

## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

## DEPARTMENT OF LABOUR

NO. R. 1177

26 OCTOBER 2018

## LABOUR RELATIONS ACT, 1995

**MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: EXTENSION TO  
NON-PARTIES OF THE ADMINISTRATIVE COLLECTIVE AGREEMENT**

I, MILDRED NELISIWE OLIPHANT, Minister of Labour, hereby in terms of section 32(2) read with section 32(5) and 32(8) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Motor Industry Bargaining Council - MIBCO**, 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 the second Monday after the publication of this notice and for the period ending 31 August 2019.




M N OLIPHANT, MP  
MINISTER OF LABOUR

DATE: 12/10/2018

**UMNYANGO WEZABASEBENZI****UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995**

**MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: UKWELULWA KWESIVUMELWANO SABAQASHI NABASEBENZI SOKUPHATHA SELULELWA KULABO ANGEYONA INGXEYENI YASO**

Mina, **MILDRED NELISIWE OLIPHANT**, onguNgqongqoshe Wezabasebenzi, lapha ngokwesigaba 32(2) sifundwa nesigaba 32(5) kanye nesigaba 32(8) soMthetho Wobudlelwano Kwezabasebenzi ka 1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa eMkhandlwini Wokuxoxisana Phakathi Kwabaqashi Nabasebenzi Bemboni Yezimoto, futhi ngokwesigaba 31 soMthetho Wezobudlelwano Kwezabasebenzi ka 1995, esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyo Mboni kusukela ngomSombuluko wesibili emva kokushicilelwa kwalesisaziso kuze kube mhlaka 31 kuNcwaba 2019.

  
.....  
**M N OLIPHANT, MP**  
**UNGQONGQOSHE WEZABASEBENZI**  
**USUKU:** 12/10/2018 .....

**SCHEDULE****THE MOTOR INDUSTRY BARGAINING COUNCIL - MIBCO****COLLECTIVE ADMINISTRATIVE AGREEMENT**

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

**Retail Motor Industry Organisation - RMI**

and

**Fuel Retailers' Association of Southern Africa**

and

**National Employers Association of South Africa - NEASA**

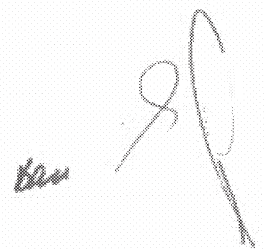
(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and

**National Union of Metalworkers of South Africa - NUMSA**

and

**Motor Industry Staff Association - MISA**

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council - MIBCO.

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**CLAUSE 1 - SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed -
- (a) In the Motor Industry by all employees in the registered scope of the Council;
  - (b) in the Republic of South Africa, excluding the portion of the Magisterial District of Somerset West occupied by the Cape Explosive Works (Ltd);
  - (c) by the employers and the employees in the Motor Industry who are members of the employers' organisations and the trade unions respectively; and
  - (d) by non-parties to the extent that the Minister has granted an extension of this agreement to non-parties in terms of section 32 of the Act.
- (2) Notwithstanding the provisions of sub clause (1), the provisions of this Agreement shall apply to apprentices and learners in terms of Chapter IV of the Skills Development Act, Act No. 97 of 1998; and
- (3) The provisions of Clauses 1(1)(c), 2, 9, and 18 of this Agreement shall, subject to the extension of this agreement to non-parties by the Minister in terms of section 32 of the Act, not apply to employers and employees who are not members of the employers' organisations and trade unions who entered into this agreement

**CLAUSE 2 - PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in operation for the period ending 31 August 2019.

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**CLAUSE 3 - DEFINITIONS**

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

The headings do not govern or affect the interpretation of this Agreement;

- (1) 'Act' means the Labour Relations Act 66 of 1995 as amended from time to time;
- (2) 'Apprenticeship' means a learnership in respect of a listed, and includes a trade-test in respect of the trade as defined in the Skills Development Act;
- (3) 'Area A (EC)' means the Magisterial District of East London, the municipal areas of Despatch, Port Elizabeth and Uitenhage;
- (4) 'Other Areas (EC)' means the Magisterial Districts of Aberdeen, Adelaide, Albany, Albert, Alexandria, Aliwal North, Barkly East, Bathurst, Bedford, Calitsdorp, Cathcart, Colesberg, Cradock, Elliot, Fort Beaufort, George, Graaff-Reinet, Hankey, Hanover, Hofmeyr, Humansdorp, Indwe, Jansenville, Joubertina, King William's Town, Kirkwood, Knysna, Komga, Lady Grey, Maclear, Middelburg (C.P.), Molteno, Mosselbay, Murraysburg, Noupoot, Oudtshoorn, Pearston, Port Elizabeth (excluding the municipal area of Port Elizabeth), Queenstown, Somerset East, Sterkstroom, Steynsburg, Steytleville, Stockenström, Stutterheim, Tarka Uitenhage (excluding the municipal area of Uitenhage), Uniondale, Verterstad, Willowmore and Wodehouse;
- (5) 'Area A (KZNL)' means the Magisterial Districts of Chatsworth, Durban, Pietermaritzburg and Pinetown and the municipal areas of Ladysmith, Newcastle and Umhlanga Rocks;



