOUR
09/12/2014

SCHEDULE**BARGAINING COUNCIL FOR THE CONTRACT CLEANING SERVICES INDUSTRY (KWA-ZULU NATAL)****MAIN COLLECTIVE AGREEMENT**

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

The National Contract Cleaners Association (NCCA)

(hereinafter referred to as "the Employers" or "the Employers Organisation") of the one part, and the

South African Transport and Allied Workers Union (SATAWU)

National General Workers Union (NAGEWU)

Transport, Action, Retail, & General Workers Union (THOR)

Health & Other Service Personnel Trade Union of SA (HOSPERSA)

(hereinafter referred to as the "Employees" or the "Trade Unions", of the other part, being parties to The Bargaining Council for The Contract Cleaning Services Industry (Kwa-Zulu Natal).

1. SCOPE OF APPLICATION OF THE AGREEMENT

1.1 The terms of this Agreement shall be observed in the Contract Cleaning Services Industry. "Contract Cleaning Services Industry" or "Industry" means the industry in which employers and employees are associated on fixed-term or fixed project contracts for carrying out one or more of the following activities for hire or reward:

- a) The cleaning or washing, by hand or machine, of furniture, windows, carpets, doors, floors, ceilings, roofs, baths, showers, toilets, kitchens, tools, machinery, at the premises of a client, including but not limited to state, industrial, commercial, business premises, residential premises, hotels, markets, hospitals and flats, buildings, and includes the maintenance of gardens and grounds that are contained within the same project and/or contract and is undertaken by the same employer, but excludes contracts that are exclusively garden and ground maintenance;
- b) The cleaning of roads or highways or the interior or exterior of any air-planes, trucks, cars buses, trains, ships or any vehicle requiring to be cleaned or valeted excluding auto valet establishments as defined in the certificate of registration of the Motor

- Industry Bargaining Council;
- c) The hiring out by temporary employment services of employees for activities or operations which ordinarily or naturally fall within the definition of contract cleaning , irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer:
 - d) in the Province of Kwa-Zulu Natal;
 - e) by all employers who are members of the party employers' organisation, which is party to this Agreement and by all employees who are members of the party trade unions, which are party to this Agreement and who are engaged or employed in the Contract Cleaning Services Industry, respectively; and
 - f) the parties agree further that this agreement shall not be legally binding on any parties concerned unless such agreement has been reduced to writing, has been signed by all the parties, promulgated and extended to non-parties by way of the Government Gazette.
- 1.2 Notwithstanding the provisions of clause 1.1 the provisions of this Agreement apply only to employees for whom wages are prescribed in this Agreement and to the employers of such employees.
- 1.3 Notwithstanding the provisions of sub clauses 1.1, the terms of this Agreement shall not apply to non-parties in respect of clauses 1.1 e) and 1.1 f) and 2.

2. PERIOD OF OPERATION OF AGREEMENT.

- 2.1 This Agreement shall only come into operation from the 1st day of the month following the date of promulgation and shall remain in force until 28 February 2017.

3. DEFINITIONS.

Any word or term used in this Agreement which is defined in the Labour Relations Act, 66 of 1995, has the same meaning as in that Act, and

“Act” means the Labour Relations Act, 66 of 1995.

“Cleaner” means a person who is required to spend more than 50% of his/her time to perform any of the following: to clean or wash, by hand or machine, furniture, windows, carpets, doors, floors, ceilings, roofs, baths, showers, toilets, kitchens, tools, machinery, at the premises of a client,

including but not limited to state, industrial, commercial, business premises, residential premises, hotels, markets, hospitals and flats, buildings and includes the maintenance of the gardens and grounds or roads or highways and the interior or exterior part of any air-planes, trucks, cars, buses, trains, ships, boats or any other vehicle requiring to be so cleaned or valet and/or to perform any work incidental thereto, which includes learnerships, but specifically excludes domestic worker.

"Casual Employee" means a person employed by the same employer on not more than three days per week.

"Domestic worker" means an employee who is employed by an individual, a temporary employment service or any other employer to undertake the domestic work of up to six private residences per week. The work carried on by the Domestic worker would be that of cleaning, washing, ironing, child minding and the preparation of food and the cleaning up thereafter at a private residence. For the purposes of this definition a private residence would be defined as a residence where one family unit resides. This would exclude the common areas of any residential premises, hotels, commercial properties, flat buildings or residential developments.

"Council" means the Bargaining Council for the Contract Cleaning Services Industry (Kwa-Zulu Natal), as registered in terms of Section 27 of the Act.

"day" means any period of 24 hours, calculated from the time an employee commences work.

"emergency work" means any work which is required to be done without delay, due to unforeseen circumstances such as fires, storms, accidents, acts of violence, epidemic, sabotage, industrial unrest, theft and/or breakdown or threatened break-down of buildings.

"establishment" means any premises or section of premises in which are employed one or more employees of the class defined in Clause 1 hereof.

"law" includes the Common Law.

"military service" means any period of military service or training required in terms of the Defence Act, 1957.

"monthly wage" shall mean the hours normally worked in a week multiplied by the rate applicable as stipulated in clause 4 and multiplied by 4.33.

"night work" means any period of work (other than overtime work) which falls between the hours of 18:00 and 06:00.

"overtime" means a period worked by an employee, on any day of any week, which is in excess of the maximum normal working hours per week laid down in Clause 7 hereof.

"piece-work" means any system under which an employee's remuneration is based on the quantity of work done by him.

"probationary period" means a maximum period of 4 (four) months in which time an employee will be considered a temporary employee.

"public holiday" means any day laid down as such in the Public Holidays Act, 1994.

“shift worker” means an employee engaged in performing an activity in shifts, at an establishment where two or three consecutive shifts are worked per day on not more than six days in any week.

“Temporary Employee for the purpose of the Provident Fund and The Family Medical Crisis Plan” shall mean:

- a) An employee who has been contracted to fill the position of an employee on sick, maternity, general absenteeism or annual leave; or
- b) An employee who has been contracted to work on a specific site where the contract with the employer's client is for a period of no more than 6 (six) months.

“wage” means the amount of money payable by an employer to his employee, in terms of any agreement in the Council in respect of ordinary hours worked by him, as laid down in Clause 4 hereof; provided that **“ordinary wage”** and **“weekly wage”** shall have equal meaning if an employer regularly pays an Employee for ordinary hours worked, at a rate higher than that laid down in any Agreement for such type of work; and

“week” means the seven-day period usually considered to be the working week of the Employee concerned.

4. REMUNERATION.

4.1 An employer shall pay his employees for ordinary hours worked at the following rates per hour (or part thereof), calculated on a pro rata basis for all employees:

- a) the province of Kwa-Zulu Natal
 - i) With effect from the period of operation – R13.18 per hour;
 - ii) With effect from 1st March 2015 – R14.50 per hour;
 - iii) With effect from 1st March 2016 – R15.95 per hour

4.2 A casual employee who is required to perform the same class of work as that performed by an employee, shall be paid by the employer at the rate applicable to ordinary hours worked by employees as laid down in sub clause 4.1 a) above.

4.3 In addition to the ordinary wage, an employer shall pay a night work allowance to any employee required or permitted to do night work, and such allowance shall be calculated in respect of each night hour (or part thereof) so worked, at a rate of 10% of said employee's hourly wage.

4.4 An employer shall give the first option of work on any contract to any employees in his/her employ in order to enable such employees to increase their hours of work up to the maximum prescribed. Provided the application of this clause will under no circumstances create an expectation of continued employment.

