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**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY**

**MAIN COLLECTIVE AGREEMENT**

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

between the

***Road Freight Employers' Association***

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

the

***Motor Transport Workers' Union (South Africa)***

***Professional Transport Workers' Union of South Africa***

***South African Transport and Allied Workers' Union***

***and***

***Transport and Allied Workers' Union***

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the National Bargaining Council for the Road Freight Industry to amend the Agreement published under Government Notice R.493, and R.494 of 30 April 2004, R.769 of 25 June 2004, R.173 of 25 February 2005, R.496 and R.297 of 27 May 2005 and R.585 and R.586 of 22 May 2009.

**1. SCOPE OF APPLICATION**

(1) The terms of this Agreement shall be observed in the Road Freight Industry:-

(a) by all the employers who are member of the employers' organization and by all employees who are members of the trade unions, and who are engaged and employed therein, respectively;

(b) In the A Area, which consists of the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan [excluding those portions of the Magisterial Districts of Boksburg and Brakpan which, prior to the publication of Government Notice No. R. 1779 of 6 November 1964, fell within the Magisterial District of Heidelberg, and excluding those portions of the Magisterial District of Brakpan which, prior to 1 April 1966 and 1 July 1972 (Government Notices Nos. R. 498 and R. 871 of 1 April

1966 and 26 May 1972, respectively), fell within the Magisterial District of Nigel], Delmas, Germiston, Johannesburg, Kempton Park [excluding those portions which, prior to 29 March 1956 and 1 November 1970 (Government Notices Nos. R. 556 and R.1618 of 29 March 1956 and 2 October 1970, respectively), fell within the Magisterial District of Pretoria], Krugersdorp [including those portions of the Magisterial Districts of Koster and Brits which, prior to 26 July 1963 and 1 June 1972, respectively (Government Notices Nos. R. 1105 and R. 872 of 26 July 1963 and 26 May 1972, respectively), fell within the Magisterial District of Krugersdorp], Oberholzer (excluding that portion of the Magisterial District of Oberholzer which, prior to the publication of Government Notice No. R. 1745 of 1 September 1978, fell within the Magisterial District of Potchefstroom), Randburg (excluding that portion which, prior to the publication of Government Notice No. R. 2152 of 22 November 1974, fell within the Magisterial District of Pretoria), Randfontein (including that portion of the Magisterial District of Koster which, prior to the publication of Government Notice No. R. 1105 of 26 July 1963, fell within the Magisterial District of Randfontein, but excluding the farms Moadowns 1, Holfontein 17, Leeuwpan 18, Ireton 19, Pahtiki 20, Bospan 21 and Rietfontein 48), Roodepoort, Springs, Vanderbijlpark, Vereeniging and Westonaria; and

- (c) in the B Area, which consists of the rest of the Republic of South Africa, excluding the Magisterial Districts specified in paragraph (b) except where otherwise indicated.
- (2) Notwithstanding the provisions of sub-clause (1), this Agreement shall apply only to employees for whom minimum wages are prescribed herein and to the employers of such employees.
- (3) Notwithstanding the provisions of sub-clause (2), this Agreement shall not apply to an owner-driver, as defined, who possesses only one motor vehicle and who is the permanent driver of such vehicle, or to the employees employed by him, except insofar as clauses 3 and 5(4) are applicable.
- (4) The provisions of clauses 1(1)(a) and 1A of this Agreement shall not apply to employers and

employees who are not members of the employers' organization and the trade unions, respectively, who entered into this Agreement, unless the Minister of Labour has declared the Agreement binding on such employers and employees in terms of section 32(2) of the Labour Relations Act, 1995.

- (5) The provisions of clauses 31, 43, 45(1), 49 and 50(3) of this Agreement shall not apply to employers who are not members of the employers organization and the trade unions respectively, who entered into this Agreement.

### **1A. 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 Labour Relations Act, 1995, and shall remain in force until 28 February 2011.

### **2. DEFINITIONS**

(1) Unless the contrary intention appears, any expression used in this Agreement which is defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to the singular shall include the plural and vice versa, any reference to any gender shall include the opposite gender, any reference to an Act shall include any amendment to such Act and further, unless inconsistent with the context -

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"artisan assistant" means an employee who assists an artisan by working on basic tasks such as removing covers, taking motors apart and doing repairs on basic equipment under supervision, using limited tools and manual equipment and also assisting in cleaning the work area and workshop;

"averaging of hours of work" means an averaging of hours of work as referred to in clause 5 (6);

"checker, grade I" means an employee who checks the assembling, packing, unpacking, weighing, stacking,

loading, unloading, marking or addressing of goods or containers and who checks, enters or records particulars of such goods or containers manually to a written or electronic

**statement;**

**“checker, grade II” means an employee who checks the assembling, packing, unpacking, weighing, stacking, loading, unloading, marking or addressing of goods or containers and who checks, enters or records particulars of such goods or containers manually to a written or electronic statement and who supervises and checks the work of a general worker;**

**“compressed working week” means a compressed working week referred to in clause 5 (5);**

**“Custodian” “Means an employee who drives a motor vehicle and is engaged in the guarding and handling of cash, valuables, securities and negotiable documents in transit and who may be required to carry firearms, in addition the employee will be required to replenish Automated Teller Machines.”**

**“Council” means the National Bargaining Council for the Road Freight Industry;**

**“Dangerous Goods Driver” means a driver who has qualified as a dangerous goods driver and holds the appropriate PDP and hazardous goods certificate and who has been specifically employed to transport goods by a company who is registered accordingly to operate as a transporter of dangerous goods;**

**“day” for the purposes of calculating a night-shift allowance, means a period of 24 hours from midnight to midnight, and in the case of a normal working day or of an employee who works shifts, it means a period of 24 hours reckoned from the time work commences;**

**“despatch clerk” means an employee who -**

- (a) is responsible for the receipt, packing or despatch of goods or containers from a store, warehouse or storage place;**
- (b) may supervise and check the work of a checker, grade I or II or a general worker;**  
**and**
- (c) utilises information and data stored manually, or electronically on a computer system;**

**“driver” means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition the expression “drives a motor vehicle” includes all periods of driving,**

**all periods during which he is obliged to remain at his post in readiness to drive and any time spent by him in connection with the vehicle or its load;**

**"emergency services" means any work which, owing to unforeseen causes such as fire, storm, accident, act of violence or theft, must be done without delay and includes work essential for the maintenance of light, power or water supplies or sanitary and telephone services and the transportation of machinery or any other thing to prevent any serious disruption in any undertaking, industry, trade or occupation, including transportation for the SA Police Service or for purposes of national defence and completing the en route transportation and unloading of perishable products to prevent spoilage;**

**"employer" means any person whomsoever who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate him or who, subject to section 3 of the Act, permits any other person whomsoever in any manner to assist him in the carrying on or conducting of his business or undertaking and "employ" has a corresponding meaning;**

**"employment" has the same meaning as set out in clause 20 (7);**

**"establishment" means any premises on or in connection with which one or more employees are employed in the Road Freight Industry;**

**"extra-heavy motor vehicle (articulated)" means a motor vehicle (articulated), the gross combination mass of which exceeds 16 000 kg but not 25 000 kg;**

**"extra-heavy motor vehicle (rigid)" means a motor vehicle (rigid), the gross vehicle mass of which exceeds 16 000 kg but not 25 000 kg;**

**"forestry in – field operations" means from the point of felling trees to the mill;"**

**"furniture removal sector" means all transport employers within the scope of the Council that exclusively transport and store furniture that is new and or used furniture and or appliances for household and or business;"**

**"gantry crane operator, grade I" means an employee who is engaged in driving a gantry crane with a lifting capacity exceeding 6 000 kg, or in operating or controlling it from the floor of an establishment;**

"gantry crane operator, grade II" means an employee who is engaged in driving a gantry crane with a lifting capacity not exceeding 6 000 kg, or in operating or controlling it from the floor of an establishment;

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

- (a) Opening, closing, nailing up, sewing up, marking, tying, filling or emptying bales, vats, packing cases, boxes, tins, cartons, drums, bags or containers;
- (b) assisting in the loading or unloading of containers;
- (c) throwing over or removing tarpaulins or plastic coverings;
- (d) sealing or opening messages, packages, letters or goods and delivering or transporting them on foot, by pedal cycle or tricycle, or by hand-operated vehicle;
- (e) carrying, lifting, pulling, pushing, dragging, packing, unpacking, repacking, stacking, rolling up, shifting, loading or unloading any goods, containers, packages or vehicles, wheelbarrows, trolleys or other hand-operated vehicles, other than by using power-driven equipment;
- (f) pasting labels on goods or marking, branding, stamping or stencilling goods, or perforating labels;
- (g) parcelling, wrapping or tying goods;
- (h) replacing towels, soap or toilet paper;
- (i) cleaning goods or containers;
- (j) setting up or taking apart ready-made cardboard or fibreboard boxes or similar containers by hand;
- (k) shovelling or scattering stone, gravel, soil, clay, sand or other raw materials with a shovel;
- (l) boring, scraping down or sandpapering by hand;
- (m) guarding motor vehicles, goods or the loads on motor vehicles;
- (n) operating a hand-operated crane, hoist, pump, duplicating machine, jack or winch;

- (o) assisting an artisan in ways other than by using the tools of his trade independently;
- (p) washing overalls, uniforms, protective clothing, packing material or blankets;
- (q) working on a motor vehicle, trailer or semi-trailer, or accompanying it on trips;
- (r) repairing packing cases, cases, crates or pallets by hand;
- (s) cleaning premises, pallets, vehicles or machinery;
- (t) preparing rations or making or serving tea or similar beverages for employees or making or serving tea or other refreshments for the employer or his guests;
- (u) using rubber or other stamps where selection or discretion is not needed;
- (v) opening or shutting railway trucks or containers;
- (w) applying paint or anti-rust agents to goods, trailers or semi-trailers by hand;
- (x) removing, replacing, changing or pumping wheels, tyres or tubes of motor vehicles, front-end loaders, mobile hoists, trailers, semi-trailers, cycles, wheelbarrows, trolleys or other hand-driven vehicles, or repairing tubes; and
- (y) any other manual labour not specifically defined herein;

“general worker, repair shop” means an employee who assists an artisan by doing manual and physical tasks, which include carrying tools, cleaning parts, cleaning the work area, packing away tools and helping where needed;

“goods” means any movable property, including but not limited to any article, commodity or substance such as sand, soil, gravel, stone, coal, water or other liquid, gaseous or solid matter and containers or containerised goods;

"gross combination mass" in relation to a motor vehicle (articulated) that is used to draw another motor vehicle, means the maximum mass of the combination of vehicles, including that of the drawing motor vehicle and its load, as specified by the manufacturer or, in the absence of such specification, as determined by the registering authority concerned;

"gross vehicle mass" in relation to a motor vehicle (rigid), means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such

specification, as determined by the registering authority concerned;

**“HAZCHEM Employees” shall mean a driver who is qualified as a Dangerous Goods Driver and holds an appropriate DGP and the driver’s assistant who accompanies the driver and who are both employed specifically to transport dangerous goods of a company which is registered accordingly to operate as a transporter of dangerous goods;**