- (6) 'Other Areas (KZNL)' means the districts and areas in the Province of Kwazulu Natal not referred to in Area A (KZNL), and the Magisterial District of Mount Currie;
- (7) 'Area A (FS & NC)' means the Magisterial District of Bloemfontein and the municipal areas of Kimberley, Sasolburg and Welkom;
- (8) 'Other Areas (FS & NC)' means the Province of the Free State, excluding those districts and areas referred to in Area A (FS & NC), and the Magisterial Districts of Barkly West, Britstown, De Aar, Gordonia, Hartswater, Hay, Herbert, Hopetown, Kenhardt, Kimberley, Kuruman, Mafikeng, Phillipstown, Postmasburg, Prieska, Upington, Vryburg and Warrenton [but excluding those municipal areas included in Area A (FS & NC)];
- (9) 'Area A (Highveld)' means the Magisterial Districts of Oberholzer, Randfontein and Westonaria, and the municipal areas of, Alberton, Bedfordview, Benoni, Boksburg, Brakpan, Edenvale, Elsburg, Germiston, Heidelberg (Gauteng), Johannesburg, Kempton Park, Klerksdorp, Krugersdorp, Meyerton, Midrand, Nigel, Potchefstroom, Randburg, Roodepoort-Maraiburg, Sandton, Springs, Vanderbijlpark and Vereeniging;
- (10) 'Other Areas (Highveld)' means the Magisterial Districts of Amersfoort, Amsterdam, Balfour, Bethal, Bloemhof, Breyten, Christiana, Coligny, Davel, Delareyville, Delmas, Ermelo, Fochville, Heidelberg, Lichtenburg, Nigel, Orkney, Ottosdal, Piet Retief, Pongola, Schweizer Reneke, Standerton, Stilfontein, Volksrust, Wolmaransstad, Wakkerstroom, and the municipal areas of Amalia, Armadene, Bank, Biesiesvlei, Bosfontein, Claudina, Chrissiesmeer, Dasville, De Deur, Devon, Ebner-on-Vaal, Eendracht, Eikenhof, Eloff, Evander, Evaton, Glenharvie, Gollel, Grasmere, Greylingstad, Grootvlei, Hartebeesfontein, Hekpoort, Holmdene, Kinross, Klipdrift, Kliprivier, Klipvalley, Leeudoringstad, Leslie, Lothair, Magaliesberg, Makokskraal, Makwassi, Migdol, Moolman,



- Moosrivier, Morgenzon, Muldersdrift, Paardekraal, Perdekop, Plat Rand, Redan, Residensia, Rykaartspoor, Sannieshof, Sibasa, Sundra, Sebokeng, Trichardt, Val, Van Wyksrust, Venterspost, Vermaas, Welbekend, Welverdiend, Walkerville, Zuurbekom, but excluding those Districts and Areas referred to in Area A (Highveld);
- (11) **'Area A (Northern Region)'** means the municipal areas of Akasia, Middelburg (Mpumalanga), Nelspruit, Pietersburg, Potgietersrus, Pretoria, Rustenburg, Centurion and Witbank;
- (12) **'Other Areas (Northern Region)'** means the Magisterial Districts of Barberton, Belfast, Brits, Bronkhorstspuit, Carolina, Cullinan, Eerstehoek/Badplaas, Ellisras, Groblersdal, Koster, Letaba (includes Tzaneen), Lydenburg, Marico (includes Zeerust), Messina, Moutse, Phalaborwa, Pilgrims Rest (includes Graskop and Sabie), Sibasa, Soshanguve, Soutpansberg (includes Louis Trichardt), Swartruggens, Thabazimbi, Warmbaths, Waterval Boven, White River and Waterberg (includes Nylstroom), but excluding those Districts and Areas referred to in Area A (Northern Region) and the Areas as it existed prior to the proclamation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).
- (13) **'Area A (WP)'** means the Magisterial Districts of Bellville, Goodwood, Kuils River, Simon's Town, The Cape and Wynberg, and the municipal areas of Paarl, Somerset West, Stellenbosch and Strand;
- (14) **'Other Areas (WP)'** means the Magisterial Districts of Beaufort West, Bredasdorp, Caledon, Calvinia, Carnarvon, Ceres, Clanwilliam, Fraserburg, Heidelberg (C.P.), Hermanus, Hopefield, Ladismith, Laingsburg, Malmesbury, Montagu, Moorreesburg, Namaqualand, Paarl, Piketberg, Prince Alfred, Riversdale, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Swellendam, Tulbagh, Vanrhynsdorp, Victoria West, Vredenburg, Vredendal, Wellington, Williston and Worcester, but excluding those municipal areas referred

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to in Area A (WP);

- (15) 'B/A journeyman' means an employee over the age of 22 who is able to prove not less than three years' experience in a trade designated for the Motor Industry or, with the approval of the Regional Council concerned, experience in some other trade, and who under the supervision of a journeyman performs work in the designated trade in which he has had the experience or, with the approval of the Regional Council concerned, in some other trade related to the activities covered by the definition of 'Motor Industry' in this Agreement, or an employee who is able to prove to the satisfaction of the Regional Council concerned not less than three-and-a-half years' experience as a repair shop assistant, body shop assistant, motor cycle mechanic's assistant, auto electrician's assistant or diesel pump room assistant with any employer in the 'Motor Industry' as defined;

[Note: Regarding the proof required of three-and-a-half years' experience, a certificate of service shall be issued by the employer in which it is certified that the employee concerned had served either as a repair shop assistant, body shop assistant, motor cycle mechanic's assistant, auto electrician's assistant or diesel pump room assistant, which certificate in turn shall be verified by the Regional Council concerned, and the employee shall submit proof of having attended the proper course at a duly registered group training centre.];

- (16) 'Council' means the Motor Industry Bargaining Council – MIBCO, registered in terms of section 29 of the Act;
- (17) 'Constitution' means the constitution of the Council;
- (18) 'Establishment' means any workplace or any other place where an employer carries on business or keeps employment records in or on which the Industry, or any part thereof, as defined in this Agreement;

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- (19) **'Independent Board'** means the Board established by the Council in terms of section 32 of the Act, to consider and to determine the outcome of all appeals on exemptions submitted by parties and non-parties for exemption from the provisions of all the Councils published collective agreements and the withdrawal of such an exemption by the Council. Exemptions in this regard, will refer to, and include any or all exemptions from any provision of the Main Agreement, this agreement and provident fund agreements, which the Council has the authority to grant.;
- (20) **'journeyman'** means a person who performs journeyman's work and who -
- (a) has served an apprenticeship in a designated trade in accordance with the requirements of the Skills Development Act in accordance with a written contract approved by any Regional Council; or
  - (b) is in possession of a Grade A membership card issued by MISA or NUMSA; or
  - (c) is in possession of a certificate issued to him in terms of the Skills Development Act; or
  - (e) is in possession of an identity card issued by the Regional Council;
- (21) **'Learner'** includes an apprentice as defined in the Skills Development Act;
- (22) **'Learnership'** means a learnership as described in chapter 4 (Learnerships) of the Skills Development Act and includes an apprenticeship;
- (23) **'Main Agreement'** means the agreement in which wages and other conditions of service are agreed for employees by the parties to the agreement in the Motor Industry, subject to extension of the agreement to non-parties by the Minister;
- (24) **'Motor Industry'** or **'Industry'**, without in any way limiting the ordinary meaning