Any dispute relating to this sub-clause shall be referred to conciliation and if unresolved to arbitration in accordance with the Council Constitution, or if applicable, the Labour Relations

Act, 66 of 1995.

4.5 "An annual incentive bonus" will be paid, to all cleaners in employment on the 1st December, in the month of December each year. The bonus will be as follows:

- a) An amount equivalent to 4.33 (four point three three) times the employee's weekly wage as at the 30th November;
- b) The annual incentive bonus will be pro rata calculated on the number of full calendar months service divided by 12 and multiplied by 4.33 (four point three three) times his weekly wage as at 30th November.
- c) Definition of Full Calendar Month of Service:
 - i) Current Employees who are currently in the service of employers and who do not ordinarily work on a Saturday, Sunday or Public Holiday will not attract a pro-rata penalty, for purposes of bonus calculations, where the first day of the month falls on a Saturday, Sunday or public holiday.
 - ii) New Employees who are engaged after the 1st day of the month will attract a pro-rata penalty when Annual Incentive Bonuses are calculated.
 - c) Calculation of Annual Incentive Bonus on Old / New Rate during full Calendar Year that the Annual Incentive Bonus will be calculated on the prevailing rate during the months of January and February and on the prevailing rate during the months of March to December of each year during the currency of the existing Wage Agreement.
- d) Incentive Bonus Penalty due to Absence from Work
 - i) Any statutory absence from work in terms of the Basic Conditions of Employment Act 75 OF 1997 as amended, in particular section 20 Annual leave, section 22 Sick leave, section 25 Maternity leave and section 27 Family Responsibility leave, any clauses in this Agreement and lay-offs due to an Injury on Duty, will not attract a pro-rata penalty when calculating the Annual Incentive Bonus.
 - ii) All other absence from work, whether authorised or unauthorised, will attract a penalty when Annual Incentive Bonuses are calculated.
- e) Casual employees do not qualify for the Annual Incentive Bonus
- f) Clause 4.5 c) ii; 4.5 d); and 4.5 f) above, are subject to the employer's right to exercise his/her discretion to regard these clauses as minimums.

4.6 a) An employer shall not employ any cleaner to work for less than 5 (five) hours per

day, if an employee works for less than 5 (five) hours then that employee shall be paid for 5 (five) hours. This will only become effective 6 (six) calendar months after promulgation of this agreement.

- b) An employer shall not employ any cleaner to work for less than 6 (six) hours per day, if an employee works for less than 6 (six) hours then that employee shall be paid for 6 (six) hours. This will only become effective from the 1st March 2016.

5. PAYMENT OF REMUNERATION.

5.1 Except as may be provided for in any Act (or any other Agreement of the Council which is binding in terms of Section 32 of the Act) any remuneration due by employers to employees in terms of this Agreement, shall be paid as follows in accordance with the rates laid down for the area of work and class of employee concerned:

- a) Employees; on shift, night and/or continuous activity work:
- i) Either by cheque or by transfer into a Building Society or Bank account;
 - ii) At a time agreed upon between the employer and the employee so employed, but which shall be during the usual office hours of the establishment concerned, but not later than 24 hours after the usual pay day; or within one week of termination of such employment, if this takes place before the usual pay day.
- b) Casual employees:
- i) In cash, or by cheque or transfer into a Building Society or Bank account.
 - ii) At least once per week until termination of such employment.

5.2 Presentation of Remuneration

- a) Any remuneration paid to an employee shall be placed by the employer in a sealed envelope or container.
- b) The details listed hereafter shall either be recorded on such envelope or container or shall be contained in a statement accompanying same:
- i) Employer's name;
 - ii) Employee's name and/or payroll number;
 - iii) period in respect of which payment is made
 - iv) number of ordinary hours worked;
 - v) number of overtime hours worked in the payment period;
 - vi) number of hours worked in the payment period on a Sunday and/or a declared Public Holiday;
 - vii) employee's hourly wage;
 - viii) details of any other payment due arising from employment during the

- payment period;
 - ix) details of any deductions made in compliance with clause 5.3 hereafter;
 - x) net amount paid to employee;
 - xi) night shift allowance.
- c) The envelope, container, or statement on which the particulars listed in b) above are recorded, shall become the property of the employee.

5.3 Deductions

Deductions as set out in sub clauses 5.3 a) to e) below may be made with the written consent of such employee, or as otherwise required or permitted under the provisions of this Agreement or any other Agreement of the Council, or in any terms of the Act or any other law:

- a) Deductions for Holiday, Sick, Medical, Insurance or Savings schemes, Provident or Pension Fund contributions, Loans, Accommodation and/or Trade Union subscriptions;
- b) Deductions for unauthorised absence from work by employees (other than Casual Employees), proportionate to the period of absence, and calculated on the basis of the rate ruling at that point in time;
- c) Deductions which the employer is required or permitted to make by law or order of any competent court;
- d) Deductions for legitimate reduction in the specified ordinary hours of work performed by employees (other than casual employees) owing to short time, which shall be calculated for each reduced hour of work at a rate not exceeding the employee's set wage (at such time) for ordinary hours worked: Provided that -
 - i) such short time deduction shall not exceed one third of the employee's monthly wage, irrespective of the number of hours by which the ordinary hours of work are reduced;
 - ii) that no deductions shall be made in the case of short time arising out of slackness of work, unless the employer has given his employees notice on the previous day, of his intention to so reduce the ordinary hours of work that no deductions shall be made in respect to the first hour of short time (when of such work stoppage is caused either by bad weather or owing to the place of work being unfit for use or is in danger of becoming so) unless the employer has given his employees notice on the previous day that no work will be available;
- e) Deductions by the employer (with written consent from the employee concerned) for

any installment which the employer has paid or has undertaken to pay on a loan granted to such employees for the purpose of acquiring a dwelling by any banking institution, building society, insurance business, registered financial institution, local authority or by the State.

6. PROHIBITION ON FURTHER NEGOTIATION

- 6.1 The contents of this main agreement are actual and not minimum standards for the Industry. No employer or employee(s)/trade union(s) may engage in a strike/work stoppage or lockout in pursuance of an improvement or improvements to any of the terms and conditions of this Agreement during the currency of this agreement.

7. REGULATION OF WORKING TIME

- 7.1 Every employer must regulate the working time of each employee:
- a) in accordance with the provisions of any Act governing occupational health and safety;
 - b) with due regard to the health and safety of employees;
 - c) with due regard to the Code of Good Practice on the Regulation of Working Time issued under section 87(1)(a) of the Basic Conditions of Employment Act 75 of 1997;
 - d) with due regard to the family responsibilities of employees.
- 7.2 Interpretation of day:
For the purpose of this clause "day" means a period of 24 hours measured from the time when the employee normally commences work.
- 7.3 Ordinary hours of work:
- a) subject to this clause an employer may not require or permit an employee to work more than:
 - i) 45 hours in any week; and
 - ii) nine hours in any day if the employee works for five days or fewer in a week;
or
 - iii) eight hours in any day if the employee works on more than five days in a week;
 - b) an employee's ordinary hours of work in terms of sub clause 7.3 a) i) above may by agreement be extended up to 15 minutes in a day but not more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.