**"heavy motor vehicle (articulated)" means a motor vehicle (articulated) the gross combination mass of which exceeds 9 000 kg but not 16 000 kg;**

**"heavy motor vehicle (rigid)" means a motor vehicle (rigid), the gross vehicle mass of which exceeds 9 000 kg but not 16 000 kg;**

**"hourly wage rate" means the weekly wage divided by the number of ordinary hours of work set out in clause 5 (1) (a);**

**"hours of work" includes all periods of driving and any time spent by a driver, security officer or any other employee on other work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to work when required to do so, but does not include any meal interval as prescribed in clause 5 (2) or any period in respect of which a subsistence allowance is payable to an employee in terms of clause 16, if during such interval or period the employee does no work other than remaining in charge of the vehicle and its load, if any, or guarding the vehicle and its load, if any;**

**"internal motor vehicle" means a motor vehicle used on the premises of or inside an establishment;**

**“In-Laws” “Means biological parents related to employee by means of his lawful marriage”**

**"law" includes the common law;**

**"light motor vehicle" means a motor vehicle, the gross vehicle mass or gross combination mass of which does not exceed 3 500 kg;**

**“loader operator, grade I" means an employee who operates a power-driven front-end loader with a lifting capacity exceeding 6 000 kg, used in the loading, shifting or unloading of**

**soil, sand, stones, gravel or any other raw materials, goods or containers;**

**"loader operator, grade II" means an employee who operates a power-driven front-end loader with a lifting capacity not exceeding 6 000 kg, used in the loading, shifting or unloading of soil, sand, stones, gravel or any other raw materials, goods or containers;**

**"medium motor vehicle (articulated)" means a motor vehicle (articulated), the gross combination mass of which exceeds 3 500 kg but not 9 000 kg;**

**"medium motor vehicle (rigid)" means a motor vehicle (rigid), the gross vehicle mass of which exceeds 3 500 kg but not 9 000 kg;**

**"mobile hoist operator, grade I" means an employee who is engaged in operating a power-driven mobile hoist or fork-lift truck with a lifting capacity exceeding 6 000 kg used in the loading, unloading, moving or stacking of goods or containers, but does not include an internal motor vehicle;**

**"mobile hoist operator, grade II" means an employee who is engaged in operating a power-driven mobile hoist or fork-lift truck with a lifting capacity not exceeding 6 000 kg used in the loading, unloading, moving or stacking of goods or containers, but does not include an internal motor vehicle;**

**"month" means a calendar month, which is one of the 12 named periods into which a year is divided;**

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

**"motor vehicle" means any self-propelled vehicle used for conveying goods or containers and includes a truck-tractor, a motorcycle, a motor tricycle and a tractor, but does not include a mobile hoist;**

**"motor vehicle (articulated)" means a combination of vehicles consisting of a motor vehicle and a semi-trailer or trailer or trailers;**

**"motor vehicle (rigid)" means a motor vehicle other than a motor vehicle (articulated);**

**"night work" means work performed after 18h00 and before 06h00 the next day;**

**"ordinary hours of work" means the ordinary hours of work prescribed in clause 5 (1) or, if by agreement between an employer and his employee the latter works a lesser number of**

**ordinary hours, such lesser hours;**

**"overtime" means, subject to the provisions of clause 8 (3), all hours worked in excess of the ordinary hours of work prescribed in clause 5 (1), other than on a Sunday or a paid holiday;**

**"owner-driver" means an employer who is the owner or part-owner or leaseholder or renter of one or more motor vehicles used in transporting goods for hire or reward and who himself drives any such motor vehicle;**

**"packer/loader, grade I" means an employee who is responsible for packing or loading furniture into any container or into or out of a vehicle or unloading or unpacking furniture;**

**"packer/loader, grade II" means an employee who is responsible for packing or loading furniture into any container or into or out of a vehicle or unloading or unpacking furniture and who supervises the activities of a general worker;**

**"paid holiday" means any of the public holidays specified in Schedule 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994);**

**"part-time employee" means an employee who does not work full-time, but who is employed on a permanent basis and who is only required to work a fixed and limited number of hours per day, per week or per month;**

**"relief employee" means an employee, other than a temporary employee of a temporary employment service, who is employed by the same employer for not more than 16 shifts in a 30-day period and not more than 144 shifts in a 52-week period;**

**"Road Freight Industry" or "Industry" means the Industry in which employers and employees are associated for carrying on one or more of the following activities for hire or reward:**

**(i) The transportation of goods by means of motor transport;**

**(ii) the storage of goods, including the receiving, opening, unpacking, packing, despatching and clearing or**

**accounting for of goods where these activities are ancillary or incidental to paragraph**

**(i); and**

**(iii) the hiring out by temporary employment services of employees for activities or**

**operations which ordinarily or naturally fall within the transportation of goods, irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer; but the "transportation of goods" does not include the following:**

- (i) The undertakings, industries, trades or occupations in respect of which the Transnet Industrial Council was registered on 2 October 1991; the interests in respect of which that Council was registered being the undertakings, industries, trades or occupations of Transnet Ltd as engaged in by Spoornet, South African Airways, Autonet, Portnet, Transnet, Transwork, Promat and Protekon, or any other business, undertaking, industry, trade, occupation, unit, department or section of Transnet Ltd;**
- (ii) the Motor Ferry Industry, which means the Industry in which employers and employees are associated for the transportation of motor vehicles by road, sea or rail, between vehicle manufacturers and motor dealerships;**

**"running repairs" means repairs to a vehicle and its component parts that can be effected by the driver, a security officer, grade A, or a general worker with tools normally supplied by the manufacturer of such vehicle, which includes normal tools required to change or pump a wheel, screwdrivers, pliers, spare globes and adjustable spanners;**

**"seasonal worker (Sugar Transport Sector)" means an employee who is in the permanent employ of an employer transporting sugar cane and who, owing to the seasonal nature of the Sugar Industry, is required to report for duty only as and when required by his employer;**

**"security guard" means an employee, other than a security officer, who is engaged in one or more of the following duties:Guarding, protecting or patrolling premises, buildings, structures or other fixed or movable property, whether or not he handles or controls dogs in the performance of any or all of the said duties;**

**"security officer, I" means an employee who drives a motor vehicle and is engaged in the guarding of cash and valuables and the guarding and handling of securities and negotiable documents in transit and who may be required to carry firearms;**

**"security officer, II" means an employee who is engaged in the guarding and handling of**

cash, valuables, securities and negotiable documents in transit and who may be required to carry firearms;

"security officer, III" means an employee who receives, issues, moves and controls cash-carrying containers conveyed between security officers, I or II, and bank officials and who may be required to carry firearms;

"semi skilled artisan" means an employee who ,although still under the supervision of an artisan, works independently on jobs but is not held fully responsible for final checking and who doe more complex repairs, uses fault-finding equipment, chooses alternative ways of carrying out tasks, operates electrical and mechanical equipment and who may be required to do jobs such as basic welding, and who is not fully qualified as an artisan but could over a period of time do a trade test and qualify as such;

"semi-trailer" means a trailer without a front axle and designed or adapted to rest on and be drawn by a truck-tractor;

"shift" means any consecutive period of work, subject to the provisions of clause 5 (1), in the course of a working day, as defined, that has been set by an employer for an employee, but shall not be deemed to include any period of overtime, as defined: Provided that each paid holiday, each Sunday on which an employee is required to work, each Saturday on which an employee works at least nine overtime hours or each working day of absence on leave, sick leave, family responsibility leave, study leave or on the instruction of the employer, as prescribed in this Agreement, shall be computed as one shift and where an employee works from Monday to Friday and is credited with five shifts in respect of such days, then any ordinary hours worked on a Saturday shall be accumulated and for every nine ordinary hours so accumulated the employee shall be credited with one shift and any ordinary hours accumulated in excess of nine hours shall be accumulated towards the next qualifying cycle of nine hours;

"short time" is only applicable to the furniture removal sector;"

"storeman (warehouse)" means an employee who is in charge of stocks, of incoming goods or containers and who is responsible for receiving, recording, storing, packing or

**unpacking goods or containers in a store or a warehouse or a storage place and for delivering goods or containers from a store, warehouse or storage place for despatch;**

**"storeman (workshop)" means an employee who is engaged in receiving, recording, storing, unpacking and issuing spares for the repair and maintenance of vehicles;**

**"substantive issues" means all issues involving cost and affecting the wage packets of employees;**

**"Sugar Cane Sector" means that portion of the Sugar Transport Sector in which employers and employees are primarily associated for the handling and transportation of sugar cane and associated products between the fields and mills for hire or reward;**

**"sugar cane in – field operations" means operations between the point of harvesting sugar cane and the mill;**

**"team leader" means an employee who, under general supervision, is in charge of a group of general workers and who may keep records of the work they do and engage in the same work;**

**"temporary employee of a temporary employment service" means a temporary employee of a temporary employment service referred to in clause 18(1) of the Main Agreement and who renders services to a client that operates in the Road Freight Industry and who falls within the registered scope of the Council;"**

**"temporary employment service" means any person or labour broker who, for reward, procures for or provides to a client other persons who –**

- (a) render services to or perform work for the client; and**
- (b) are remunerated by the temporary employment service;"**

**"tractor" means a motor vehicle designed or adapted mainly for drawing other vehicles and not for carrying any load;**

**"trailer" means a vehicle that is not self-propelled, but is designed or adapted to be drawn by a motor vehicle;**

**"truck-tractor" means a motor vehicle designed or adapted to draw other vehicles and not to carry any load other than in the form of a trailer, semi-trailer or ballast resting on it and**

**does not include a tractor;**

**"ultra-heavy motor vehicle" means a motor vehicle, the gross vehicle mass or gross combination mass of which exceeds 25 000 kg;**

**"Vehicle Guard" Means an employee who is engaged to provide a protective, armed service to the security officer II, in securing an area, guarding of cash and valuables, securities and negotiable documents in transit;**

**"wage" means the amount of money payable to an employee as a basic wage in terms of clause 7 in respect of his ordinary hours of work as prescribed in clause 5 (1) and excludes any bonus: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work a larger amount than that prescribed in clause 7, it means such larger amount;**

**"wage register" means the record required to be kept by an employer in terms of clause 42;**

**"working day" means any period of ordinary hours of work and overtime, as defined, and any meal intervals and rest intervals referred to in clause 5 (2) and (3), respectively, falling within a single 24 hour cycle and shall be deemed to commence at the time at which an employee commences work during such cycle;**

**"year", in respect of an employee, means any period of employment in the Industry extending over a period of 252 completed shifts.**

- (2) The Council shall be the body responsible for the administration of this Agreement and may, for the guidance of employers and employees, issue interpretations and rulings not inconsistent with the provisions hereof or of the Act.**

### **3. REGISTRATION OF AND PARTICULARS TO BE FURNISHED BY EMPLOYERS**

**(1) Every employer or owner-driver who has not already done so in pursuance of a previous Agreement of the Council, and every employer or owner-driver who enters the Industry shall, within 30 days of the date of coming into operation of this Agreement or within 30 days of entering the Industry, as the case may be, furnish the Council with a statement for each of his establishments in the form of Annexure A.1, specified for this purpose by the Council, reflecting -**

- (a) his full names, identity number and home address, or those of each partner, trustee,**