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of the expression and subject to the provisions of any demarcation determination made in terms of section 62 of the Labour Relations Act, 1995, includes -

- (a) assembling, erecting, testing, remanufacturing, repairing, installing, adjusting, overhauling, wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with -
  - (i) chassis and/or bodies of motor vehicles;
  - (ii) internal combustion engines and transmission components of motor vehicles;
  - (iii) the electrical and electronic equipment and/or devices mainly exclusively connected with motor vehicles;
- (b) automotive engineering;
- (c) Auto valet establishments;
- (d) repairing, vulcanising and/or retreading tyres;
- (e) repairing, servicing and/or reconditioning batteries for motor vehicles;
- (f) the business of parking and/or storing motor vehicles;
- (g) the business conducted by filling and/or service stations including ancillary activities forming part of a filling station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages of customers but excluding activities of separately registered establishments whose sole activities relates to the restaurant, tea room and catering environment;
- (h) the business carried on mainly or exclusively for the sale of motor vehicles

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or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto, whether or not such sale is conducted from premises that are attached to a portion of an establishment wherein is conducted the assembly of or repair of motor vehicles is carried out;

- (i) the business of motor graveyards;
- (j) the business of manufacturing establishments wherein are fabricated motor vehicle parts and/or spares and/or accessories and/or components thereof;
- (k) motor vehicle body building;
- (l) the sale of tractors, agricultural and irrigation equipment (not connected with the manufacture thereof) in the Republic of South Africa, but excluding the Magisterial District of Kimberley, in respect of the sale of:
  - (i) agricultural and irrigation equipment; and
  - (ii) tractors, except when undertaken by establishments substantially engaged in the sale and/or repair of other motor vehicles.

For the purposes of this definition -

**'automotive engineering'** means the reconditioning of internal combustion engines or parts thereof for use in motor vehicles in establishments mainly or exclusively so engaged, whether such establishments are engaged in the dismantling and repair of motor vehicles or not;

**"Auto valet establishment"** means an establishment associated with filling and/or service stations forming part of the same enterprise within the Motor Industry wherein the under mentioned activities pertaining to motor vehicles in or on the premises of such establishment are carried out:



- (a) Steam cleaning of chassis/or engines;
- (b) Washing and/or polishing of the exterior/body;
- (c) Vacuuming and/or cleaning of upholstery and/or interior;
- (d) Painting and/or polishing of tyres; and
- (e) Driving and/or parking of vehicles on premises of a valet establishment.

**"motor vehicle"** means any wheeled conveyance propelled by mechanical power (other than steam) or electrically and designed for haulage and/or for the transportation of persons and/or goods and/or loads and includes trailers and caravans and shall not include any equipment designed to run on fixed tracks, on air crafts.

**"Motor vehicle body building"** means any or all of the following activities carried on in a motor vehicle body building establishment, but shall not include motor vehicle body building done by assembly establishments incidentally to the assembling of motor vehicles:

- (a) The construction, repair or renovation of cabs and/or bodies and/or any superstructure for any type of vehicle;
- (b) the manufacture or repair of component parts for cabs and/or bodies and/or any superstructure and the assembling, adjusting and installation of parts in cabs or bodies or on the superstructure of vehicles;
- (c) fixing cabs and/or bodies and/or any superstructure to the chassis of any type of motor vehicle;
- (d) coating and/or decoration of cabs and/or bodies and/or any superstructure with any preservative or decorative substance;

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- (e) equipping, furnishing and finishing off the interior of cabs and/or bodies and/or any superstructure;
- (f) building of trailers, but not including the manufacture of wheels or axles therefore; and
- (g) all operations incidental to or consequent upon the activities referred to in paragraphs (a), (b), (c), (d), (e) and (f) above.

For the purposes of this definition, 'vehicle' does not include an aircraft and 'Motor Industry' as defined above does not include the following:

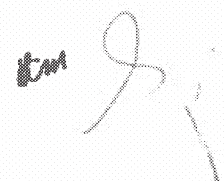
- (a) The manufacture of motor vehicle parts and/or accessories and/or spares and/or components in establishments laid out for and normally producing metal and/or plastic goods of a different character on a substantial scale, or the sale of motor spare parts and accessories by assembly establishments from such establishments;
- (b) the assembling, erecting, testing, repairing, adjusting, overhauling, wiring, spraying, painting and/or reconditioning of agricultural tractors, except where carried on in establishments rendering similar service in respect of motor cars, motor lorries or motor trucks;
- (c) the manufacturing and/or maintenance and/or repair of -
  - (i) civil and mechanical engineering equipment, and/or parts thereof, whether or not mounted on wheels;
  - (ii) agricultural equipment or parts thereof; or
  - (iii) equipment designed for use in factories and/or workshops:





Provided that for the purposes of paragraphs (a), (b) and (c) above, 'equipment' shall not be taken to mean motor cars, motor lorries and/or motor trucks;

- (iv) motor vehicle or other vehicle bodies and/or parts or components thereof made of steel plate of 3,175 mm thickness or thicker when carried on in establishments laid out for and normally engaged in the manufacture and/or maintenance and/or repair of civil and/or mechanical engineering equipment on a substantial scale; and
  - (d) assembly establishments which shall mean establishments wherein motor vehicles are assembled from new components on an assembly line and includes the manufacture and/or fabricating of any motor vehicle parts or components when carried on in such establishments, but shall not include motor vehicle body building, except in so far as it is carried on incidentally to the assembly of motor vehicles, other than caravans and trailers.
- (25) 'PFA' means the Pension Funds Act 24 of 1956 as amended from time to time;
  - (26) 'Region EC' means those areas defined as 'Area A (EC)' and 'Other Areas (EC);
  - (27) 'Region KZNL' means the Province of Natal as it existed prior to the promulgation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and the Magisterial District of Mount Currie;
  - (28) 'Region FS & NC' means those areas defined as 'Area A (FS & NC)' and 'Other Areas (FS & NC);
  - (29) 'Region Highveld' means those areas defined as 'Area A (Highveld)' and 'Other Areas (Highveld);