7.4 Meal Intervals

An employer shall not require or permit an employee to work continuously for more than five hours without a meal interval, during which meal interval the employee shall not be required or permitted to perform any work, and which shall not form part of the ordinary or overtime hours worked: Provided that:

- a) The period of the meal interval may be reduced to not less than half an hour, subject to agreement between the employer and the employee;
- b) If a meal interval is longer than one hour, any period in excess of three hours shall be deemed to be time worked, except when the proviso set out in sub clause e) hereafter, applies;
- c) Only two meal intervals (taken during the ordinary hours of work of any Employee on any day) shall not form part of the ordinary hours of work;
- d) When an employer is required to give an employee a further meal interval on any day, by reason of overtime worked on that day, such meal interval may be reduced to not less than fifteen minutes;
- e) If the meal interval is longer than three hours in the case of an employee wholly or mainly engaged in cleaning, any period of such meal interval which is in excess of three hours, shall be deemed to form part of the ordinary hours of work.

7.5 Overtime:

- a) subject to this clause an employer may not require or permit an employee:
 - i) to work overtime except in accordance with an agreement;
 - ii) to work more than three hours overtime a day; or
 - iii) ten hours overtime a week.
- b) an employer must pay an employee at least one and a half times the employee's wage for overtime worked in accordance with the provisions of the Basic Conditions of Employment Act, 75 of 1997 as amended from time to time.

7.6 Compressed working week:

- a) an agreement in writing may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of sub clause 7.2 without receiving overtime pay.

7.5 An agreement in terms of sub clause 7.6 a) may not require or permit an employee to work:

- (i) more than 45 hours in any week;
- (ii) more than ten hours overtime in any week ; or
- (ii) on more than five days in any week.

7.6 Averaging of hours of work:

- a) Despite sub clauses 7.3 and 7.5, the ordinary hours of work and overtime of

an employee may be averaged over a period of up to four months.

- 7.7 an employer may not require or permit an employee who is bound by a collective agreement in terms of sub clauses 7.6 a) to work more than:

- (i) an average of 45 ordinary hours of work in a week over the agreed period;
- (ii) an average of five hours overtime in the agreed period.

- 7.8 Daily or weekly rest period:

- (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 need not necessarily include Sunday.

- (b) a daily rest period in terms of sub clauses 7.8 (a) (i) may be reduced to ten hours for an employee:

- (i) who lives on the premises at which the workplace/contract is situated; and
- (ii) whose meal interval lasts for at least three hours.

- (c) despite sub clauses 7.8 (a) (ii):

- (i) a rest period of at least 60 consecutive hours every two weeks; or
- (ii) an employee's weekly rest period may be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

- b) an agreement in terms of sub clause 7.6 a) may not require or permit an employee to work:

- i) more than 45 hours in any week;
- ii) more than ten hours overtime in any week ; or
- iii) on more than five days in any week.

- 7.7 Averaging of hours of work:

- a) despite sub clauses 7.3 and 7.5, the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months.

- b) an employer may not require or permit an employee who is bound by a collective agreement in terms of paragraph a) to work more than:

- i) an average of 45 ordinary hours of work in a week over the agreed period;
- ii) an average of five hours overtime in the agreed period.

- 7.8 Daily or weekly rest period:

- 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 need not

necessarily include Sunday.

- b) a daily rest period in terms of paragraph a) i) may be reduced to ten hours for an employee:
 - i) who lives on the premises at which the workplace/contract is situated; and
 - ii) whose meal interval lasts for at least three hours.
- c) despite paragraph a) ii):
 - i) a rest period of at least 60 consecutive hours every two weeks; or
 - ii) an employee's weekly rest period may be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

8. ANNUAL LEAVE.

8.1 Leave entitlement

Subject to the provisions of sub clause 8.3, an employer shall grant leave to employees (other than casual employees) in respect of each period of 12 months employment completed by them with such employer and according to their class of employment, as follows:

- a) 21 consecutive days leave in the case of an employee who normally works not more than 6 days in any week;
- b) 28 consecutive days leave in the case of an employee with more than ten years service with the same employer.

8.2 Timing of Leave

- a) The leave specified in sub clause 8.1 above shall be granted to the Employee, and shall be taken by him, at a time to be fixed by the Employer; provided that:
 - i) if such leave has not been granted earlier, it shall be granted and taken so as to commence within three months after completion of the 12 month employment period for which it is due; or
 - ii) if agreed in writing between the employer and employee before such three month period has expired, the said leave may be granted by the employer and be taken by the employee, to commence within a further three month period, dating from the first such period ended.
- b) The period of leave shall not run concurrently with any period during which an employee is absent due to any of the following circumstances:
 - i) sick leave in terms of Clause 9;
 - ii) incapacity in the circumstances as set out in sub clause 9.4 a) or b) thereafter, for any period amounting in total to not more than ten weeks in any 12 month period of employment;

- iii) being under notice of termination of employment, in terms of Clause 20;
- iv) undergoing military service.
- c) At the written request of the employee, the employer may offset against the annual leave period, any days of occasional leave which have been granted to such employee on full pay during the 12 month period of employment for which such annual leave is due.

8.3 Payment of leave on termination of services

If the services of an employee terminate before such employee has completed any 12 month period of employment or become entitled to annual leave in terms of sub-clause 8.1 above, the employer shall pay such employee in respect of leave entitlement (in addition to any other remuneration which may be due) on the following basis:

- a) An amount of not less than one fourth or one third (as the case may be) of the weekly wage being received by the employee immediately before the date of such termination, for each completed month of such employee's period of employment; provided that:
 - i) an employer may make, at the employee's written request, a proportionate deduction from the remuneration set out in a) above, in settlement of any debts of such employee; and
 - ii) An employee (subject to the provisions of sub clause 20.4 hereafter) shall not be entitled to any payment in terms of this clause if said employee leaves such employment:
 - aa) without having given and served the period of notice laid down in Clause 20 hereafter; unless the employer has waived such notice; or the employee has paid the employer in lieu of such notice; or
 - ab) when there is cause recognised by law as being sufficient reason for such termination of services.

8.4 Closure of Establishment

- a) Notwithstanding anything to the contrary contained in this Clause, for the purpose of annual leave at any time, but not more than twice in any period of 12 months, an employer may close the establishment/contract for 21 consecutive days and, in that case, shall remunerate his employees, as the case may be, in terms of sub clause 8.1 above or sub clause 8.4 c) below.
- b) Notwithstanding anything to the contrary contained in this Clause, an employer may place an employee on split leave, but not on more than two occasions during a year and, in such case, the two periods of such leave shall not total more than the full

leave entitlement of such employee, in terms of sub clause 8.1 above.

- c) In the event of the closure of an establishment in which an employee is employed, or the suspension of an activity on which an employee is engaged, taking place when such employee is not yet entitled to the full period of annual leave as prescribed in clause 8.1 above, the following rulings shall apply:
 - i) The employer shall pay said employee in respect of any leave due at the time of such closure or suspension, on the basis as set out in sub clause 8.3; and
 - ii) For the purposes of annual leave thereafter, the employment of such employee shall be deemed to have commenced on the date of closing of the establishment or suspension of the activity.

9. SICK LEAVE.

9.1 Sick leave cycle:

- a) In this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following:
 - i) an employee's commencement of employment; or
 - ii) the completion of that employee's prior sick leave cycle.
- b) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- c) Despite 9.1 (b), during the first six months of employment, an employee is entitled to one days sick leave for every 26 days worked.
- d) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of paragraph b) by the number of days sick leave taken in terms of sub clause 9.1 (c).
- e) An employer must pay an employee for sick leave:
 - i) in accordance with the wage the employee would ordinarily have received for work on that day; and
 - ii) on the employee's usual pay day.
- f) An agreement may reduce the pay to which an employee is entitled in respect of any days absence in terms of this clause if:
 - i) the number of days paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
 - ii) the employee's entitlement to pay:
 - aa) for any days sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked

on that day; or

- ab) for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of sub clause 9.1 (b).