**director or member if the employer is a partnership, trust, company or close corporation;**

**(b) the name of the partnership, trust, company or close corporation and its registration number;**

**(c) the trading name, if any;**

**(d) the physical and postal address of each establishment, together with the telephone and fax number and e-mail address, if any;**

**(e) the names, identification numbers and addresses of all persons covered by this Agreement, as well as their dates or years of birth, where possible;**

**(f) where applicable, the number of motor vehicles used in his or its business, together with their registration numbers and the registered gross vehicle mass of each vehicle; and**

**(g) the Magisterial District of the establishment.**

**(2) If the Council has reason to believe that the gross vehicle mass is not correctly registered, the Council shall request the employer to produce the registration certificate so as to decide the issue.**

**(3) On receipt of the particulars referred to in sub-clause (1), the Council shall issue to the employer a Certificate of Registration in the form of Annexure A.2.**

**(4) Every registered employer shall notify the Council within 30 days, in writing, of any changes in the particulars furnished by him on registration.**

**(5) Other documents specified for use and referred to elsewhere in this Agreement shall be in the form of -**

**(a) Annexure B - Certificate of Service [clause 28 (1)];**

**(b) Annexure C - Wage Envelope [clause 6 (1) (ii)];**

**(c) Annexure D - Monthly Assessment Return [clauses 11 (6) and (7), 12 (13) and (14), 18 (7),**

**(8) and**

**(10), 19 (1) (c), 21 (1) (c), 22 (1) (c), 30 (4), 31 (1) (a), 32 (1) (c), (d), (2) and (3) and 54];**

**(d) Annexure E - Pro Rata Accrued Shift Entitlement Advice Voucher [clauses 19 (1) (d), 21 (1) (d) and 27 (5)];**

**(e) Annexure F - Annual Leave Pay/Bonus Payment Voucher [clauses 19 (8) (a) (i) and 21 (3) (iii)];**

(f) Annexure G - Retrenchment Advice [clause 51 (3)]; and

(g) Annexure H - Notice of Termination of Employment [clause 27 (2)].

(6) The onus shall rest with the employer for ensuring that he has an adequate stock of the Annexures referred to in sub clause (5) at all times.

#### 4. CONTRACT OF EMPLOYMENT

(1) Every employee, other than a relief employee or a temporary employee of a temporary employment service, shall be deemed to be a weekly employee, whether he has worked the full number of specified hours or less in any week.

(2) *Differential wage:* An employee, other than a temporary employee of a temporary employment service, who on any day performs work in a class for which a higher wage is prescribed in clause 7 than his usual wage for his usual class of work, shall be paid such higher wage in respect of the whole of such day, irrespective of the number of hours worked on that day in that class of work. A relief employee who on any day performs classes of work for which different wages are prescribed in clause 7, shall be paid at the highest such wage for that day, plus an additional premium of 10 per cent of such highest wage.

(3) *Calculation of monthly wage:* An employee's monthly wage shall be calculated at four and a third times his weekly wage prescribed in clause 7, or at four and a third times any higher weekly wage normally paid to him.

(4) *Incentive work:* (a) Provided that the time and wage register prescribed in clause 42 of this Agreement is properly kept and that an employee be paid not less than the amount he would otherwise be entitled to in terms of clauses 7, 8, 9, 10, 16 and 17, an employer may, subject to the approval of the Council, base such employee's remuneration on the quantity of work done or his output: Provided further that no such system of remuneration shall be approved by the Council except in the form of an incentive scheme established in terms of paragraphs (b) and (c).

(b) An employer who wishes to introduce an incentive scheme shall set up an elected joint representative committee consisting of management and employees to negotiate and agree the terms of such scheme.

(c) The terms of any such incentive scheme shall be reduced to writing and be signed by all the

members of the committee and shall not be varied or terminated by either party unless the party wishing to do so has given the other party such notice in writing as may have been agreed upon by the parties who entered into the scheme.

(5) A driver engaged in the transportation of either hazardous substances, as defined in the regulations for the transportation of hazardous substances under the Hazardous Substances Act, 1973 (Act No. 15 of 1973), or perishable products, may participate in industrial action only after the safe discharge of the load and the return of the vehicle to the employer's establishment, or after having given the employer at least seven days' written notice of his intended participation in industrial action that will occur during a period during which he is required to undertake a trip involving the transportation of the said substances or products.

(6) (1) In the event that an employer's client, in the fuel transport sector, restricts a driver's maximum daily working hours from 15 (fifteen) to less than 12 (twelve) hours per shift, a driver will be paid his ordinary hours of work plus overtime in terms of the Council's Main Agreement and will be deemed to have worked the full shift as described in the definition of "*hours of work*". In addition the driver will be paid an allowance of R70.00 in lieu of the daily hours lost due to the restriction provided that:

- (a) the allowance is offset against existing practices where any amount or allowance is already paid to compensate for a similar purpose; and
- (b) entitlement to the allowance is limited to instances when a driver is utilised in fuel transport operations and working hours are restricted as indicated above; and
- (c) a driver does not refuse to be transferred between different operations for the reason of forfeiting the allowance.

## **5. HOURS OF WORK**

(1) (a) The ordinary hours of work of an employee shall not exceed 45 in any week.

(b) Ordinary hours of work per day shall not exceed -

(i) in the A Area -

(aa) "in the case of an employee who works a five day week, nine and a half hours provided that the ordinary hours of work may not exceed four hours on a Saturday, except

where the hours of work do not exceed nine hours per day and the employee does not work on a day between Monday and Friday the ordinary hours of work may not exceed eight hours on a Saturday.” and

(ab) “in the case of an employee who works a six day week, nine: provided that the ordinary hours of work may not exceed four on a Saturday and”

(ii) in the B Area -

(aa) “in the case of an employee who works not more than five days in a week, nine hours per day provided that:

- the ordinary hours of work may not exceed four hours on a Saturday, except where the hours of work do not exceed nine hours per day; and
- the employee does not work on a day between Monday and Friday then the ordinary hours of work may not exceed eight hours on a Saturday and

(ab) in the case of an employee who works more than five days in a week, eight.

(c) Regular daily shift commencement times shall be fixed and regulated by individual employers: Provided that no employer shall change any regular shift commencement time of -

- (i) vehicle crew employees and employees excluded by (ii) below, unless he has served the employees with at least 12 hours’ prior verbal notice of such change;
- (ii) non-vehicle crew employees who have been in the employ of an employer on the same shift configuration for 26 weeks or longer, unless the employer has notified and consulted with the employees, or their union representative, on the change at least seven days in advance.

(d) Subject to the meal intervals prescribed in sub-clause (2), all hours worked by employees, other than temporary employees of a temporary employment service, on any day shall be consecutive and be regarded as one completed shift.

(e) An employer may change the working week commencement day and time of an employee by giving him at least 72 hours’ written notice of such change.

(2) *Meal intervals:* An employer shall not require or permit an employee to work for longer than five hours continuously without a meal interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work and such interval shall not form

part of the ordinary hours of work or overtime: Provided that the period of five hours may be extended to not more than seven hours for the purpose of loading or unloading a vehicle: Provided further that -

(a) such interval may be reduced to not less than half an hour by written agreement between an employer and his employee;

(b) periods of work interrupted by intervals of less than one hour, except when proviso (a) or (e) applies, shall be deemed to be continuous;

(c) if such interval is longer than one hour, any period in excess of one and a quarter hours shall be deemed to be time worked;

(d) only one such interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work; and

(e) when on any day, by reason of overtime worked, an employer is required to give an employee a second meal interval, such interval may be reduced to not less than 15 minutes.

(3) *Rest intervals:* (i) An employer shall not require or permit an employee to work so that he has less than nine consecutive hours for rest in any period of 24 hours, calculated from the time the employee commences work on any day.

(ii) An employer shall grant to each of his employees a rest interval of not less than ten minutes as nearly as practicable in the middle of the first work period of each day and during such interval such employee shall not be required or permitted to perform any work and such interval shall be deemed to be part of the ordinary hours of work of such employee.

(4) An owner-driver who is an employer shall observe the same hours of work and limitations as are prescribed herein for an employee.

(5) (a) *Compressed working week:* Upon at least 72 hours' written notice to an employee, an employer may require him to work up to 15 hours on a day, inclusive of meal intervals required in terms of subclause (2), without overtime pay.

(b) An employer shall not require or permit an employee to work -

(i) more than the maximum number of ordinary hours of work prescribed in sub-clause (1) in any week;

(ii) more than the maximum number of overtime hours prescribed in clause 8 (9) in any week;

(iii) during the rest interval prescribed in sub-clause (3); or

(iv) a compressed working week for more than two consecutive weeks in five weeks.

(c) An employer who intends implementing a compressed working week scheme shall -

(i) immediately notify the Secretary of the Council in writing of the anticipated date of implementation and approximate duration of the scheme;

(ii) retain copies of all notices issued to employees in terms of paragraph (a) above for a period of three years; and

(iii) maintain a register detailing the dates and hours worked by every employee involved in the scheme.

(d) An employer shall credit an employee with one shift for every nine ordinary hours worked during a compressed working week, up to a maximum of five shifts per week. A part of an hour so worked shall be deemed to be a full hour: Provided that an employer shall be entitled to deduct one shift for each day that the employee is absent from work for reasons not specified in the proviso to the definition of "shift" in clause 2.

(6) (a) *Averaging of hours of work:* Upon at least 72 hours' written notice to an employee, an employer may average such employee's ordinary hours of work and overtime over a period of up to five weeks: Provided that -

(i) he not be required to work more than the ordinary hours of work prescribed in sub-clause (1) and

overtime hours prescribed in clause 8 (9) during the said period; and

(ii) the rest intervals prescribed in sub-clause (3) be adhered to.

(iii) A written agreement must be entered into between the employer and the affected employees at the time of introducing such averaging.

(iv) an employees employed in the CIT sector must consent in writing.

(b) An employer who intends implementing an averaging of hours of work scheme shall -

(i) immediately notify the Secretary of the Council in writing of the anticipated date of implementation and approximate duration of the scheme;

(ii) retain copies of all notices issued to employees in terms of paragraph (a) for a period of

three years; and

(iii) maintain a register detailing -

(aa) the dates, ordinary hours of work and overtime worked by every employee involved in the scheme; and

(ab) a calculation of how the hours were averaged over the period in respect of each employee.

(c) An employer shall credit an employee with five shifts for each week during which an averaging of hours of work scheme is operative: Provided that an employer shall be entitled to deduct one shift for each day that the employee is absent from work for reasons not specified in the proviso to the definition of “shift” in clause 2.

(7) *Overall limitation of hours of work and overtime:* An employer shall not require or permit an employee to work more than 90 hours in any week, inclusive of ordinary hours of work, overtime hours and hours worked on a Sunday or paid holiday.

(8) (a) Subclauses (1) (d), (2) and (3) shall not apply in respect of the performance of “emergency services” as defined in clause 2.

(b) Sub-clauses (2) and (3) shall not apply to a security guard: Provided that if a meal interval is granted to such employee, the time taken up by such interval shall be deemed to be time during which he worked.