- (30) 'Northern Region' means those areas defined as 'Area A (Northern Region)' and 'Other Areas (Northern Region);
- (31) 'Region WP' means those areas defined in 'Area A (WP)' and 'Other Areas (WP)';
- (32) 'Regional Council' means a committee appointed as such by the Council in terms of its Constitution;
- (33) 'Republic of South Africa' means the Republic of South Africa as defined in the Republic of South Africa Constitution Act 108 of 1996 as amended;
- (34) 'Skills Development Act' means the Skill Development Act 97 of 1998 as amended;
- (35) 'week' means -
- (a) for the purposes of clause 11 (Returns to the Council) of this Agreement, a period of seven consecutive days commencing at midnight on a Sunday;
- (b) for the purposes of the remaining clauses of this Agreement, a period of seven consecutive days.

#### CLAUSE 4 - EXEMPTIONS

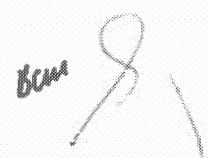
- (1) Exemption from any of the provisions of any of the Council's Agreements may be granted by the Council , to any party or non-party on application.
- (2) Application for exemption to the Council shall be made, in a form prescribed by





the Council to the General Secretary of the Council.

- (3) The Council shall fix the conditions subject to which such exemptions shall be valid, and may, if it deems fit, after one week's notice has been given, in writing, to the person(s) concerned, withdraw any certificate of exemption.
- (4) Should a party wish to appeal a decision of the Council to refuse to grant an exemption or to withdraw any licence of exemption granted to it, other than a decision relating to an application for exemption relating to actual and/or guaranteed increases, it shall appeal, within 14 calendar days of receiving reasons in writing of such refusal or withdrawal, the decision of the Council to the Independent Board. Written reasons shall only be furnished to a Party upon receipt of a written request for such reasons by the Council no later than 14 calendar days from the date of receipt of written notification of such refusal or withdrawal. In the event of an appeal against the decision of the Exemptions to withdraw an exemption of a party, such decision to withdraw shall not be implemented before the outcome of the appeal to the Independent Board.
- (6) The General Secretary of the Council shall issue to every person granted an exemption, a certificate signed by him setting out -
  - (a) the name of the person concerned;
  - (b) the provisions of this Agreement from which exemption is granted;
  - (c) the conditions subject to which such exemption is granted; and
  - (d) the period during which the exemption shall be valid.

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### CLAUSE 5 - WAGE EXEMPTIONS BOARD

- (1) The council hereby establishes the Wage Exemptions Board ("the Board"). The Board shall have sole jurisdiction to consider applications for exemption by individual employers to pay a lesser wage increase and/or guaranteed increase.
- (2) The Board shall consist of 6 members who shall include the General Secretary of the Council who shall also act as chairperson of meetings of the Board.
- (3) The members of the Board shall include:
  - a) Two independent labour representatives;
  - b) Two independent business representatives; and
  - c) An Auditor.

The members of the Board shall be required to *inter alia* possess the following qualities:

- (i) the ability to be objective, independent and impartial;
- (ii) sound decision-making skills;
- (iii) leadership qualities, particularly in respect of exercising sound judgment;
- (iv) be a person in whose impartiality and integrity the public can have confidence;
- (v) understand and comply with confidentiality requirements;





- (vi) working knowledge and experience of labour and collective bargaining matters; and
  - (vii) knowledge and understanding of judicial / quasi-judicial processes.
- (4) The General Secretary shall convene board meetings as and when required by giving at least 14 (fourteen) days written notice to members of the Board. Such notice shall include the Agenda and such other information as may be necessary to prepare for such meeting.
- (5) The following procedure shall apply to wage exemptions:
- (a) An employer that applies for an exemption in order to pay a lesser wage increase or to be exempted from paying on actuals shall complete the wage exemption application form available on request from the Council for consideration by the Board.
  - (b) The employer shall consult its employees on the employer's intention to apply for an exemption and the application for exemption must contain details and proof of the consultation process. The proof of the consultation process shall include written confirmation by the employer that the substantive reasons motivating for the application for exemption have been disclosed to its employees.
  - (c) The employer, in the application shall furnish all relevant financial information supporting the motivation for the exemption applied for.
  - (d) The Board shall make a decision on the application for an exemption within 30 days from the date upon which it was lodged with the Council.




- (e) If an application for exemption is granted to an employer and written proof of such exemption is issued to the employer, the employer shall ensure that such written proof of exemption is contained and displayed at all establishments to which the exemption is applicable.
- (6) In the case of an application for exemption relating to actual and / or guaranteed increases the following procedure shall apply:
  - (a) Individual employers seeking exemption to pay a lesser actual wage increase and/or a guaranteed increase or to be exempted from paying such must obtain the wage exemption application form available on request from the Council for consideration by the Board.
  - (b) Applications for exemption not to pay the agreed prescribed minimum wage increases will not be accepted or considered in terms of these exemption procedures.
  - (c) The application must be lodged with the Council and must include the following supporting documents –
    - (i) Formal financial information;
    - (ii) A written motivation; and
    - (iii) Details and proof of the consultation process between the employer, employees and relevant MIBCO Trade Unions.
  - (d) Applications must be lodged with the Council and considered within 21 calendar days from the date the Council has circularised all employers with the amending Agreements and wage schedules, either hand delivered or by registered mail or by fax or E-mail, in the prescribed format.