9.2 Proof of incapacity.

- a) An employer is required to pay an employee in terms of sub clause 9.1 (a) if the employee has been absent from work for one day or on more than two occasions during an eight week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
- b) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
- c) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of paragraph a) unless the employer provides reasonable assistance to the employee to obtain the certificate.

9.3 Conditions governing payment of sick leave

- a) Before making payment of any amount claimed in terms of this Clause by an employee in respect of any absence from work owing to incapacity, the employer may require a Certificate (signed by a registered medical practitioner and stating the nature and duration of the incapacity) to be produced by the employee under the following circumstances:
 - i) if the employee is absent from work for more than one consecutive day;
 - ii) if the employee is absent from work on the working day immediately before and/or after a Sunday or defined Public Holiday on which such employee would normally work; provided that:
 - aa) said employee has received payment (in terms of this Clause) for such absence from work on two or more occasions during any period of up to eight weeks, without producing a medical certificate; and provided further that:
 - ab) such certificate shall be produced by said employee within the 8 week period immediately after the last occasion of such absence by the employee.
- b) Should an employee fail to produce the Medical Certificate required by the employer in terms of sub clause 9.3 (a) above, and provided said employee does not normally work on the Sunday or defined Public Holiday in question, such employee shall not

be entitled to receive payment in terms of Clause 10 hereafter.

10. PUBLIC HOLIDAYS AND SUNDAYS.

10.1 Compensation for public holiday work in the case of Employees other than Casual Employees

- a) An employer may not require an employee to work on a public holiday except in accordance with an agreement.
- b) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay:
 - i) an employee who does not work on the public holiday, at least the wage the employee would ordinarily have received for that day;
 - ii) an employee who does work on a public holiday:
 - aa) at least double the amount referred to in sub clause 10.1 b) i); or
 - ab) the amount referred to in sub clause 10.1 b) i) plus the amount earned by the employee for the time worked on that day, whichever is the greater.
- c) 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:
 - i) the employee's ordinary daily wage; plus
 - ii) the amount earned by the employee for the hours of work performed on that day at the rate specified in clause 4).
- d) An employer must pay an employee for a public holiday on the employee's usual pay day.
- e) 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 if the greater portion of the shift was 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.

10.2 Compensation for work on Sundays

- a) 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 half times the employee's wage for each hour worked;
- b) If an employee works less than the ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub clause 10.2 a) is less than the employee's daily wage, the employer must pay the employee the employee's ordinary daily wage;
- c) Despite sub clause 10.2 a) and b) above, 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 a Sunday and the pay that the employee is entitled to in terms of sub clause 10.2 a) and b) above;

- d) 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;
- e) 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, 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;
- f) An employer must grant an employee paid time off in terms of paragraph c) above within one month of the employee becoming entitled to it. However, an agreement in writing may increase the period to 12 months.

11. STUDY LEAVE AND QUALIFICATIONS.

- 11.1 Provided satisfactory proof is produced by an employee (other than a casual employee) the said employee is allowed to write, and has duly written, any examination conducted by a registered educational body, the employer shall grant study leave to that employee, on full pay, as follows:
 - a) one day's leave to prepare for each such examination;
 - b) one day's leave to write each such examination.
- 11.2 An employer shall keep all educational qualifications of his employees on file, provided that it shall be the responsibility of each employee to provide said employer with copies of the documentation concerned.
- 11.3 An employee may apply for a study loan, but this shall be dealt with on an in-house basis between the employer and employee concerned.
- 11.4 An employer shall not be required, at some later date, to provide any of the leave benefits laid down in this Clause to any employee, who has already taken such leave on a previous occasion but who failed to pass the examination/s in respect of which such leave was granted.

12. MATERNITY LEAVE.

12.1 Application for maternity leave

When applying for maternity leave, a female employee shall:

- a) complete the maternity leave form of the employer concerned three months prior to the expected date of confinement; and
- b) hand the duly completed maternity leave form to the employer, together with a

medical certificate from a registered medical practitioner certifying:

- i) the expected date of said employee's confinement;
- ii) that said employee is fit to work until four weeks prior to the expected date of confinement.

12.2 Pre-Natal Care

A pregnant female employee shall be entitled to one day's fully paid leave in each of the 3 months prior to the expected date of confinement, for the purpose of attending a prenatal clinic: provided that satisfactory proof of attendance by such employee at a pre-natal clinic shall be provided to the employer.

12.3 Maternity Leave Entitlement:

A pregnant female employee shall cease working at least 8 weeks prior to the date of confinement, and shall return to work not later than 12 weeks after the date of the child's birth.

12.4 Rights on return from maternity leave:

When a female employee returns to work from maternity leave, such employee shall be entitled to the following:

- a) Payment of one third of one month's wage, calculated at such female employee's rate of pay at time of going on said maternity leave;
- b) Placement in the same job as was occupied at the commencement of said maternity leave, or a job similar thereto.

12.5 Still Birth and/or Legal Adoption

The provision of this clause shall also apply to:

- a) Still births;
- b) Legal adoptions provided the adopted child is less than one year old.

13. PROHIBITION ON PIECE-WORK.

13.1 No Employer shall employ any Employee on piece-work.

14. UNIFORMS, OVERALLS, PROTECTIVE CLOTHING AND SAFETY EQUIPMENT

14.1 When an employer requires an employee to wear, or is required by law to provide to such employee, any uniform, overalls, gumboots or other protective clothing, the employer shall issue such clothing to the employee concerned, on the following basis:

- a) Any employee shall have two serviceable uniforms for use, at any time;
- b) Uniforms shall be issued to any employee, free of any charge;
- c) Any item of clothing or safety equipment provided for in this clause shall be issued without any employee being required to make a deposit therefore, either to the

employer or any other person.

- d) should uniforms or safety equipment not be returned on termination of service the replacement cost thereof shall be deducted by the employer from any money that is due to the employee

15. NIGHT WORK.

- 15.1 Whenever an employee finishes work between the hours of 20:00 and 05:00, the employer concerned shall provide such employee with transport to the nearest public transport pick-up point;
- 15.2 A female employee who is more than six month's pregnant shall not be required to commence work before 05:00, nor to work after 21:00;

16. PROHIBITION OF EMPLOYMENT.

- 16.1 In terms of this Clause, an employer:
 - a) shall not employ any person under the age of 15 years;
 - b) require or permit any pregnant female employee to work during the 8 week period prior to the expected date of her confinement and/or during the 8 week period after the date of said female Employee's confinement.

17. TRADE UNION SUBSCRIPTIONS.

17.1 Deduction of Trade Union Subscriptions

Upon being requested in writing by an employee so to do, the employer shall:

- a) deduct from monthly wage of the employee concerned, the subscription payable by such employee to any trade union for as long as the trade union is allocated a representative on the Council in terms of clause 6.1.1 of the constitution;
- b) hand the amount so deducted, less an administration fee, over to the official appointed to receive it by the trade union concerned or, alternatively, shall send such amount by post to the registered office of that trade union;
- c) hand over or alternatively post such amount by the 15th day of the month following that on which such deduction was made.
- d) the employer will forward a list of each trade unions' members that have had subscriptions deducted from their wages together with proof of payment of the subscriptions of the trade union to the Council no later than the 7th of the month following which the deductions have been made.

17.2 Deduction of Congress Levies

During one month of each year, an employer shall deduct a double membership fee for

payment of a congress levy, from the wages of those of his employees as are trade union members, provided such employer:

- a) has received written notification from the trade union concerned, confirming that payment of the double membership fee was determined in terms of its Constitution; and
- b) such employer has been given written permission to do so by the employees concerned, by means of stop order forms.