(c) Sub-clause (3) (ii) shall not apply to a driver or to an employee who accompanies or assists a driver on the vehicle while such vehicle is not at the employer’s establishment.

(9) **Dangerous Goods Driver Limitation of Hours Levy**

(a) This clause shall be applicable to Dangerous Goods Drivers as defined.

(b) In the event that an employer’s client restricts a driver’s maximum daily hours from 15 (fifteen) to 12 (twelve) hours or less per shift, a driver shall be paid his ordinary hours of work plus overtime in terms of the provisions of the Council’s Main Agreement and shall be deemed to have worked a full shift as described in the definition of “hours of work”. In addition the driver shall be paid the following limitation of hours levy per shift in lieu of the daily hours lost to the restriction:

(i) 12 Hours or less : R70.00

- (ii) 13 Hours or less : R45.00
- (iii) 14 Hours or less : R25.00

These amounts will increase as per the across the board increase as at 1 March 2010.

The amounts referred to in sub-clause (9) (b) (i) – (iii) above shall be payable by the employer provided that:

- (i) The hours of work are restricted by the employer's client.

## 6. PAYMENT OF REMUNERATION

- (1) *Employees other than relief employees:* (i) Wages, payments for overtime, allowances and all other payments due to an employee shall be paid in cash weekly by the employer during the ordinary hours of work of the employee on the usual pay day of the establishment, or, with the written consent of the employee, monthly in cash or by cheque during the ordinary hours of work of the employee on the usual pay day of the establishment, or on termination of employment if this takes place before the usual pay day.

(ii) All such payments shall be contained in a sealed Wage Envelope in the form specified by the Council for this purpose (Annexure C), or in a sealed container on which shall be recorded, or which shall be accompanied by a statement showing -

- (a) the employer's name;
- (b) the employee's name or his number on the payroll and his category;
- (c) the number of ordinary hours of work worked by the employee;
- (d) the number of overtime hours worked by the employee;
- (e) the employee's wage;
- (f) details of any other payments arising out of the employee's employment;
- (g) details of any deductions made;
- (h) the actual amount paid to the employee; and
- (i) the period in respect of which payment is made,

and the envelope or container on which the said particulars are recorded, or the statement on which such particulars are shown, shall become the property of the employee.

(iii) If an employee is absent on the usual pay day of the establishment, he shall be paid within 24 hours of his return to the establishment.

(iv) The particulars prescribed in paragraph (ii) may be recorded on such envelope or container, or in such statement, in code, which code shall be fully set out and explained in an accompanying notice, or in a notice kept posted in a conspicuous place in the establishment, accessible to all employees affected thereby.

(v) At the written request of an employee, any amount referred to in paragraph (i) may be paid into his building society or bank account by his employer, who shall hand to him the relevant receipt together with the aforementioned statement.

(2) All queries regarding the particulars on the envelope or container, or the amount enclosed therein, or regarding the statement, as the case may be, shall be made within 14 days of the date of payment to the employer and, failing satisfaction, within 26 weeks of the date of payment to the Council.

(3) *Premiums*: Subject to any other law, no payment by or on behalf of an employee shall be accepted by an employer, either directly or indirectly, in respect of the employment or training of such employee.

(4) *Purchase of goods*: An employer shall not require an employee to purchase any goods from him or from any business or person nominated by him.

(5) *Accommodation, meals and rations*: Subject to any other law, an employer shall not require an employee to accept accommodation, meals or rations from him or from any person or at any place nominated by him.

(6) *Set-off*: An employer shall not apply set-off against an employee's remuneration for any reason whatsoever, except in accordance with clause 53.

## 7. WAGES

(1) For the period until 28 February 2010, the minimum rate at which wages in respect of ordinary working hours shall be paid by an employer to each member of the under mentioned grades of his employees, shall be as follows:

“(a) *Weekly Wages*:

*General Freight and Logistics:*

Category Code	Class	Grade	Patter-son grade	New Minimum Wage	Across the board Increase p.w.
1 42 3 27	General worker..... General worker, repair shop..... Packer/loader, grade I..... Security guard.....	1.	A Band A Band A Band A Band	R642.87	11%
5 6 2 22 24 46	Motorcycle/motor tricycle driver.... Light motor vehicle driver..... Checker, grade I..... Loader operator, grade II..... Mobile hoist operator, grade II..... Packer/loader, grade II.....	2.	B1 B1 B1 B1 B1 B1	R711.48	11%
7 8 44 19 23 47 21 20 26 15	Medium motor vehicle driver (articulated)..... Medium motor vehicle driver (rigid) Artisan assistant..... Gantry crane operator, grade I..... Mobile hoist operator, grade I..... Checker, grade II..... Loader operator, grade I..... Gantry crane operator, grade II..... Storeman (workshop)..... Team leader.....	3.	B2 B2 B2 B1 B2 B2 B1 B2 B2 B2	R876.91	11%
50	Vehicle Guard.....	3.	B2	R1153.94	11%
10 11 12 13 18	Heavy motor vehicle driver (articulated)..... Heavy motor vehicle driver (rigid).. Extra-heavy motor vehicle driver (articulated)..... Extra-heavy motor vehicle driver (rigid)..... Dispatch clerk.....	4.	B3 B3 B3 B3 B3	R985.53	11%
14 45 49	Ultra-heavy motor vehicle driver.... Semi-skilled artisan..... Storeman (warehouse).....	5.	B4 B4 B4	R1131.85	11%

51	Custodian.....	5.	B4	R1615.51	11%
41	Security officer, III.....	6.	B3	R1153.94	11%
40	Security officer, II.....		B3	R1384.72	11%
39	Security officer, I.....		B4	R1384.72	11%

- (b) Across the board increase: Employees who were in the employ of an employer prior to the publication of these amendments shall be awarded a wage increase of 11% on actual wage. The implementation date for employees employed in the CIT sector shall be 1 April 2009 for employers who are members of the employers' organisation and their employees and for non-parties on the date of coming into operation of this Agreement.
- (c) For the period 1 March 2010 to 28 February 2011 the minimum weekly rate at which wages in respect of ordinary working hours shall be paid by an employer to his employees who are engaged in the under mentioned grades, shall be as follows:

Category Code	Class	Grade	Patter-son Grade	New Minimum Wage	Across the board Increase p.w.
1 42 3 27	General worker..... General worker, repair shop..... Packer/loader, grade I..... Security guard.....	1.	A Band A Band A Band A Band	R692.37	9.5%
5 6 2 22 24 46	Motorcycle/motor tricycle driver.... Light motor vehicle driver..... Checker, grade I..... Loader operator, grade II..... Mobile hoist operator, grade II..... Packer/loader, grade II.....	2.	B1 B1 B1 B1 B1 B1	R782.63	9.5%
7 8 44 19 23 47	Medium motor vehicle driver (articulated)..... Medium motor vehicle driver (rigid) Artisan assistant..... Gantry crane operator, grade I..... Mobile hoist operator, grade I..... Checker, grade II.....	3.	B2 B2 B1 B2	R964.60	9.5%

21	Loader operator, grade I.....		B2		
20	Gantry crane operator, grade II.....		B1		
26	Storeman (workshop).....		B2		
15	Team leader.....		B2		
50	Vehicle Guard.....	3.	B2	MIN & ATB to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant Period	MIN & ATB to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period
10	Heavy motor vehicle driver (articulated).....	4.	B3		
11	Heavy motor vehicle driver (rigid).		B3		
12	Extra-heavy motor vehicle driver (articulated).....		B3		
13	Extra-heavy motor vehicle driver (rigid).....		B3	R1074.23	9.5%
18	Dispatch clerk.....		B3		
14	Ultra-heavy motor vehicle driver....	5.	B4		
45	Semi-skilled artisan.....		B4		
49	Storeman (warehouse).....		B4	R1233.72	9.5%
51	Custodian.....	5.	B4	MIN & ATB to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period	MIN & ATB to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period
				MIN & ATB	MIN & ATB

41 40 39	Security officer, III..... Security officer, II..... Security officer, I.....	6.	B3 B3 B4	to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period	to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period
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(d) The weekly minimum wages of grade 3 (Vehicle Guard), 4 and 5 employees will further be increased on the dates indicated in the under mentioned table:

Category Code	Class	Grade	Patter-son Grade	New Minimum Wage as from	New Minimum Wage as from
50	Vehicle guard	3.	B2	01/01/2010 R1384.72	28/02/2011 MIN & ATB to be paid at a total cost of average CPI+2% year on year Dec 2009 capped at minimum of 6% and maximum 10%, after which point only the MIN & ATB wages will be renegotiated for the relevant period
10 11 12 13 18	Heavy motor vehicle driver (articulated)..... Heavy motor vehicle driver (rigid).. Extra-heavy motor vehicle driver (articulated)..... Extra-heavy motor vehicle driver (rigid)..... Dispatch clerk.....	4.	B3 B3 B3 B3	31/12/2010  R1106.46	28/02/2011  R1139.65

14	Ultra-heavy motor vehicle driver...	5.	B4	31/12/2010	28/02/2011
45	Semi-skilled artisan.....		B4		
49	Storeman (warehouse).....		B4	R1270.73	R1308.85

- (e) Grade 4 and 5 employees shall be awarded a 3% across the board increase on 31/12/2010 and a further across the board increase of 3% on 28/02/2011. The increases for grade 4 and 5 wages that will be negotiated for the period immediately following 28/02/2011, will be off-set against the 3% paid on 28/02/2011.
- (f) **Furniture Removal:** The RFEA may apply for an exemption on behalf of this sector in this regard, which application will not unreasonably be opposed by the Unions. The definition of furniture removal on the main collective agreement shall be strictly applied.

#### **8. OVERTIME WORK**

(1) An employer shall pay an employee who works overtime at a rate of not less than one and a half times his hourly wage in respect of the total period so worked -

- (i) on any day in the case of a relief employee;
- (ii) in each category on any day in the case of a temporary employee of a temporary employment service; and
- (iii) in any week in the case of any other employee.
- (iv) overtime of employees employed in the CIT sector shall be calculated on weekly overtime worked with due regard to daily and weekly overtime entitlements set out in sub clause (9) hereof.

(2) An employer shall pay an employee who works overtime on emergency services at a rate of not less than double the employee's weekly wage, divided by 45, in respect of each hour or part thereof so worked.

(3) Notwithstanding the provisions of sub-clause (10), where in any week an employee absents himself from work without the consent of his employer during any or all of the ordinary hours of work of a normal working day, such ordinary hours not worked may be deducted from the overtime hours worked during that week and the hours so deducted shall be paid for at the employee's normal hourly wage: Provided that -

(i) if the number of ordinary hours of work during which the employee is absent in any week exceeds the number of overtime hours worked, all such overtime hours worked shall be paid for at the employee's normal hourly wage; and

(ii) where an employee is absent from work with the permission of his employer, or on account of sickness or circumstances beyond his control, the provisions of this subclause shall not apply and the overtime hours worked shall be paid for at the specified overtime rate for his class: Provided further that, in the case of sickness, an employer may, as a prerequisite to the payment of overtime, request an employee to produce a medical certificate as proof of cause of absence.

(iii) overtime of employees employed in the CIT sector shall only be set off against shortage of ordinary hours of work by written consent of the individual employee except in instances of unauthorised absence provided for in sub clause 8 (3) and 8 (4) hereof.