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- (e) The Board must make a decision on the application within 14 calendar days of the conclusion of the first period, i.e. 21 days as referred to in sub-clause (d) hereof.
  - (f) Applicant employers shall be advised of the outcome within seven days by fax where applicable and by registered mail.
  - (g) Establishments may appeal to the Independent Board within 14 calendar days from the date of receipt of the registered post or fax advising of the rejection of the application.
  - (h) All hearings will be attended by the Council's Auditors to assist with the interpretation of the financial information.
- (7) The General Secretary of the Council shall -
- (a) number consecutively all licences issued;
  - (b) retain a copy of each licence issued; and
  - (c) where exemption is granted to an employee, forward a copy of the licence to the employer concerned.
- (8) The General Secretary of the Council shall issue to every person granted a licence, a letter of authority signed by him setting out, read with the changes required by the context, the information referred to in sub-clauses (6) and (7) above.
- (9) The Council shall determine on an annual basis, for the avoidance of any doubt, at the beginning of each financial year the remuneration to be paid to the



members of the Board other than the General Secretary for their services to the Council.

#### CLAUSE 6 - INDEPENDENT BOARD

- (1) In terms of section 32(3)(e) of the Act the Council hereby establishes an independent body, to be known as the Independent Board, to consider appeals from parties and non-parties against a refusal by the Exemptions Board of a party's or non-party's application for exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council. The following provisions shall apply to the Independent Board:

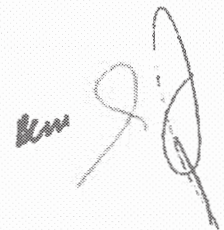
(a) The Council shall appoint 6 (six) independent persons (Members) to constitute the Independent Board, for the avoidance of doubt, such persons shall not be a representative, office bearer or official of the Council or party to the Council or any of its collective bargaining agreements. The independent persons shall be appointed for a period of 12 (twelve) months and shall possess *inter alia* the following qualities:

- (i) the ability to be objective, independent and impartial;
- (ii) sound decision-making skills;
- (iii) leadership qualities, particularly in respect of exercising sound judgment;
- (iv) be a person in whose impartiality and integrity the public can have confidence;
- (v) understand and comply with confidentiality requirements;
- (vi) working knowledge and experience of labour and collective bargaining matters; and
- (vii) knowledge and understanding of judicial / quasi-judicial processes.





- (b) The Council shall determine such other terms of appointment of Members of the Independent Board subject to the provisions of the Labour Relations Act.
- (2) Any party or non-party may lodge an appeal with the Independent Board against the decision of the Council, or Wage Exemptions Board, as the case may be, to refuse to grant an application for an exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council, in which event the following procedure shall apply:
- (a) An appeal shall be in writing and shall be addressed to the General Secretary of the Council for consideration by the Independent Board.
  - (b) All appeals lodged by non-parties shall be considered by the Independent Board with due regard to the Appeal criteria set out in subclause 7 (Exemption criteria) of this clause 6.
  - (c) All appeals to the Independent Board shall be substantiated or motivated by the applicant and shall include the following details:
    - (i) the period for which the exemption is required;
    - (ii) the Agreement and clauses or subclauses of the Agreement from which exemption is required;
    - (iii) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives; and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.
- (3) The Independent Board may, having regard to the individual merits of each appeal, grant or refuse the appeal if -

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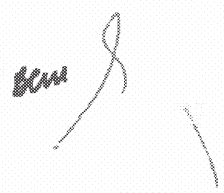
- (a) it does not undermine the agreement;
  - (b) it is fair to the employer or his employees and other employers and employees in the Industry.
- (4) The Independent Board shall deal with all appeals within 30 days of the date on which the appeal was submitted. The Independent Board may however defer a decision to a following meeting if additional motivation or substantiation or information is considered necessary to make a decision on the appeal.
- (5) Once the Independent Board has granted an exemption, it must issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.
- (6) When the Independent Board dismisses or dismisses part of an appeal for exemption it shall advise the applicant(s) within 14 days of the date of such decision.
- (7) **Exemption criteria:** The Independent Board must consider all appeals with reference to the following criteria:
- (a) the written substantiation and motivation submitted by the applicant;
  - (b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
  - (c) the scope of exemption required;
  - (d) the infringement of basic conditions of employment rights;



- (e) the fact that a competitive advantage is not created by the exemption;
  - (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
  - (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Motor Industry;
  - (h) any existing special economic or other circumstances which warrant the granting of the exemption;
  - (i) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
  - (j) any recommendation from the Council.
- (8) The Council shall determine on an annual basis, for the avoidance of any doubt, at the beginning of each financial year the remuneration to be paid to the members of the Board other than the General Secretary.

#### CLAUSE 7 - DEDUCTIONS FROM EARNINGS

- (1) Unless otherwise provided for in this Agreement or the Main Agreement, no deductions or set-off of any description, shall be made from the earnings that an employee would normally be entitled to receive other than the following:
- (a) Deductions made with the written consent of the employee and of the Regional Council or the Council for –
    - (i) holiday, insurance, provident and/or pension funds or medical aid



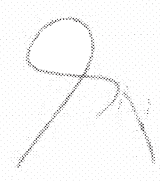


schemes where these are not administered by a Regional Council or the Council, and where an employee through negotiations between himself and his employer agrees on the amount to be paid by the employee to accept board and/or lodging from his employer;

- (ii) tea, sports or similar clubs;
- (iii) purchases by employees from their employers;
- (iv) traffic fines in cases where the guilty person(s) have been identified beyond doubt; provided that in the event of an employee being required to drive an unroadworthy or unlicensed vehicle, such fines shall be excluded;

Provided that in the case of Division B employees who are in receipt of remuneration, excluding commission on sales, in excess of amounts as determined by Council from time to time, the deductions referred herein, together with other similar deductions, may be made subject to the written consent of the employee only: Provided further that such deductions are not in conflict with any contract on commission work that exist between the employer and employee.

- (b) Contributions to Council funds in terms of clause 13 of this Agreement and contributions to any sick benefit, provident and/or pension funds administered by any Regional Council or the Council.
- (c) Any amount paid by an employer compelled by law, ordinance, or legal process to make payment on behalf of an employee.
- (d) Subscriptions to MISA and NUMSA, in terms of clause 14 of this Agreement, or to such other registered trade union as may be approved by a Regional Council or the Council.