18. COUNCIL FUNDING.

18.1 For purposes of meeting the expenses of the Council, every employer:

- a) shall deduct an amount equal to 0.5% from the monthly basic wage of each of his employees (other than casual employees);
- b) shall add to such employee deductions an amount equal to the total sum thereof; shall forward such combined employer/employee sum, in total, to the Secretary of the Council, by not later than the 7th day of the month following that on which the transactions referred to in sub clause 18.1 a) and b) above were performed.
- c) when forwarding the combined levies referred to paragraph (c) above, will send the monies together with the remittance advice as prescribed by Council, with all sections of such remittance advice fully completed.
- d) when forwarding the combined levies referred to sub clause 18.1 (c) above, will send the monies together with the remittance advice as prescribed by Council, with all sections of such remittance advice fully completed.

18.2 Should a company not pay the prescribed levies by the date stipulated in sub clause 18.1 c) above, then interest may be charged by the Council at a rate of ten per cent per month on any outstanding amount. The finance committee will determine whether the charge should be made.

19. SHOP STEWARD RIGHTS

19.1 Definitions/Provisions

For the purposes of this Clause:

- a) "*Shop Steward*" means a shop steward elected in terms of a Union Constitution;
- b) "*Union membership*" shall be solely determined by the provisions of valid stop order forms, as provided for in terms of Clause 17 of this Agreement.

19.2 In any workplace in which at least 10 members of a representative trade union are employed, those members are entitled to elect from among themselves -

- a) if there are 10 members of a trade union in a workplace, one trade union

- representative;
- b) if there are more than 10 members of the trade union employed in the workplace, two trade union representatives;
 - c) if there are more than 50 members of the trade union employed in the workplace, two trade union representatives for the first 50 members, plus a further one trade union representatives for every additional 50 members up to a maximum of seven trade union representatives;
 - d) if there are more than 300 members of the trade union employed in the workplace, seven trade union representatives for the first 300 members, plus one additional trade union representatives for every 100 additional members up to a maximum of ten trade union representatives; if there are more than 600 members of the trade union employed in the workplace, seven trade union representatives for the first 600 members, plus one additional trade union representatives for every 200 additional members up to a maximum of twelve trade union representatives; and
 - e) if there are more than 1000 members of the trade union employed in the workplace, twelve trade union representatives for the first 1000 members, plus one additional trade union representatives for every 500 additional members up to a maximum of twenty trade union representatives.

19.3 Provision of Shop Steward facilities

- a) For purposes of contacting the union concerned, a shop steward shall have reasonable access to a telephone on the employer's premises, and/or to a telephone of such employer located on a contract site;
- b) An employer shall attempt to facilitate reasonable access to his clients' premises for company shop stewards and elected safety representatives; provided that:
 - i) that the said shop steward or safety representative requests a senior representative of the employer concerned, in advance, to arrange a suitable date and time for such access; and\
 - ii) that the granting of such access rights does not infringe upon the operations or requirements of the client and non-members of the trade union.

19.4 Shop Steward Leave

- a) To allow shop stewards to attend to union affairs, the employer shall grant paid leave for such purpose to those concerned, on the following basis:
 - i) four days paid leave per year in the case of an office bearer of a representative trade union;
 - ii) 6 days paid leave per year in the case of any other shop steward.
- b) If requested to do so, the employer shall enter into negotiations with the in-house

shop stewards regarding the granting of additional unpaid leave to allow for attending to union affairs;

- c) Whenever a shop steward requires paid leave to attend to union affairs as provided for in sub-clause 19.4 a) above, the union shall give the employer not less than 14 days written notice to that effect; provided that notification of less than 14 days shall be accepted by the employer in the case of emergencies.

19.5 Full time Shop Stewards

When a company has 600 members of a union who is party to the Council in any of the three designated regions as set out below, the union will be entitled to a full time shop steward of that union in the region where it has more than 600 members.

- a) The designated regions shall be:
 - i) Region 1 - the coastal area North of the Tugela river and 100 kilometres inland;
 - ii) Region 2 - the coastal area south of the Tugela river and 100 kilometres inland;
 - iii) Region 3 - any areas not in regions 1 and 2.
- b) Should there be more than one union which has more than 600 members in a region in that company then the union with the most members will secure the shop steward.
- c) The union will nominate five union members who are employed by the company and the company management will in its opinion select the most suitable one of those to take up the post.
- d) The company will have the discretion to set the work place, working hours which will be not less than thirty hours per week and any other duties as determined by management when not fully occupied with union business.
- d) The terms and conditions of employment for the shop steward will be as per the Council's Main Agreement.

20. TERMINATION OF EMPLOYMENT

20.1 Notice of contract termination

when either an employer or an employee (other than a casual employee) desires to terminate the contract of employment existing between them, such termination may be effected in the following manner:

- a) Notice by either the employer or the employee of intention to terminate such contract shall be given in writing (except when such notice is given by an Employee who is unable to write);

- b) The length of such notice shall be based on the duration of the employee's employment with the employer concerned, as follows:
 - i) Not less than one working day's notice shall be given during the first four weeks of such employment;
 - ii) Not less than two weeks notice shall be given after the first four weeks of such employment.
 - iii) Not less than one weeks notice shall be given to an employee whilst on probation, as defined, for the period of employment between 4 weeks as in i) above and six months.

20.2 Payment in lieu of Notice

- a) Either an employer or employee may terminate the contract without giving notice by paying the employer or the employee concerned As the case may be, an amount of not less than:
 - i) the daily wage being received by the Employee at the time of such termination in lieu of the one working days' notice called for in the circumstances laid down in sub-clause 20.1 b) i) above;
 - ii) an amount equal to double the weekly wage being received by the employee at the time of such termination in lieu of the two weeks notice called for in the circumstances laid down in sub-clause 20.1 b) ii) above.
- b) The terms of paragraph a) above shall not affect the following:
 - the right of an employer or his employee to terminate the contract without notice, for any cause recognised by law as being sufficient; any written agreement between an employer and his employee which provides for a period of notice of equal duration on both sides and for longer than that prescribed in this clause;
 - i) the operation of any forfeitures or penalties which may be applicable by law in respect of an employee who deserts;
- c) If an employer pays an employee in lieu of notice at a time when, as at the date of termination, the wage of such employee has been reduced by short-time deductions, the expression "is receiving at the time of such termination" shall be deemed to mean "would have received at the time of such termination had no deduction been made in respect of short-time".
- d) Where there is an agreement in terms of sub clause 20 b) ii) above, the payment in lieu of notice shall be in line with the period of notice agreed upon.

20.3 Timing of Notice

The Notice specified in clause 20.1 above, shall not run concurrently with, nor be given during, the absence of any employee for any of the following reasons:

- a) Leave granted in terms of clause 8 hereof;
- b) Sick leave granted in terms of clause 9, or incapacity in the circumstances set out in clauses 9.5 a) or 9.5 b) where such absences amount in total to not more than ten weeks in any 12 month period of employment with the same employer;
- c) Military service, except if the employee so requests in writing and the employer so agrees, also in writing;

20.4 Appropriation of employee dues in lieu of Notice

- a) Notwithstanding anything to the contrary in this Agreement, where an employee terminates his contract of employment by leaving his employment without having given and served the required notice period; or without having paid the employer in lieu of such notice, the employer may appropriate to himself an amount of not more than that which the employee would have had to pay in lieu of notice;
- b) Such appropriation by the employer shall be made from any monies owed by him to the employee concerned, in terms of any of the provisions of this Agreement, and shall not exceed more than the amount the employee would have paid him in lieu of notice;
- c) If such appropriation is made, the employee shall be deemed, for the purposes of clause 8.6 hereof, to have paid the employer in lieu of notice.