(4) An employee penalised in terms of sub-clause (3) may, on good cause shown, appeal to the Council which shall, after due consideration of all the facts relating to such penalty, either uphold or deny such appeal.

(5) Notwithstanding the provisions of sub-clause (1) (a), upon 72 hours' written notice to an employee, an employer may -

- (a) pay an employee who works overtime at a rate of not less than the ordinary basic wage for overtime worked and grant the employee at least 30 minutes' time off in respect of overtime payable at one and a half times his hourly wage, on full pay, for each hour so worked; or
- (b) grant the employee at least 90 minutes' time off in respect of overtime payable at one and a half times his hourly wage, on full pay, for each hour so worked.

(6) An employer shall grant paid time off in terms of sub-clause (5) within 30 days of the employee's becoming entitled thereto, which period may be increased to 52 weeks by written agreement.

(7) Paid time off in lieu of payment for overtime worked may not be granted during any period during which a compressed working week is worked.

(8) An employer who intends implementing a scheme of paid time off in lieu of payment for overtime worked shall -

(a) immediately notify the Secretary of the Council in writing of the anticipated date of implementation and approximate duration of the scheme;

(b) retain copies of all notices issued to employees in terms of sub-clause (5) for a period of three years after issue;

(c) retain copies of all agreements entered into in terms of sub-clause (6) for a period of three years; and

(d) maintain a register detailing -

(i) the dates and overtime hours worked by every employee involved in the scheme;

(ii) the calculation of paid time off due to each employee; and

(iii) the dates and periods of paid time off granted to each employee.

(9) *Limitation of overtime:* An employer shall not require or permit an employee to work overtime for more than

(a) 6 hours on any day, except Saturdays: Provided that the maximum hours of work on any day shall not exceed 15, including ordinary hours of work, overtime hours and meal intervals prescribed in this Agreement; or

(b) 30 hours in any week from Monday to Saturday, inclusive, subject to the proviso to paragraph (a):

Provided further that the provisions of this sub-clause shall not apply in respect of the performance of "emergency services" as defined in clause 2.

(10) *Calculation of overtime:* (a) Overtime in respect of a weekly employee shall be calculated on the basis of the weekly total of overtime worked, with a fraction of an hour rounded up or down to the nearest full half-hour.

(b) Overtime in respect of a relief employee, or a temporary employee of a temporary employment service, shall be calculated on the basis of the daily total of overtime worked, with a fraction of an hour rounded up or down to the nearest full half-hour: Provided that overtime in respect of a relief employee shall be calculated on the wage specified in clause 12 (1), including the additional premium of 10 per cent.

## 9. SUNDAY WORK

**Whenever an employee, including a relief employee and a temporary employee of a temporary employment service, is required to work on a Sunday, he shall be paid not less than double the hourly rate prescribed for his class for each hour, or part thereof, so worked: Provided that -**

- (i) he shall be paid for six hours, whether he has worked six hours or less: Provided further that if a shift worked falls on a Sunday and another day, the whole shift shall be deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift shall be deemed to have been worked on such other day;**
- (ii) in the case of a relief employee, the wage upon which the payment is based shall include the additional premium of 10 per cent specified in clause 12 (1);**
- (iii) notwithstanding the provisions of sub-clause (i), upon 72 hours' written notice to an employee, an employer may grant such employee who works on a Sunday paid time off equivalent to the difference in value between the pay actually received by the employee for working on the Sunday and the pay that he is entitled to in terms of the said sub clause;**
- (iv) an employer shall grant paid time off in terms of sub clause (iii) within 30 days of the employee's becoming entitled thereto, which period may be extended to 52 weeks by written agreement;**
- (v) paid time off in lieu of payment for time worked on a Sunday may not be granted during any period during which a compressed working week is worked; and**
- (vi) an employer who intends implementing a scheme of paid time off in lieu of Sunday pay shall -**
  - (a) immediately notify the Secretary of the Council in writing of the anticipated date of implementation and approximate duration of the scheme;**
  - (b) retain copies of all notices issued to employees in terms of sub-clause (iii) for a period of three years after issue;**
  - (c) retain copies of all agreements entered into in terms of sub-clause (iv) for a period of three years; and**
  - (d) maintain a register detailing -**

(aa) the dates and hours worked on Sundays by every employee involved in the scheme;

(ab) the calculation of paid time off due to each employee; and

(ac) the dates and periods of paid time off granted to each employee.

## **10. PAID HOLIDAY WORK**

(1) *Compensation for work on paid holidays:* (a) If a paid holiday falls on a day on which an employee, other than a relief employee, would ordinarily work, an employer shall pay -

(i) an employee who does not work on the paid holiday, at least the wage that he would ordinarily have received for work on that day; and

(ii) an employee who does work on the paid holiday -

(aa) at least double the amount referred to in subparagraph (i); or

(ab) if it is greater, the amount referred to in subparagraph (i) plus the amount earned by the employee for each hour, or part thereof, worked on that day.

(b) A relief employee who works on a paid holiday shall be paid in terms of the provisions of clause 12 (7).

(2) The provisions of clause 9 (iii) to (vi) shall *mutatis mutandis* apply in the case of an employee who is required or permitted to work on a paid holiday.

(3) Whenever an employee works on a paid holiday he shall, in addition to the shift to be credited in terms of the proviso to the definition of “shift” in clause 2, be credited with a further shift.

(4) No employee shall insist on working on any paid holiday.

(5) Whenever any paid holiday falls on a Sunday, the following Monday shall be regarded as a paid holiday and whenever the Day of Goodwill falls on a Monday, the following Tuesday shall be regarded as a paid holiday.

(6) Whenever any paid holiday falls within the period of annual leave of an employee prescribed in clause 19 (2) (a) or 20 (1), his period of leave shall be extended by one day for each such paid holiday and he shall be paid for each such paid holiday in addition to the leave pay that is due to him. In such case the employee shall also be credited with one shift in respect of each such paid holiday for the purposes of his qualifying period for annual leave during the following year.

## 11. PART-TIME EMPLOYEES

(1) A written contract of employment which specifies the fixed hours that a part-time employee is required to work each day, week or month shall be entered into between the employer and such employee.

(2) The minimum wage of a part-time employee shall be calculated as a proportion of the wage prescribed in clause 7 for the class of work performed by such employee.

(3) The number of part-time employees employed by an employer shall on average not exceed 30 per cent of the employer's average monthly workforce over any 12-month period.

(4) An employer shall credit a part-time employee with five shifts for every week, irrespective of the number of days or weeks actually worked, unless the employee is absent for reasons not specified in clause 19 (5) on any day on which he is required to work.

(5) For the purposes of calculating Leave Pay Fund, Holiday Pay Bonus Fund, Sick Fund and Council Expense contributions due in terms of clauses 19, 21, 22 and 32, respectively, the normal basic weekly wage of a part-time employee who works an average of 15 or more ordinary hours per week, shall be computed as follows:

$$\text{Normal basic weekly wage} = \frac{\text{Total basic wage due for month}}{1} \times \frac{3}{13}$$

(6) The normal basic weekly wage calculated in terms of sub clause (5) shall be reflected in the wage column of the monthly return (Annexure D) to be submitted to the Council in terms of the provisions of this Agreement.

(7) The category code of each part-time employee to be entered in the monthly return (Annexure D) shall be prefixed with a "P".

## 12. RELIEF EMPLOYEES

(1) An employer shall pay a relief employee in respect of each day worked not less than one-fifth of the weekly wage prescribed for an employee of his class, plus an additional premium of 10 per cent of such wage and shall credit him with a shift: Provided that where the

employer requires such employee to work for a period of less than six hours on any day, he shall be deemed to have worked for six hours.

(2) A relief employee may not be employed for more than 144 shifts in a 52 week period unless he is given the status of a permanent employee and remunerated accordingly.

(3) Once a relief employee has worked for more than 90 shifts in a 52 week period, his employer shall reduce his wage by dispensing with the 10 per cent premium on wages prescribed in sub clause (1), but such employee shall be entitled to the benefits prescribed in terms of clauses 19 (1) (a) (iii), 20 (2) (b), 21 (1) (a) (iii) and 22 (1) (a) (iii) of this Agreement and clause 7 (1) (d) of the Provident Fund Agreement, irrespective of the Area in which the establishment of his employer is situated.

(4) The number of relief employees employed by an employer shall on average not exceed 30 per cent of the employer's average monthly workforce over any 12 month period.

(5) An employer shall pay a relief employee his remuneration in cash -

(i) immediately on termination of his employment if he has worked for two days or less; or

(ii) on the normal weekly pay day of the establishment where his employment is terminated after he has worked for more than two days.

(6) The ordinary hours of work of a relief employee shall not exceed nine on any day.

(7) An employer shall pay a relief employee who works on a paid holiday not less than double the hourly rate prescribed for his class, for each hour or part thereof worked, plus an additional premium of 10 per cent of such amount: Provided that he shall be paid for six hours, whether he has worked for six hours or less: Provided further that whenever a relief employee works for any period that falls -

(a) partly on a paid holiday and partly on a Sunday; or

(b) partly on a paid holiday and partly on an ordinary working day,

he shall, for the purposes of this sub clause, be deemed to have worked the whole period on the day on which the major portion of such work period falls.

(8) A relief employee who works on a Sunday shall be paid in terms of the provisions of clause 9.

(9) A relief employee who on any day performs classes of work for which different wages are prescribed in clause 7 shall be paid at the highest such wage for that day, plus an additional premium

of 10 per cent of such highest wage.

(10) The provisions of clause 6 (1) (ii) shall apply to employers of relief employees.

(11) The provisions of clause 32 shall apply to employers of relief employees.

(12) Overtime in respect of a relief employee shall be calculated on the basis of the daily total of overtime worked, with a fraction of an hour rounded up or down to the nearest full half-hour: Provided that such overtime shall be calculated on the wage specified in subclause (1), including the additional premium of 10 per cent.

(13) The category code of each relief employee to be entered in the monthly return (Annexure D) shall be prefixed with an “R”.

(14) The total number of shifts worked by a relief employee during a month shall be entered in the “Shifts Worked” column of the monthly return (Annexure D) to be submitted to the Council.

(15) The total basic weekly wage earned by a relief employee during a month, including the additional premium of 10 per cent, shall be reflected in the wage column of the monthly return (Annexure D) to be submitted to the Council.

### **13. SHORT-TIME**

Short time is only applicable to the furniture removal sector

### **14. SEASONAL EMPLOYMENT**

(1) Employees who are not employed in the Sugar Cane Sector, as defined in clause 2, but who fall within the Sugar Transport Sector of the Road Freight Industry and the definition of “seasonal worker (Sugar Transport Sector)” in clause 2, shall receive a retainer payment throughout the off-crop period equal to 66,6 per cent of their normal basic wage for all periods, except annual leave periods, during which they are not required to report for normal duty.

(2) Employees, while in receipt of retainer payments, shall hold themselves in readiness to report for normal duty on reasonable notice.

(3) Employees who are recalled for normal duty during the off-crop period and who fail to report for duty shall forfeit the retainer payment prescribed in sub clause (1) for the period during which they are absent without permission.