- (e) Any amount an employer deducts to pay a financial institution approved by the Council in respect of a housing loan for which any of the Pension or Provident Funds administered by the Council provide collateral security.
- (2) An employer who has made a deduction in terms of this sub-clause shall pay the amount deducted to the Secretary of the Regional Council concerned by not later than the 10th day of the month following that during which the deduction was made, or in the case of sub-clause 1(e) to the appropriate person or authority in terms of any law, ordinance or legal process or to the approved financial institution referred to in that sub-clause: Provided that the maximum deduction may not exceed 30% of an employee's weekly/monthly earnings including deductions for the payment of housing loans, and provided further that statutory deductions will not form part of this limitation.
- (3) Subject to the provisions of Clause 22 of this Agreement, should any amount due in terms of this clause not be received by the Council by the 16th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in terms of clause 22 of this Agreement, from such 16th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

#### CLAUSE 8 - ADMINISTRATION & ENFORCEMENT OF AGREEMENT

- (1) The Motor Industry Bargaining Council - MIBCO, registered in terms of section 29 of the Act, hereinafter referred to as the "Council", shall be the body responsible for the administration, interpretation, implementation and enforcement of any provision of this Agreement, the Main Agreement or any



other collective Agreements entered into by the parties to the Council.

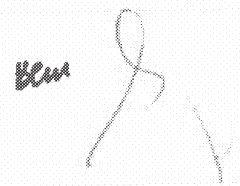
- (2) The Council may, in terms of its Constitution, appoint Regional Councils for such Regions as it may establish from time to time.

#### CLAUSE 9 - AGENTS

- (1) The Council or any Regional Council may appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement and any other collective agreement of the Council, and it shall be the duty of every employer and every employee to permit such persons to enter such establishment, institute and complete such enquiries and to examine such documents, books, wage sheets, time sheets and pay tickets, question such individuals and to do all such acts as may be necessary for the purpose of ascertaining whether the provisions of this Agreement and any other collective agreement of the Council are being observed.
- (2) The Council may also request the Minister to appoint the designated agents referred to in section 33 of the Act whose functions shall include the promotion of and enforcement of any collective bargaining agreement of the Council.

#### CLAUSE 10 - REGISTRATION OF EMPLOYERS AND EMPLOYEES

- (1) Every employer, unless he has already done so, shall in respect of each place at which he carries on business, complete a statement in the form of Annexure A, to this Agreement and lodge such statement with the secretary of the Regional Council within whose area of jurisdiction such place of business is situated, not later than 30 days after the date -
  - (a) on which this Agreement comes into operation in the case of any place(s) of business which he is operating at that date; or
  - (b) Date of the commencement or discovery of the business at any such





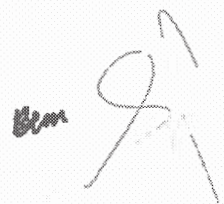
place.

- (2) Every employer shall, within one month after such change, notify the secretary of the Regional Council concerned of any change in -
- (a) the ownership; and/or
  - (b) the name; and/or
  - (c) the address; and/or
  - (d) the partners, directors, members or managers, of the business.

#### CLAUSE 11 - EXHIBITION OF AGREEMENT AND POSTING OF NOTICES

Every employer upon whom this Agreement is binding must -

- (a) keep a copy of the Collective Agreements available in the workplace at all times;
- (b) make that copy available for inspection by any employee; and
- (c) give a copy of the collective 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.
- (d) affix and keep affixed in some conspicuous and readily accessible place upon his premises the undermentioned documents, which must be printed in legible characters in two official languages of the Republic of South Africa:
  - (i) a notice in the form specified by the Council, specifying the day of the week or month, as the case may be, and the time and place at which





wages will ordinarily be paid each week or month, as the case may be;

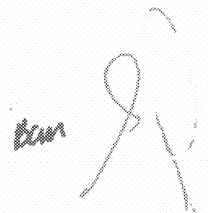
- (ii) a notice containing the official address of the Provincial Director, of the Department of Labour and of the secretary of the Regional Council within whose area of jurisdiction the employer is carrying on his business;
- (iii) a notice containing the starting and finishing times of each shift, in the case of filling and/or service stations where forecourt attendants are employed on a shift system.

#### CLAUSE 12 - RECORDS TO BE KEPT BY EMPLOYERS

(1) *Hours and wages record:*

- (a) Every employer shall, in respect of and at each place where he conducts business, keep available for inspection at all times records containing at least the following information:
  - (i) The employee's name and occupation, identity number / passport or permit number;
  - (ii) The time worked by each employee;
  - (iii) The remuneration paid to each employee;
  - (iv) The date of birth of any employee under 18 years of age; and
  - (v) Any other prescribed information.
- (b) Every employer shall keep the record referred to in paragraph (a) of this subclause for a period of three years from the date of the last entry in the record.

- (2) *Attendance record:* Every employer shall have available an attendance register in the form of BCEA 3 to the regulations promulgated in terms of the Basic Conditions of Employment Act, 1997, in which any employee who wishes to do so may, and every employee whose employer requires him to do so, shall record his correct times of arrival at and departure from work.



**CLAUSE 13 - RETURNS TO THE COUNCIL**

- (1) Every employer shall on each pay-day deduct from the earnings of each of his employees, other than apprentices, the levies specified in subclause (5) of this clause.
- (2) Every employer shall contribute and add to the levies deducted in terms of subclause (1) levies of an equal amount.
- (3) The total amount of levies deducted from the earnings of employees and contributed by employers in terms of subclauses (1) and (2) of this clause, respectively, shall be paid each month to the Council and shall be accompanied by a written or electronic statement containing the following details:
  - (a) The total number of employees employed and the total amount of levies remitted in respect of such employees; and
  - (b) in respect of all other employees, including apprentices -
    - (i) the family name, initials, sex, date of birth, occupation and identity number ( in the case of an employee who is not a south african citizen a passport number and a work permit number);
    - (ii) the amount of the levy remitted in respect of each employee;
    - (iii) the date on which service began or the date on which service ended, in the case of employees whose employment began or ended since the details were last submitted.