21. CERTIFICATE OF SERVICE.

- a) Upon termination of any contract of employment, the employer shall furnish the employee concerned with a Certificate of Service showing:
 - i) the employee's full names
 - ii) the name and address of the employer
 - iii) the class of employment in which the employee was wholly or mainly engaged;
 - iv) the dates of commencement and termination of the contract;
 - v) the employee's monthly wage as at the date of termination.
- b) Certificates of Service shall not be issued by the employer in the case of casual employees or of any employee whose contract of employment has been terminated on the grounds of desertion.

22. STAFF RECORDS.

22.1 Maintenance of Staff Records

- a) Every employer shall maintain attendance and wage records in respect of each of his employees;

- b) Staff timekeeping may be maintained by the employer either by means of attendance registers or time cards as laid down in sub clauses 23.2 and 23.3, respectively, hereafter.

22.2 Attendance registers

If the employer chooses to use the attendance register method of staff timekeeping, this shall be implemented as follows:

- a) Attendance Registers shall be substantially in the form as prescribed by the Council;
- b) The employer shall maintain an individual Attendance Register in respect of all the employees in his employ;
- c) The particulars called for in such Attendance Registers shall be written up in ink or indelible pencil.

22.3 Time Cards

If the employer chooses to use the time card method of staff timekeeping, this shall be implemented as follows:

- a) The employer shall provide a semi-automatic time recorder, together with the necessary cards which shall be as prescribed by the Council;
- b) A time card shall be supplied by such employer to each of his employees, and such cards shall detail:
 - i) the name and staff number of the employee concerned;
 - ii) the date of the last day of the working week for which such card is to be used by such Employee.
- c) Unless prevented from so doing by unavoidable cause, an entry shall be made by each employee on the time card provided in terms of sub clause 22.3 b) above by means of the semi-automatic time recorder provided in the establishment for such purpose and such entry shall be made on, and in respect of, each day worked by such employee;
- d) Each entry made by an employee for each working day concerned, on the time card referred to in sub clause 22.3 c) above, shall show the following:
 - i) time of commencing work;
 - ii) time of commencing and terminating all meal and other intervals that are not accountable as ordinary hours of work;
 - iii) time of finishing work.

22.4 Retention of Records

All records in terms of this Clause:

- a) shall remain the property of the employer; and
- b) shall be retained by said employer for a period of three clear years after the date of

the last entry made therein.

23. COUNCIL REGISTRATION BY EMPLOYERS.

23.1 Registration procedures

- a) All existing employers (and every employer entering the Industry in the future) shall register with the Council.
- b) Applications for such registration shall indicate the particulars covered in sub clause 23.1 c) hereafter, and shall be effected in writing, signed by the employer concerned and forwarded by such employer to:

THE SECRETARY OF THE COUNCIL

P. O. BOX 47435

GREYVILLE

4023

- c) The said registration particulars shall include:
 - i) the name of the business concerned, in full;
 - ii) the street and postal address of said business;
and as the case may be:
 - iii) in a sole proprietorship: the identity number and name of the proprietor;
 - iv) in a partnership: the identity numbers and names of the partners and a certified copy of the Partnership Agreement;
 - v) in the case of a company: the identity numbers and names of the Directors, and a copy of the Certificate of Incorporation;
 - vi) in the case of a closed corporation: the identity numbers and names of the members, and a copy of the Certificate of Incorporation;
 - vii) in the case of any other body corporate or juristic person: the names and identity numbers of the persons responsible for the administration of such body corporate or juristic person;
 - viii) copies of registration certificates and certificates of good standing for the following: UIF, WCA, JSB, Training Board, PAYE, and VAT and the company shall produce a current certificate of compliance for each of the above annually in the month of January.

23.2 Certificate of Registration

A Certificate of Registration, signed by either the Chairperson or the Secretary of the Council, shall be issued to every Employer registered.

23.3 Register of Employers

The Secretary of the Council shall maintain a register of all employers registered in terms of

sub clause 23.1 a) above.

23.4 Advice of Change in Particulars

- a) Every registered employer shall notify the Council of any change in the particulars furnished by him on registration;
- b) Such changes shall be advised within 14 days of occurrence and shall include:
 - i) Any change in a partnership or partnership agreement;
 - ii) Any change in the Directors of the Company;
 - iii) Any change in the members of a close corporation;
 - iv) Any change in the persons responsible for the administration of any other body corporate or juristic person.

24. ADMINISTRATION OF THE AGREEMENT.

- 24.1 The Council shall be the body responsible for administering this Agreement and may issue rulings and/or express opinions for the guidance of employers and employees, provided such rulings and opinions are not inconsistent with any provisions therefore, as laid down in the Agreement.

25. AGENTS.

25.1 Appointment of Designated Agents

In order to ensure that the parties and non-parties adhere to the terms of this Agreement (and any other Agreement administered by the Council) the Council:

- a) shall appoint one (or more) specified person/s as Council Designated Agent/s;
- b) may request the Minister of Labour to appoint a Designated Agent in terms of the provisions of Section 33 of the Act.

25.2 Designated Agents' Terms of Authority

For the purpose of ensuring adherence to the terms of this Agreement (and/or any other Agreement of the Council) a duly appointed Council Designated Agent shall have the right to:

- a) To enter any establishment for the purpose of carrying out an inspection on behalf of the Council;
- b) To question any employer or employee during such inspection;
- c) To inspect the records prescribed in clause 23 hereof.

25.3 Employer/Employee obligations

The employer and employees of an establishment undergoing a Council inspection as prescribed in sub clause 25.2 above, shall permit the Designated Agent/s concerned to exercise, as necessary, the rights prescribed in sub clause 25.2 a), b) and c) of said clause.

26. EXEMPTIONS.

26.1 Granting of Exemptions

In terms of section 32 of the Labour Relations Act, No. 66 of 1995, as amended, the Council hereby establishes an independent body called an "Exemptions Board" to hear and decide any appeal brought against—

- a) the Council's refusal of any party's application for exemption from the provisions of this Agreement;
- b) the withdrawal of such an exemption by the Council.

26.2 Any party to this Agreement or any member of a party to this Agreement may apply to the Council for exemption from any of the terms of the Agreement.

26.3 The Council shall consider an application for exemption received from a party or a member of a Party to the Agreement, at the first Executive Committee meeting of the Council following the receipt of the application, with the proviso that applications received within less than five (5) normal working days prior to a Council meeting shall only be tabled at the next Executive Committee meeting of the Council.

26.4 Applications for exemption referred to the Council in terms of sub-clause 26.2 or 26.3 shall be considered by the Council in accordance with the exemption criteria set out in sub-clause 26.13 hereof, and the applicant/s shall be advised, in writing, of the Council's decision within five (5) normal working days following the meeting at which the applications were considered.

26.5 The Council shall, subject to the exemption criteria, only grant exemption on good cause and may determine such period and conditions of exemption as it deems fit, with the proviso that all exemptions shall lapse on 28 February of every year and may only be extended for a further period by the Council on the application for such extension by the applicant.

26.6 Any non-party to which this Agreement has been extended to in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of this Agreement.

26.7 Sub clause 26.3 to and including 26.5 shall *mutatis mutandis* apply to any application for exemption received from a non-party.