(4) Employees shall receive remuneration as prescribed in clauses 7, 8, 9, 10, 16 and 17 for all

periods during which they perform their normal work.

## 15. SUGAR CANE SECTOR

(1) Employees who are employed in the Sugar Cane Sector, as defined in clause 2, and who fall within the definition of “seasonal worker (Sugar Transport Sector)” in clause 2, shall receive a retainer payment throughout the off-crop period, during which they are not required to report for normal duty, equal to 66,6 per cent of their normal basic wage for the first 15 weeks and thereafter 40 per cent of their normal basic wage: Provided that the period for which the retainer payment is payable shall not include annual leave.

(2) Employees, while in receipt of retainer payments, shall hold themselves in readiness to report for normal duty on reasonable notice.

(3) Employees who are recalled for normal duty during the off-crop period and fail to report for duty, shall forfeit the retainer payment prescribed in sub clause (1) for the period during which they are absent without permission.

(4) Employees shall receive remuneration as prescribed in clauses 7, 8, 9, 10 and 16 for all periods during which they perform their normal work.

(5) Employees who work a night-shift as defined in clause 2 shall receive R11,50 for every such shift worked: Provided that where two different shifts qualify for a night-shift allowance during a 24-hour period commencing at midnight, only those employees who worked the first shift shall receive payment of the night-shift allowance.

(6) Employees who qualify for and receive a subsistence allowance are excluded from qualifying for a night-shift allowance.

(7) *Consolidated allowance:*

(i) Employees shall receive an allowance of R100,00 per month, payable monthly in arrear, offset against any shift, accommodation, housing, rations or other allowances of a subsistence nature paid to such employees. Where employment commences or terminates during a month, the consolidated allowance shall be paid pro rata to service during such month.

(ii) The total night-shift allowances earned by an employee during a month shall be offset against the consolidated allowance up to an amount of R100,00 and any consolidated allowance or

night-shift allowance remaining after applying the set-off shall be paid to the employee.

#### **16. SUBSISTENCE & CROSS BORDER ALLOWANCE**

(1) An employer, excluding employers in the Cash in Transit Sector and Sugar Cane and Forestry In – Field Operations shall in addition to any other remuneration due, pay an employee who on any journey undertaken in the performance of his duties is absent from his place of residence and his employer’s establishment for any period extending over the compulsory rest interval of nine consecutive hours prescribed in clause 5(3)(i), a subsistence allowance of not less than –

- (a) R20.57 to end of February 2010 for each period of absence within the borders of the Republic of South Africa and R22.54 to end of February 2011;
- (b) R28.82 to end of February 2010 if such period of absence is outside the borders of the Republic of South Africa and R31.56 to end of February 2011;
- (c) R17.84 to end of February 2010 for each of the three daily meal intervals due in terms of sub-clause (2) during such absence and R19.53 to end of February 2011.

(2) The three daily meal intervals prescribed in clause 5 (2) shall be due at five-hour intervals reckoned from the working day commencement time of an employee referred to in sub-clause (1).

(3) An employer shall pay all allowances due to an employee in terms of sub-clause (1) within seven days of completion of the journey to which they relate.

(4) Where an employee is required to undertake a journey involving an absence of 48 hours or more in terms of sub clause (1), his employer shall pay him in advance an allowance based on the subsistence allowance payable to him in terms of that sub clause in respect of the estimated duration of such absence and the employee shall refund to his employer any overpayment of such allowance on completion of the journey.

## 17. NIGHT WORK

- (1) An employer may only require or permit an employee to perform night work, if –
- (a) The employee is compensated by the payment of an allowance of R5.55 for any amount of time beyond one hour of night work and R1.11 for every hour thereafter or by the reduction of working hours. The amounts mentioned above will be increased to R6.08 and R1.22 respectively as from 1 March 2010.
  - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- (2) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must –
- (a) inform the employee in writing, or orally, if the employee is not able to understand a written communication, in a language that the employee understands –
    - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
    - (ii) of the employee's right to undergo a medical examination in terms of sub clause (2)(b);
  - (b) at the request of the employee, enable the employee to undergo a medical examination by a doctor designated and paid for by the employer, concerning those hazards –
    - (i) before the employee starts, or within a reasonable period of the employee starting, such work; and
    - (ii) at appropriate intervals while the employee continues to perform such work; and
    - (iii) the record of such medical examination performed in terms of this clause must be kept confidential and may be made available only –

- (aa) in accordance with the ethics of the medical practice;
  - (ab) if required by law or court order; or
  - (ac) if the employee has in writing consented to the release of that information.
- (c) transfer the employee to suitable day work within a reasonable time if –
- (i) the employee suffers from a health condition associated with the performance of night work; and
  - (ii) it is practicable for the employer to do so.
- (3) For the purposes of sub clause (2), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.”
- (4) An employee who qualifies for and receives a subsistence allowance shall not be entitled to a night shift allowance.

#### **18. TEMPORARY EMPLOYMENT SERVICES**

(1) An employee of a temporary employment service who is provided to one or more clients on a casual, non-continuous and occasional basis for periods of less than two months, shall be deemed to be a temporary employee of such temporary employment service.

(2) An employee of a temporary employment service who is provided to one or more clients on a continuous basis for a period in excess of two months shall be deemed to be an ordinary employee and all the provisions of this Agreement shall be applicable to such employee.

(3) Unless expressly otherwise provided in a written contract between a temporary employment service and its temporary employee, and subject to the further provisions of this clause, nothing contained in this Agreement shall be so construed as to preclude a temporary employment service from requiring its temporary employee to perform work of different classes for which different wages are prescribed.

(4) A temporary employee of a temporary employment service who works overtime while employed in two or more job categories during a pay week shall be paid overtime at the rate of one and a half times his hourly rate in respect of the total number of hours so worked in each category:

**Provided that a fraction of an hour shall be rounded up or down to the nearest full half-hour.**

**(5) If a temporary employee of a temporary employment service is required to work on a Sunday or paid holiday he shall be paid at not less than double the hourly rate prescribed for his class for each hour so worked: Provided that he shall be paid for not less than six hours, whether he has worked for six hours or less: Provided further that if a shift worked by such employee falls on a Sunday or a paid holiday and another day, the whole shift shall be deemed to have been worked on the Sunday or paid holiday, as the case may be, unless the greater portion of the shift was worked on the other day, in which case the whole shift shall be deemed to have been worked on such other day.**

**(6) A temporary employee of a temporary employment service shall accrue a shift if one or more ordinary hours are worked during a day.**

**(7) (a) The total shifts accrued by a temporary employee of a temporary employment service during a month must be reflected on the monthly return (Annexure D) required to be submitted to the Council by an employer in terms of clause 32.**

**(b) The category code of each temporary employee of a temporary employment service to be entered in the monthly return (Annexure D) shall be a "T".**

**(8) An ordinary employee of a temporary employment service shall accrue shifts in accordance with the definition of "shift" in clause 2 and the temporary employment service shall, depending on the Area in which its establishment at which the employee is employed, is located, be required to pay contributions and render monthly returns (Annexure D) in terms of clauses 19 (1) (c), 21 (1) (c), 22 (1) (c), 30 (4), 31 (1) (a) and 32 (2) hereof and clause 7 (1) of the Provident Fund Agreement.**

**(9) A temporary employment service and its client shall, in terms of section 198 of the Act, be jointly and severally liable if the temporary employment service contravenes the provisions of this Agreement in respect of any of its employees provided to such client.**

**(10) A temporary employment service shall comply with the provisions of clause 32 (1) (a) by calculating the amount of 0,4 per cent specified therein of the total actual basic wage earned in any week by its temporary employee. The total actual basic wage earned by such an employee during a month shall be reflected in the wage column of the monthly return (Annexure D) to be submitted to**

the Council each month in terms of clause 32.

(11) The contract of employment of an employee of a temporary employment service shall be deemed to be weekly, unless the employee is a temporary employee of such temporary employment service, in which case the contract shall be deemed to be daily.

(12) The provisions of clause 7 (2) shall not apply to a temporary employee of a temporary employment service.

(13) The hours of work of a temporary employee of a temporary employment service shall not be required to be consecutive.

(14) *Leave Pay Fund:* A temporary employment service may, in lieu of the contributions due in terms of clause 19 (1) (a), pay to each of its temporary employees an amount calculated using the following formula for every ordinary hour of work in each job category:

$$\frac{25}{100} \times \frac{\text{Total basic wage for week}}{195}$$

(15) *Holiday Pay Bonus Fund:* A temporary employment service may, in lieu of the contributions due in terms of clause 21 (1) (a), pay to each of its temporary employees an amount calculated using the following formula for every ordinary hour of work in each job category:

$$\frac{36,08}{100} \times \frac{\text{Total basic wage for week}}{195}$$

(16) *Sick Fund:* In the A Area a temporary employment service may, in lieu of the contributions due in terms of clause 22 (1) (a), pay to each of its temporary employees an amount calculated using the following formula for every ordinary hour of work in each job category:

$$\frac{\text{Total basic wage for week}}{45} \times \frac{9}{195}$$

(17) A temporary employee of a temporary employment service who works in two or more job categories during a pay week shall be paid at not less than the minimum wage prescribed in clause 7 for the hours actually worked in each category.

(18) Provisions regarding the termination of a contract of employment of a temporary employee of a temporary employment service who is provided to a client, shall be contained in the document handed to the employee when he is assigned to the client.

(19) The provisions of clauses 1, 1A, 3, 36, 45 and 47 of this Agreement shall apply to the

client of a temporary employment service who falls within the Council's registered scope as if he were an employer.

(20) An employer who continues to utilise the services of an employee referred to in sub clause (1) for any period after the expiration of the initial two months period must comply with the provisions of sub clause (21) below.

(21) No employer may use the services of a temporary employment service unless the temporary employment service provides satisfactory proof to the employer that it is registered with Council subject to compliance with:

21.1 the Unemployment Insurance Act;

21.2 the Compensation for Occupational Injuries and Diseases Act; and

21.3 the South African Revenue Services and in possession of an IT 30 Tax Certificate.

(22) When a temporary employment services supplies one or more workers to an employer, the employer must notify the Council in writing on the prescribed forms, of employees so utilised, which notification must be submitted to Council in the month following the date of utilising such employees.

(23) The number of employees supplied by a temporary employment service or services to an employer shall on average not exceed 30% of the employers' average workforce over any retrospective period of 12 (twelve) months from the date of an inspection.

(24) Any employer who exceeds the 30% average as of the date of implementation of this agreement shall notify the Council in writing within 60 (sixty) days and shall have a period of 12 (twelve) months from the date of implementation to comply with the agreement.

(25) In the event that a temporary employment service defaults on any obligation provided for in terms of this agreement, the employee shall hold the employer to whom that employee was supplied, liable for complying with the obligation referred to above.

(26) Employers may only utilise the services of temporary employment service companies which are registered with Council.

## 19. LEAVE PAY FUND

In the A and B Area

(1)(a) The Leave Pay Fund established under Government Notice No. R.41 of 15 January 1971

is hereby continued. Every employer shall pay as contributions to the Leave Pay Fund by not later than the 20<sup>th</sup> of each month, in respect of every employee employed by him during the preceding month, for each completed 21-shift cycle worked or accrued, an amount equivalent to 25 per cent of the normal basic weekly wage earned by the employee at the time when the 21<sup>st</sup> shift was completed or accrued.