[Note: Journeymen shall be given numbered identity cards by the Council, and the trade union numbers must be inserted on monthly returns in terms of clause 14(1)(a) of this Agreement.]

- (4) Every employer shall pay the total amount of the levies payable and render the statement of details required each month in terms of subclause (3) of this clause to the secretary of the Regional Council concerned by not later than the 10th day of the month immediately following the month to which the levies and details relate.

- (a) The postal addresses of the secretaries of the various Regional Councils are as follows:

Region EC: PO Box 7270, Port Elizabeth, 6055;  
Region KZNL: PO Box 17263, Congella, 4013;  
Region FS & NC: PO Box 910, Bloemfontein, 9300;  
Region Highveld: PO Box 2578, Randburg, 2125;  
Region Northern: PO Box 13970, Hatfield 0028,;  
Region WP: PO Box 17, Bellville, 7535.

- (b) Forms prepared specifically for the inclusion of the details required by this clause are obtainable on application from the secretary of the Regional Council concerned.

- (5) The contributions in terms of subclause (1), shall be the sum of R 3.02 (three rand two cents) per week applicable to Employers and Employees:

Provided that -

- (i) where an employee receives wages for less than 23 hours, or has worked for less than 23 hours in a particular week, no contributions shall be payable by or in respect of him for that week; and

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- (ii) before an employee proceeds on annual leave, contributions due in respect of the period during which he is to be on leave shall be deducted.
- (6) Subject to the provisions of clause 22 of this Agreement, should any amount due in terms of this clause not be received by the Council by the 16th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in clause 22 of this Agreement from such 16th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.
- (7) The Council shall allocate all payments received from employers, including amounts which are not paid on due date or amounts which are due in terms of a DRC award, for the relevant period for which such payment is applicable.

#### **CLAUSE 14 - SUBSCRIPTIONS TO THE TRADE UNIONS AND EMPLOYERS' ORGANISATIONS**

- (1) (a) Every employer shall deduct from the wages of each of his employees concerned who are members of any of the Trade Unions that are Party to the Council, the amount of the subscription payable by such employees to the trade unions and shall pay to the Council's Shared Services Centre (SSC) having jurisdiction in the area concerned, the amount thus deducted and render a written statement containing the following details in respect of each employee from whose wages subscriptions have been deducted:
  - (i) The family name and initials, identity number/passport of permit number;

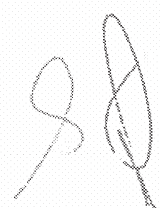


- (ii) the trade union membership number;
- (iii) the amount deducted; and
- (iv) the period in respect of which subscriptions were deducted.

(b) Every employer shall pay the subscriptions deducted and render the statement required in terms of paragraph (a) to the SSC by not later than the 10th day of the month immediately following the month to which the subscriptions relate.

[Note: Forms prepared specifically for the inclusion of the details required by this subclause are obtainable on application from the secretary of the Regional Council concerned.]

- (2) Every employer who is a member of the employers' organisations shall not later than the 10th day of each month forward to the secretary of the Regional Council concerned one twelfth of his annual subscriptions payable to the relevant employers' organisation, should such subscriptions not already have been paid direct to the said organisation.
- (3) Subscriptions received by the Council in accordance with the provisions of subclauses (1) and (2) of this clause on behalf of the employers' organisations and the trade unions shall be paid to the organisation or the trade union in question by not later than the 10th day of the month following that during which the subscriptions were received.
- (4) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in clause 22 of this Agreement from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be

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entitled in its absolute discretion to waive the payment of such interest or part thereof.

#### **CLAUSE 15 - EMPLOYEES' REPRESENTATIVES ON THE COUNCIL**

Employees' representatives on the Council or any Regional Council shall be given every reasonable facility by their employers to attend their duties in connection with meetings of such Councils.

#### **CLAUSE 16 - PROHIBITION OF CESSION OF BENEFITS**

No benefit arising out of an employee's contract of service, whether due by his employer or the Council, shall be capable of being ceded, and any such cession by an employee is prohibited. No purported cession of such benefits shall be binding on or be recognised by the Council or his employer unless such cession is in respect of moneys advanced by the Contingency Reserve provided for by clause 18 of this Agreement.

#### **CLAUSE 17 - PRESUMPTIONS**

An employee shall be deemed to be working in the employ of an employer, in addition to any period during which he is actually so working, during -

- (a) any period during which, in accordance with the requirements of his employer, he is present at or in any establishment;
- (b) any period during which he is in charge of any vehicle used in the industry, whether or not it is being driven;
- (c) the whole of any interval in his work if he is not free to leave the premises of his employer for the whole of such interval; or
- (d) the whole of any interval in his work if the duration of such interval is not



shown in the records required to be kept in terms of clause 12 of this Agreement:

Provided that, if it is proved that any such employee was not working and was free to leave the premises during any part of any period referred to in paragraphs (b), (c), (d) or (e), the presumption established by this clause shall not apply in respect of such employee with reference to that part of such period.

#### CLAUSE 18 - CONTINGENCY RESERVE

- (1) Leave pay, holiday bonus and additional holiday pay in the possession of the Council from employees who are members of the respective party trade unions and unclaimed by the beneficiaries after the expiration of three years from the date of receipt shall be paid -
  - (a) to Contingency Reserve A where the beneficiary is a member of MISA;
  - (b) to Contingency Reserve C, where the beneficiary is member of NUMSA; and
  - (c) to Contingency Reserve, where the beneficiary is an employee who is a non-party to this agreement.
- (2) Contingency Reserves A and 'C' (hereinafter referred to as the 'Reserves') shall be utilised for the benefit of employees who are members of the respective trade unions provided that -
  - (i) any such leave pay or additional holiday pay or part thereof as the Council may regard as being in excess of what is required to finance the Reserves shall be forfeited to the Council;