26.8 Within 14 consecutive days after having been advised of the Council's decision regarding an application for exemption, the party who feels aggrieved by the Council's decision, may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal must be fully reasoned.

26.9 The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board who shall as soon as possible, hear and decide the matter with reference to the exemption criteria set out in sub

clause 26.13 hereof and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting; provided that the Exemptions Board may defer a decision to a following meeting if additional motivation, information or verbal representations are considered necessary to decide on the application for exemption.

26.10 Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of the decision, clearly specifying—

- a) the terms of the exemption; and
- b) the reporting requirements by the applicant and considering re-evaluation processes.

26.11 When the Exemptions Board decides against granting an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.

26.12 All applications for exemptions referred to in this clause 26 shall be addressed to the Secretary of the Council and shall be—

- a) in writing on an application form provided by the Council;
- b) indicate the period of time for which the exemption is required;
- c) indicate clearly the clauses or sub-clauses of this Agreement from which exemption is applied;
- d) be fully reasonable and motivated and include proof that the exemption applied for has been discussed between the employer, his employees and their representatives and also include the responses resulting from such consultations whether in support or against the application;
- e) indicate possible substitutive provisions;
- f) indicate the specific workplaces and employees in respect of which the exemption is applied for;
- g) include details of the total work force of the employer concerned.

26.13 Exemption criteria: The Exemptions Board and the Council shall consider all applications of exemptions referred to in terms of this clause 26 with reference to the following criteria:

- (a) The extent of consultation with and the petition for or against granting the exemptions as provided by employers or employees who are to be affected by the exemption if granted;
- (b) infringement of basic conditions of employment rights;
- (c) that a competitive advantage is not created by the exemption;
- (d) that exemption from any employee benefit fund or training provision be viewed in relation to the alternative comparable bone fide or provision including the cost to the employee, transferability, administration management and cost, growth and

- stability;
- (e) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Contract Cleaning Services Industry;
 - (f) the reality that the majority of employers at any time engaged in the Contract Cleaning Services Industry within the Council's area of jurisdiction as well as the majority of members of the employer parties to the Council, represent the category micro to medium enterprises and employ between one and one hundred employees;
 - (g) any special economic or other circumstances that exist warrant the granting of the exemption;
 - (h) take cognizance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.

27. STAFF TRANSFERS DUE TO TRANSPORT DIFFICULTIES.

- 27.1 Employers shall give due consideration to employee requests for transfer from any contract to another in order to reduce traveling time and costs.
- 27.2 Employees shall sign new Contracts of Employment whenever any transfer takes place at their own request or at the request of the employer.

28. DESERTION AND ABSCONDING.

- 28.1 If an employer has not been contacted and given a satisfactory explanation by an employee who has been absent from work for more than three days, such employee shall be regarded as having absconded from the place of work.

29. RETIREMENT.

- 29.1 An employee shall retire from employment as soon as said employee reaches the age of qualification for a State Retirement Pension in terms of the relevant legislation.

30. PROVIDENT FUND.

- 30.1 The Fund shall be governed by its Rules and regulations, as in force from time to time, and the benefits provided under the Fund shall be assured under policies issued by the assurance company as appointed by the Board of Trustees.
- 30.2 The objects of the Fund shall be to provide for:
 - a) payment of cash benefits or annuities to members on retirement, on or after the normal retirement date;
 - b) payment of death benefits to members' beneficiaries in the event of the death of

- such members prior to retirement;
- c) payment of certain benefits in terms of the rules, to members retiring before the normal retirement date.
- 30.3 Membership of the Provident Fund shall be compulsory for all party employees who are employed by party employers and for all non-party employees who are employed by non-party employers when this agreement is extended to non-party employees and employers in terms of section 32 of the LRA by the Minister of Labour.
- 30.4 To obtain membership of the Fund, these employees and employers must fall within the registered scope of this Council and this Collective Agreement must prescribe their wages.
- 30.5 Auditors as defined in the Pension Fund Act shall be appointed by the Board of Trustees and shall audit the accounts of the Fund at least annually.
- 30.6 A copy of the Fund rules (and any amendments thereto) shall be:
- a) furnished to the Registrar of Labour Relations;
- b) available at the office of the Secretary of the Council during office hours for inspection by any Employer or contributor.
- 30.7 All eligible employees after having completed the probationary period shall be able to join the Fund from the date specified in the Rules, provided they are under the normal retirement age as at such date;
- 30.8 Every member shall contribute 8% of his monthly wage to the Fund.
- 30.9 The contribution referred to in clause 30.8 above, shall be deducted from the member's salary and shall be reflected through the wage records each and every month.
- 30.10 In respect of each member in his employ every employer shall contribute, on a monthly basis, an amount equal to the member's contribution each month, as made in terms of clause 30.3 and 30.9 above.
- 30.11 Every employer shall forward a printed return with the name of each member, their ID number and their basic wage to the underwriter, month by month, together with payment of the total member and employer contributions for the relevant month, so as to reach the office of such administrator not later than the 7th day of the month following that for which the contributions were so made.
- 30.12 The administration, management and control of the Fund and the payment of the benefits from the Fund shall be decided by the Board of Trustees
- 30.13 A copy of this Agreement shall be kept by every employer within the area of jurisdiction of the Council, in his work place at all times.
- 30.14 Should a company not comply with the provisions of the provident fund by not registering all the eligible employees the company shall be liable as follows:
- a) back pay both the employer and employee contributions of the eligible employees

from the date they became eligible.

- b) Should a company not pay across the contributions to the administrators in terms of the Agreement then company will be liable for a penalty as determined through the Pension Fund Act and by the Board of Trustees.

30.15 No alteration to the Rules which affects the terms on which the Employer's contributions are based or the Fund may be terminated may be made without the approval of the Employer Association which is party to the Council.

31. DISPUTES ABOUT INTERPRETATION, APPLICATION OR ENFORCEMENT OF AGREEMENT.

31.1 The Secretary of the Council may at any time require a designated agent to monitor compliance with the provisions of the Agreement.

31.2 A dispute about interpretation, application or enforcement of this Agreement may be lodged with or referred to the Secretary of the Council by any person, for resolution in terms of this Agreement.

31.3 The Secretary of the Council may require a designated agent to investigate the dispute.

31.4 the designated agent must investigate the facts surrounding the dispute and if the agent has reason to believe that a collective agreement has been breached, the agent may endeavor to secure compliance with the Agreement through conciliation.

31.5 the designated agent must submit, within seven days, a written report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.

31.6 if in the course of performing a designated agent's duties an agent discovers what appears to be a breach of the Agreement, the agent -

- b) must investigate the alleged breach;
- a) may endeavor to secure compliance with the Agreement; and
- b) must submit a report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.

31.7 on receipt of the report, the Secretary may -

- a) require the designated agent to make further investigation;
- b) if further conciliation is indicated, appoint a conciliator from the Council's panel of conciliators;
- c) refer the dispute for conciliation to the disputes committee of the Council;
- d) issue a compliance order; or
- e) refer the dispute for arbitration in terms of this Agreement.

31.8 If a conciliator is appointed or the dispute is referred to the disputes committee, the Secretary must decide the date, time and venue of the conciliation meeting and must serve

notices of these particulars on the parties to the dispute.