(i) A temporary employment service may, in lieu of the contributions due in terms of paragraph (a), pay to each of its temporary employees an amount based on the following formula for every ordinary hour of work in each job category:

$$\frac{25}{100} \times \frac{\text{Total basic wage for week}}{195}$$

(ii) An employer of -

(aa) a part-time employee who works less than 15 hours per week; or

(ab) a relief employee who has been employed for more than 90 days in a 52-week period, shall, in lieu of the contributions due in terms of paragraph (a), pay to such employee an amount based on the formula in subparagraph (i) for every hour, or part thereof, worked.

(iii) An employer of a part-time employee who works an average of 15 or more ordinary hours per week shall, in respect of the contributions due in terms of paragraph (a), base the calculation on the employee's normal basic weekly wage using the following formula:

$$\text{Normal basic weekly wage} = \frac{\text{Total basic weekly wage due for month}}{1} \times \frac{3}{13}$$

(b) Shortfall shifts, being shifts worked in a month amounting to less than 21, or shifts worked or accrued in excess of the 21-shift cycles referred to in paragraph (a) in a month, shall be carried forward to the next succeeding month.

(c) An employer shall effect payment of the contributions due in terms of paragraph (a) at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of the following month, a monthly return with the particulars in the form specified by the Council for this purpose (Annexure D), including each employee's full names, surname, date of birth and

**identification number.**

**(d) An employer shall, in respect of an employee who is discharged from or who leaves his employment before such employee has qualified for annual leave in terms of subclause (2) (a) and in respect of whom contributions are due in terms of this clause, complete in triplicate a Pro Rata Accrued Shift Entitlement Advice Voucher in the form specified by the Council for this purpose (Annexure E) and shall retain one copy in his possession, forward one copy within 24 hours of the termination of employment of the employee to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, and hand the remaining copy to the employee.**

**(e) An employer shall credit an employee who has qualified for annual leave with 15 shifts in respect of the period during which he is on annual leave.**

**(2) (a) Three consecutive weeks' annual leave shall be granted to all employees who have completed 252 shifts with an employer since the date of their employment, or since the date on which their previous annual leave last fell due, as the case may be, and they shall be credited with 15 shifts in respect of the period during which they are on annual leave.**

**(b) The period of leave referred to in paragraph (a) shall not be concurrent with any period during which an employee is undergoing military service in terms of the Defence Act, 1957.**

**(c) No employee shall perform his normal work during his period of annual leave and no employer shall require or permit an employee to work in the Industry during such period of leave.**

**(d) An employer may set-off against any period of annual leave, any days of paid occasional leave granted to an employee at the employee's request during the year, or annual shift cycle, immediately preceding the date on which such employee becomes entitled to such annual leave: Provided that not more than one week's such occasional leave shall be set-off against annual leave in any one year or annual shift cycle. Payment to an employer in reimbursement of occasional leave granted and paid to an employee shall be made by the Council on production of**

**proof of payment by the employer when an application is received in terms of sub-clause (8).**

**(3) Annual leave shall become due immediately after an employee has completed the qualifying number of shifts prescribed in sub-clause (2) (a), but may be taken earlier or later if -**

- (i) the exigencies of the employer's business so require; or**
- (ii) the employer and the employee so agree in writing:**

**Provided that annual leave shall not be taken more than two months before or after the due date.**

**(4) Annual leave shall not run concurrently with any period during which an employee is working notice.**

**(5) Employment shall be deemed to include shifts lost while an employee is absent -**

- (a) on leave in terms of sub clause (2) (a) for a period of up to 15 shifts per year or such entitlement as may be due to him;**
- (b) on instruction or at the request of his employer for a period not exceeding 21 one shifts**

**per year;**

- (c) on family responsibility leave;**
- (d) on study leave; or**
- (e) on sick leave amounting in the aggregate to not more than 24 shifts in any two year cycle, and for the purposes hereof employment shall be deemed to have commenced -**

**(i) in the case of an employee who before the coming into operation of this Agreement became entitled to annual leave in terms of any wage regulating measure, from the date on which he last became entitled to such leave; or**

**(ii) in the case of any other employee, from the date on which he entered his employer's service.**

**(6) No deductions from leave pay shall be made as a set-off against moneys owing to an employer by an employee.**

**(7) An employer shall record all periods of leave of an employee in his wage or leave register.**

**(8) Annual leave-pay payments:**

**(a) An employer shall -**

- (i) at least 15 days before the completion of an employee's annual leave-qualifying period**

prescribed in sub-clause (2) (a), complete in triplicate a Leave Pay Advice Voucher in the form specified by the Council for this purpose (Annexure F) and shall retain one copy in his possession, forward one copy to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, and hand the remaining copy to the employee for claim purposes; and

- (ii) at least 15 days before the completion of an employee's annual leave-qualifying period prescribed in sub-clause (2) (a), forward to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, any arrear leave-pay contributions due to the Leave Pay Fund in respect of such employee, up to and including his date of annual leave entitlement.

(b) The Council shall, subject to the availability of funds to the credit of an employee, on application pay to such employee (or to the employer for onward payment to the employee if so agreed) who has completed the annual leave – qualifying period prescribed in sub clause 2(a), an amount equal to the Leave Pay contributions received by the Fund during the said qualifying period for such employee for his class of work.

*(9) Accrued or pro rata leave-pay payments:* (a) (i) An employee who is discharged from, or who leaves, his employment in accordance with the provisions of clause 27 before he has qualified for annual leave in terms of sub-clause 2 (a), shall be entitled to accrued leave pay equivalent to 25 per cent of his actual weekly wage for each completed 21-shift cycle of employment reckoned from the date of commencing employment with the employer or from the date of his last annual leave.

(ii) Accrued leave pay due to an employee in terms of subparagraph (i) shall not be handed to or accepted by such employee, but shall immediately upon termination of services be remitted to the Secretary of the Council, Private Bag X69, Braamfontein, 2017.

(iii) In the event that an employer, contrary to the provisions of subparagraph (ii) above or subclause (8) (ii), pays accrued leave pay to an employee, this will not absolve him of his obligation to remit the amount to the Council and no set-off will be permitted.

(b) Accrued leave pay remitted to the Council on behalf of an employee in terms of paragraph (a) (ii) shall be paid to him on application upon the expiration of four weeks after being

discharged from his employment or after leaving his employment in the Industry, as the case may be.

(c) Accrued leave pay held by the Council on behalf of an employee who is retrenched, or who for health reasons or any other incapacity has become unable to continue his work, shall be paid immediately to the employee and accrued leave pay due in the event of the death of an employee shall be paid immediately to his estate.

(d) Any accrued or pro rata leave pay to be remitted to the Council in terms of paragraph (a)

(ii) shall be

calculated after the employee has been credited with shifts pro rata to the period of leave he would

have been entitled

to in terms of subclause (2) (a), according to the following formula:

Number of shifts to be credited since commencing =  $\frac{X}{12} \times \frac{15}{1}$  where X = the number of completed 21-shift cycles since commencing employment or commencing the last period of leave.

(10) *Banking account:* All moneys paid into the Leave Pay Fund shall be deposited in a special bank account to be operated for and in the name of the Leave Pay Fund.

(11) *Investments of funds:* Any money that belongs to the Leave Pay Fund and that are not required for immediate use may be invested by the Council from time to time in terms of section 53 (5) of the Act.

(12) Income earned on invested moneys shall accrue directly to the Council in reimbursement of expenses incurred by the Council on behalf of the Fund administered by the general funds of the Council.

(13) *Forfeiture of unclaimed Leave Pay Fund contributions:* Five years after the date of receipt thereof, all contributions paid to the Council for an employee in terms of sub-clause (1) (a) shall, if not claimed or otherwise legally disposed of, be forfeited to the general funds of the Council.

(14) A registered auditor, whose fees shall be determined by the Council, shall be appointed annually by the Council and shall audit the accounts of the Leave Pay Fund at least once a year and prepare a statement showing all moneys received and expenditure incurred under all headings during the 12 months ended 28/29 February of the preceding year, together with a balance sheet showing the assets and liabilities of the Fund as at that date. The audited statement and balance sheet, countersigned by the Chairman of the Council, together with any report made thereon by the

auditor, shall lie for inspection at the offices of the Council and true copies thereof shall be transmitted to the Registrar of Labour Relations within three months of the close of the period covered thereby.

(15) (a) In the event of the dissolution of the Council, or of its ceasing to function during the currency of this Agreement, the Registrar of Labour Relations may appoint a committee consisting of an equal number of representatives of employers and employees in the Industry for the purpose of administering the Leave Pay Fund.

(b) Any vacancies occurring on the committee may be filled by the Registrar of Labour Relations from among representatives of employers or employees in the Industry, as the case may be. Where the committee is unable or unwilling to discharge its duties, the Registrar may appoint one or more trustees to administer the Fund. The committee, or trustee or trustees so appointed shall have the powers vested in the Council for the purposes of administering the Fund. If there is no Council in existence upon the expiration of this Agreement, the Fund shall continue to be administered by the committee or trustee or trustees functioning at the time and any amount remaining to the credit of the Fund shall be distributed in terms of section 59 (5) of the Act as if it formed part of the general funds of the Council.

(16) In the event of -

(a) the Council's incorrectly paying leave pay to an employee or an employer as a result of the employer's failure to comply with any of the provisions of this Agreement, or an error made by the employer; or

(b) the Council's incorrectly paying leave pay to an employer as a result of an error, the Council may invoke the provisions of the Exemptions and Dispute Resolution Collective Agreement to recover the amount incorrectly paid. In addition, the employer shall be liable for all costs incurred by the Council in recovering the amount.

## 20. ANNUAL LEAVE

In the B Area -

(1) Three consecutive weeks' annual leave shall be granted to all employees who have completed 252 shifts with an employer since the date of their employment or from the date on which their

previous annual leave fell due, as the case may be: Provided that -

(i) in the case of an employee who works a five-day week such annual leave shall not exceed 15 working days; and

(ii) in the case of an employee who works a six-day week such annual leave shall not exceed 18 working days.

(2) (a) An employer shall pay his employee in respect of the leave prescribed in subclause (1) not less than three times the normal basic weekly wage the employee was receiving immediately prior to the date on which the leave commenced.