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- (ii) any leave pay or additional holiday pay that has been forfeited to the Council or paid to the Reserves in terms of this subclause, and that is subsequently claimed by the beneficiary, may be paid out at the discretion of the Council;
  - (iii) subject to proviso (ii), any money forfeited to the Council shall, in the case of a beneficiary who was a member of MISA or NUMSA, be credited separately in the books of account of the Council in an account to be styled the "A" or "C" Contingency Account respectively.
- (3) The Reserves shall be administered by the Council in accordance with principles formulated by the Council and a copy of the memorandum containing such principles and particulars of any amendments shall be lodged with the Director-General of Labour.
- (4) In the event of the dissolution of the Council, any moneys standing to the credit of the Reserves shall at the time of such dissolution be deemed to constitute part of the Council's cash assets and shall be dealt with accordingly: Provided that in the case of Contingency Reserve A such moneys shall be paid into any Benefit Fund established on behalf of MISA in terms of Clause 4 of its Constitution and approved by the Registrar of Labour Relations.
- (5) Subject to the provisions of subclause (4) of this clause, in the event of the expiration of this Agreement by effluxion of time or cessation for any other cause, the Reserves shall continue to be administered in terms of subclause (3): Provided that if another agreement for the industry is not negotiated within a period of two years after such expiration or cessation, any moneys standing to the credit of the Reserves shall be forfeited to the Council.
- (6) The cost of administering the Reserves referred to in this clause and the special Leave Pay Account referred to elsewhere in this Agreement shall be borne by the



Council, which may at their discretion invest any of the funds on hand with an approved bank and/or building society, and any interest accruing from such investment shall be retained by the Council to defray costs of administration of the Reserves and of the said Special Leave Pay Account.

#### **CLAUSE 19- DISHONoured CHEQUES**

Whenever an employer pays any sum of money, which is due to the Council in terms of this Agreement, in any manner other than in cash and such payment is not honoured for any reason whatever, then and in such event a penalty shall be payable by the employer to the Council in its sole discretion, which penalty shall be equal to the interest as determined by the Council from time to time of the amount of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.

#### **CLAUSE 20 - REVISION OF WAGES**

The wages prescribed for the Motor Industry shall be negotiable by the employers' organisation and the trade unions for a period to be agreed by the parties and implemented in terms of the main agreement.

#### **CLAUSE 21 - LEGAL COSTS**

- (1) For purposes of this clause "money" means any amount of money and includes money that an employer has to deduct or has deducted from moneys due to an employee by virtue of any obligation, but not paid over to the Council.
- (2) When the Council instructs an attorney to collect money from an employer, the employer shall be liable to the Council for all the legal costs incurred by the Council in the recovery of the amount due including costs on the attorney and own client scale irrespective of whether the Council instituted civil proceedings or arbitration proceedings or whether those proceedings have commenced or not.



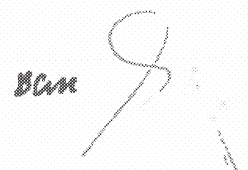
- (3) When the Council instructs a natural or legal person other than an attorney to collect money, then the employer shall be liable for the costs and fees determined by the Council to be the costs and fees payable by the Council to such person in the recovery of the amount due by the employer.

#### CLAUSE 22 - INTEREST CLAUSE

- 1 Whenever any amount payable to the Council in terms of this Agreement is not paid on the due date, other than amounts due in terms of the Pension Funds Act No. 24 of 1956 as amended from time to time ("PFA"), interest shall be payable monthly on such amount or on any such lesser amount as may remain unpaid, calculated from the due date at the interest rate of 1,5 per cent.
2. Interest on amounts not paid on due date in terms of the PFA shall accrue interest at the rate prescribed in the PFA. Interest collected by the Council in respect of amounts overdue in terms of the PFA shall be collected for the benefit of the provident and / or pension fund.

#### CLAUSE 23 - RESOLUTION OF DISPUTES

- (1) For the purpose of this Agreement, "dispute" means any dispute about the application, interpretation or enforcement of this Agreement, or any other collective agreements entered into by the parties to the Council.
- (2) Any such dispute shall be referred to the Council on the form specified by the Council. This provision shall not apply when the Council makes use of the procedure set out in subclause (4).
- (3) If the Council fails to resolve the dispute through conciliation and the dispute remains unresolved, such dispute shall be referred to arbitration to the MIBCO-Dispute Resolution Centre in terms of section 52 of the Act. The arbitrator shall have the power to decide upon the procedure to be followed at the arbitration






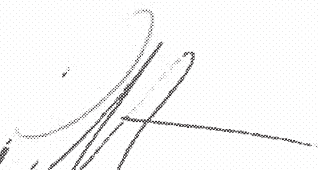
hearing in terms of section 138 of the Act, and be entitled to make an award in respect of the parties' arbitration costs in terms of section 138 (10) of the Act.

- (4) The provisions of this clause stand in addition to any other legal remedy through which the Council may enforce a collective agreement.
- (5) The arbitrator's decision shall be final and binding, subject to the parties' rights of review to the Labour Court.

Any other dispute shall have the same meaning as defined in the Act and shall be dealt with in terms of section 51 of the Act.

Signed at Randburg, on behalf of the parties, this 20<sup>th</sup> day of June 2018.

  
.....L.D. BOUCHIER  
PRESIDENT OF THE COUNCIL

  
.....V. POTTERTON  
VICE PRESIDENT OF THE COUNCIL

  
.....B.C. MKHWANAZI  
GENERAL SECRETARY OF THE COUNCIL

THE MOTOR INDUSTRY BARGAINING COUNCIL - MIBCO



**ANNEXURE A**  
**[Specified in clause 8(1) of this Agreement]**

Date: .....

The Regional Secretary  
The Motor Industry Bargaining Council - MIBCO  
Regional Council .....  
P O Box .....  
.....

Dear Sir

**REGISTRATION AS EMPLOYER IN THE MOTOR INDUSTRY**

In accordance with clause 8(1) I hereby furnish the following particulars in connection with this business:

1. Name under which business is carried on .....  
.....
2. Address at which business if carried on .....
3. Telephone No. ....  
Fax No. ....  
E-Mail Address: .....  
Cell Phone No. ....