- 31.9 If a compliance order is issued, that order must be served on the party allegedly in breach of the Agreement.
- 31.10 The Secretary of the Council may apply to make the arbitration award an order of the Labour Court under section 158 (1) of the Act.
- 31.11 Should a company be found to be not complying with the provisions of this agreement, the arbitrator may impose fines as per the following tables or as amended by a notice in the Government Gazette amending chapter 10 schedule 2 of the Basic Conditions of employment act No. 75 of 1997:

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R 200 per employee in respect of whom the failure to comply occurs
A previous failure to comply with the previous 12 months or two previous failures to comply in respect of the same provision within three years	R 300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R 400 per employee in respect of whom the failure to comply occurs
Four or more previous failures to comply in respect of the same provision within three years	R 500 per employee in respect of whom the failure to comply occurs

TABLE TWO: MAXIMUM PERMISSIBLE FINES INVOLVING AN UNDERPAYMENT.

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
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A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

32. CERTIFICATE OF COMPLIANCE.

32.1 A Certificate of Compliance will be:

- a) issued to companies whom are found to be fully compliant with the Bargaining Council Main Agreement, provident fund and all other statutory payments after an audit has been carried out by a Designated Agent appointed by the Council, as long as there are no outstanding Council penalties, fines, settlement agreements or arbitration awards for non-compliance against the company;
- b) valid for a period of six months from date of issue to ensure the company=s continued compliance;
- c) issued without alteration on the printed format of the Council and must be signed by either the Secretary or Deputy Secretary and by either the Chairman or Vice Chairman.

32.2 A Certificate of Compliance will only be issued if the company adheres to the following procedures:

- a) The company must apply in writing to the Secretary;
- b) The Secretary will appoint a designated agent to carry out a full inspection within fifteen (15) working days of receiving the application. This period may be exceeded should the Council receive

- (i) an excessive number of applications;
 - (ii) and/or over year end when the Council closes between the 25th December and 2nd January;
 - (iii) and/or for reasons beyond its control.
 - c) The Designated Agent will inspect the following company records for the preceding three (3) calendar months from the date of application:
 - (i) Personnel files, time sheets, wage registers, pay slips, provident fund schedules and annual bonus payment schedules from the previous December, registration certificates for PAYE, VAT, UIF, Skills Development Levies, Workman's Compensation fund and any other statutory obligations;
 - (ii) Proof of payment and date of payment for wages, overtime, night shift allowance, provident fund contributions, annual incentive bonus payments from the previous December, PAYE, VAT, UIF, Skills Development levy, Bargaining Council levy, Workman's Compensation fund and any other statutory payments. Proof of payment shall be by way of bank statements with all payments that do not have any bearing on the inspection being deleted and/or bank confirmed electronic payments but will not include bank deposit slips or cancelled cheques;
 - (iii) All the above records must be extracted and ready for inspection at the time arranged for the inspection. Due cooperation must be given to such agent in his inspection by the company representatives and make copies of all records as requested by the agent for the Council's file.
- 32.3 Should it be found that the company is not complying a compliance order will be issued within five (5) working days.
- 32.4 If found to be complying a Certificate of Compliance will be issued within fifteen (15) working days of the completion of the designated agent's inspection.

33. COMPANY PRIORITY LIST.

- 33.1 A company will set up a priority list to assist cleaners whose fixed term contracts have come to an end due to the termination of the company's contract with the client.
- 33.2 The company will not employ any new staff until such time as all the ex-employees as mentioned above have been assigned a new fixed term contract unless:
- a) should all ex-employees on the priority list not have suitable skills to carry out the tasks required by the client, the company may then employ someone new with the necessary skills;
 - b) when the company is granted a new contract and the client wishes for their existing

staff to be employed, these staff will take preference over ex-employees on the priority list and may be employed.

- 33.3 Should there still be ex-employees on the priority list and the company loses another contract, then the ex-employees whose contract came to an end later will be placed at the bottom of the list. ex-employees names will remain on the priority list for a maximum period of twelve (12) months.
- 33.4 The fixed term contracts offered may be more or less working hours per week than what they had been previously contracted for.
- 33.5 When the cleaner, whose fixed term contract has come to an end due to the contract with the client being terminated, is being paid their final remuneration they shall leave a telephone number in order for them to be contacted in regard a new fixed term contract. The ex-employees name will be taken off the priority list if:
- a) he fails to report as instructed after the third phone call at the number given. When the ex-employee fails to report to the office as instructed on the first and second occasions the ex-employee's name will be placed at the bottom of the priority list;
 - b) an ex-employee has refused an offer of a new contract in the same municipal area for any reason, that person will be removed from the priority list.
- 33.6 Once another contract has been identified the ex-employee will sign a new fixed term contract and:
- a) as new employees they will be eligible to join the provident fund as from the date of commencing the new fixed term contract;
 - b) as new employees the incentive bonus will be pro-rata from the date of commencing the new fixed term contract;
 - c) as new employees the sick and annual leave cycle will be calculated from the date of commencing the new fixed term contract;
- 33.7 This clause shall not apply to contracts lost due to poor performance in terms of the Labour Relations Act. However, the company must disclose the employee's file to show that the ex-employee was disciplined in the past six (6) months for poor performance.
- 33.8 This clause shall not in any way give employees expectation of continued employment over and above their fixed term contract of employment.

34. FAMILY MEDICAL CRISIS PLAN.

- 34.1 It is compulsory for all employers to enroll all their employees on the Family Medical Crisis Plan after having completed their probationary period with the company, with the exception of temporary employees. The employer will:
- a) deduct R54.00 from the employee's wages for the period of operation of this

agreement for those employees who have elected to join the Family Medical Crisis Plan;

- c) the company will then pay an amount of R54.00 per month per employee to the administrators by the 7th of each and every month thereafter.

34.2 The Council shall consider any request for an increase in the premium in the Family Medical Plan by the administrator by giving the Council 3 (three) months' notice of its intention.

- a) The Council will contemplate the request and decide on the increase acceptable and pass a resolution on the new amount to be contributed and advise the administrator accordingly.
- b) The Council will thereafter submit an amendment to the Agreement to the Minister of Labour for promulgation.
- c) Implementation of the increase will only take place after/on publication of the Agreement.

34.3 a) Should an employee be on unpaid leave for whatever reason the employer will not deduct from the employee nor pay across the premium to the administrator. During this period the employee's entitlement to the Family Medical Crisis Plan will lapse;

- b) Should an employee be able to produce a certificate issued by a medical practitioner, each month for the period of the unpaid leave stating that he/she is unfit to work; the administrator will extend the Family Medical Crisis Plan to that employee for a period not exceeding four months. The employer shall notify and forward the medical practitioner's certificate to the administrator with the schedule as per clause 34.5 below;

- c) Should an employee be proceeding on maternity leave the employer must notify the administrator of the member's name and I.D. number 30 days prior to the impending maternity leave; the administrator will extend the Family Medical Crisis Plan to that employee for a period not exceeding four months.

34.4 The employer will send a schedule of all employees for whom the deduction has been made together with their I.D. numbers to reach the administrator by the 7th of each month.

34.5 Should the services of an employee be terminated for whatever reason the employer shall notify the administrator of the name and ID number of that employee and the date of termination."

35. SEVERANCE PAY.

35.1 For the purposes of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employee.

- 35.2 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.
- 35.3 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)
- 35.4 The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.
- 35.5 If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to the CCMA.

Signed at Durban on the 31/10/2014


For the NCCA

PAUL JUSKINS
Name of signatory


For SATAWU

SIPHONESHAKALA
Name of signatory

P. Mthembu
For NAGEWU


PHILIPPOSI Mthembu
Name of signatory


For THOR

PATRICK MKHIZE
Name of signatory


For HOSPERSA

MTHOBISA ZUMA
Name of signatory


For the Bargaining Council

SKHAKA-VENTER
Name of signatory