(b) An employer of a relief employee who has been employed for more than 90 days in a 52-week period shall, in addition to his wage, pay to such employee an amount calculated using the following formula for every ordinary hour, or part thereof, included in the calculation of his wage:

$$\frac{25}{100} \times \frac{\text{Total basic wage for week}}{195}$$

(c) A temporary employment service may, in lieu of the payment due in terms of paragraph (a), pay to each of its temporary employees an amount based on the following formula for every ordinary hour of work in each job category:

$$\frac{25}{100} \times \frac{\text{Total basic wage for week}}{195}$$

(3) The leave prescribed in sub-clause (1) shall be granted and be taken at a time to be fixed by the employer: Provided that -

(a) if such leave has to be granted and be taken later, it shall, save as provided in sub clause (4), be granted and be taken so as to commence within 17 weeks after completion of the qualifying period of employment to which it relates in terms of sub-clause (1) or, if the employee has agreed thereto in writing before the expiration of the said period of 17 weeks, from a date not later than 60 days after the expiration of the said period of 17 weeks;

(b) the period of leave shall not be concurrent with any period -

(i) of sick leave in terms of clause 23;

(ii) during which the employee is under notice of termination of employment in terms of clause 27; or

(iii) during which the employee is performing military service;

(c) an employer may set-off against such period of leave all days of occasional leave granted on full pay to his employee at such employee's written request during the period of employment to which the annual leave relates;

(d) when an employer requires his employee to take leave before the expiration of the qualifying period of employment to which it relates in terms of sub-clause (1), the employer shall grant such employee the full period of leave accruable for such qualifying period of employment and, with due regard to the accrual of any increments in terms of clause 7, shall pay such employee in respect of such leave an amount of not less than that which the employee would have been entitled to at the date on which the leave would normally have accrued: Provided further that if such employee's employment terminates before the expiration of the qualifying period in respect of which the leave was granted in terms hereof, the employer may set-off against any remuneration due to the employee at the termination of his employment the difference between the amount paid to the employee in terms hereof and the amount to which he would have been entitled at the termination of his employment in terms of sub-clause (6) had the leave not been granted to him.

(4) (a) At the written request of his employee an employer may permit the leave to accumulate over a period of not more than two years of employment: Provided that -

(i) the request is made by such employee not later than 17 weeks after the expiration of the first period of 52 weeks of employment to which the leave relates; and

(ii) the date of receipt of the request is endorsed on the request, over his signature, by the employer who shall retain the request for a period of at least three years.

(b) Sub-clause (3) shall mutatis mutandis apply to the leave referred to in this sub-clause.

(5) Payment in respect of the leave prescribed in sub-clause (1), read with sub-clause (4), shall be made not later than the last working day before the date of commencement of the leave or, at the written request of the employee, not later than the first pay day after the expiration of the leave.

(6) An employee whose employment terminates during any period of employment before the period of leave prescribed in sub-clause (1), read with sub-clause (4), in respect of such period of employment has accrued shall, upon such termination and in addition to any other payments that

may be due to him, be paid in respect of each completed cycle of 21 shifts an amount of not less than one fourth of the weekly wage he was receiving immediately before the date of such termination:

Provided that -

(i) an employer may make a proportionate deduction in respect of leave granted to an employee in terms of sub-clause (3) (c); and

(ii) an employee who leaves his employment without having given and served the period of notice prescribed in clause 27 shall, save as provided in clause 27 (3) (a), be entitled to claim payment in terms of this sub-clause in respect of only such accrued leave pay as exceeds the amount he forfeits to his employer in lieu of notice in terms of clause 27 (1) or (2), as the case may be, unless the employer has waived such notice or the employee has paid the employer upon or prior to termination of service in lieu of such notice.

(7) For the purposes of this clause the expressions “employment” and “period of employment” shall be deemed to include-

(i) any period in respect of which an employer pays an employee or an employee pays an employer in lieu of notice in terms of clause 27;

(ii) any period amounting in the aggregate in any period of 52 weeks to not more than 17 weeks during which an employee is absent -

(a) on leave in terms of this clause;

(b) on sick leave in terms of clause 23;

(c) at the instance of his employer;

(d) with the consent or condonation of his employer;

(e) on study leave in terms of clause 24;

(f) on family responsibility leave in terms of clause 25;

(g) on maternity leave in terms of clause 26; or

(h) for any other reason that is not in breach of his contract of employment; and

(iii) any period during which an employee is absent from work while on military service:

Provided that an employee shall not be entitled to claim as employment in any period of 52 weeks of employment, more than 17 weeks of such military service,

and employment shall be deemed to have commenced -

(a) in the case of an employee who, before this Agreement became binding, had become entitled to a period of annual leave in terms of any law, on the date on which he last became entitled to leave in terms of that law;

(b) in the case of an employee who was in employment before this Agreement became binding and to whom any law providing for annual leave applied, but who had not yet become entitled to a period of leave in terms thereof, on the date on which such employment commenced; and

(c) in the case of any other employee, on the date on which he entered his employer's service, or on the date on which this Agreement became binding, whichever is the later.

(8) (a) Notwithstanding anything to the contrary contained in this clause an employer may, for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close his establishment for 21 consecutive days or suspend an activity for 21 consecutive days and in such case he shall remunerate his employee in terms of sub-clause (2), or in terms of paragraph (c) hereof, as the case may be.

(b) Whenever a paid holiday falls on a day that would otherwise be a working day for an employee and such paid holiday falls within the closed or suspension period referred to in paragraph (a), another working day shall be added to the said closed or suspension period of leave and the employee shall be paid an amount of not less than his daily wage in respect of each such day added.

(c) An employee who, at the date on which an establishment or activity in which he is employed is closed or suspended, is not entitled to the full period of annual leave prescribed in sub-clause (1) shall, in respect of any leave due to him, be paid by his employer on the basis set out in sub-clause (6) and for the purposes of annual leave thereafter his employment shall be deemed to have commenced on the date of such closing of the establishment or such suspension of the activity, as the case may be.

## **21. HOLIDAY PAY BONUS FUND**

(1)(a) The Holiday Pay Bonus Fund, established by the Council under the provisions of the Agreement published under Government Notice No. R.41 of 15 January 1971 is hereby continued, and for the purposes of this clause "employee" means an employee categorized in clause 7(1)(a).

Every employer shall pay into the Holiday Pay Bonus Fund by no later than the 20<sup>th</sup> day of each month in respect of each employee employed by him in grades 1 – 6 during the preceding month an amount equivalent to 36.08% per cent of the normal basic weekly wage earned by the employee at the time when the 21<sup>st</sup> shift was completed or accrued.

Provided that where an employer, prior to the date of coming into operation of this Agreement, has of his own accord paid an annual or holiday bonus to any class of employee, he may reduce such annual or holiday bonus by the equivalent of the sum of the monthly contributions remitted to the Council in terms of this sub clause in respect of that class of employee for the corresponding period.

- (i) A temporary employment service may, in lieu of the contributions due in terms of paragraph 1(a), pay to each of its temporary employees an amount calculated using the following formula for every ordinary hour worked in each job category.

$$\frac{36.08}{100} \times \frac{\text{Total actual wage for week}}{195}$$

- (ii) An employer of –
- (aa) a part-time employee who works less than 15 ordinary hours per week; or
- (ab) a relief employee who has been employed for more than 90 days in a 52-week period, shall, in lieu of the contributions due in terms of paragraph (aa), pay to such employee an amount based on the formula in subparagraph (i) for every hour, or part thereof, worked.
- (iii) An employer of a part-time employee who works an average of 15 or more ordinary hours per week shall, in respect of the contributions due in terms of paragraph (a), base the calculation on the employee's normal actual weekly wage using the following formula:

$$\text{Normal actual weekly wage} = \frac{\text{Total actual weekly wage due for month}}{1} \times \frac{3}{13}$$

(b) Shortfall shifts, being shifts in a month amounting to less than 21, or shifts worked or accrued in excess of the 21-shift cycles referred to in paragraph (a) in any month, shall be carried forward to the next succeeding month.

(c) An employer shall effect payment of the amount due in terms of paragraph (a) at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein,

Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of the following month, a monthly return (Annexure D) with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.

(d) An employer shall, in respect of an employee who is discharged from or who leaves his employment before such employee has qualified for annual leave in terms of clause 19 (2) (a) or 20 (1), as the case may be, and in respect of whom contributions are due in terms of this clause, complete in triplicate a Pro Rata Accrued Shift Entitlement Advice Voucher in the form specified by the Council for this purpose (Annexure E) and shall retain one copy in his possession, forward one copy within 24 hours of the termination of employment of the employee to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, and hand the remaining copy to the employee.

(e) An employer shall credit an employee who has qualified for annual leave with 15 shifts in respect of the period during which he is on such leave.

(2) An employer shall each year, at least 15 days before the completion of an employee's annual leave-qualifying period prescribed in clause 19 (2) (a) or 20 (1), as the case may be, forward to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, any arrear Holiday Pay Bonus Fund contributions due to the Fund in respect of such employee up to and including his date of annual leave entitlement.

(3) *Holiday Pay Bonus Fund payment:* Holiday pay bonus due to an employee shall be payable to him, (or to the employer for onward payment to the employee if so agreed) by the Council when he proceeds on annual leave: Provided that –

- (i) he has completed the qualifying leave pay entitlement period prescribed in clause 19(2)(a) or 20(1), as the case may be;
- (ii) the Council holds Holiday Pay Bonus Fund moneys to his credit; and
- (iii) application for payment (Annexure F) is lodged with the Secretary of the Council at least 15 days before his annual leave is due to begin.

(4) *Accrued or pro rata Holiday Pay Bonus Fund payments:* (a) (i) An employee who is discharged

from, or who leaves, his employment in accordance with the provisions of clause 27 before he has qualified for annual leave in terms of clause 19 (2) (a) or 20 (1), as the case may be, shall be entitled to the holiday pay bonus accrued to him in terms of the provisions of sub-clause (1)(a), reckoned from the date of commencing employment with the employer or from the commencement date of his last annual leave.

(ii) Any unpaid accrued holiday pay bonus due by an employer for an employee in terms of subparagraph (i) shall not be handed to or accepted by such employee, but shall immediately upon termination of services be remitted to the Secretary of the Council, Private Bag X69, Braamfontein, 2017.

(iii) In the event that an employer, contrary to the provisions of subparagraph (ii) above or subclause (2), pays accrued holiday pay bonus to an employee, this will not absolve him of his obligation to remit the amount to the Council and no set-off will be permitted.

(b) Accrued holiday pay bonus held by the Council, plus payments remitted to the Council on behalf of an employee in terms of paragraph (a) (ii), shall be paid to him on application, upon the expiry of four weeks after being discharged from his employment or after leaving his employment in the Industry, as the case may be.

(c) Accrued holiday pay bonus held by the Council on behalf of an employee who is retrenched, or who for health reasons or any other incapacity has become unable to continue his work, shall be paid immediately to the employee and accrued holiday pay bonus due in the event of the death of an employee shall be paid immediately to his estate.

(d) Any accrued or pro rata holiday pay bonus to be remitted to the Council in terms of paragraph (a) (ii)

shall be calculated after the employee has been credited with shifts pro rata to the period of leave he would have been entitled to in terms of clause 19 (2) (a) or 20 (1), as the case may be, according to the following formula:

Number of shifts to be credited =  $\frac{X}{12} \times \frac{15}{1}$  where X = the number of completed 21-shift cycles since commencing employment or commencing the last period of leave.

(5) No deductions from holiday pay bonus shall be made as a set-off against any moneys that may

be owing to an employer by an employee.

(6) *Banking account:* All moneys paid into the Holiday Pay Bonus Fund shall be deposited in a special bank account to be operated for the in the name of the Holiday Pay Bonus Fund.

(7) *Investments of funds:* Any money that belongs to the Holiday Pay Bonus Fund and that are not required for immediate use may be invested by the Council from time to time in terms of section 53 (5) of the Act.

(8) Income earned on invested moneys shall accrue directly to the Council in reimbursement of expenses incurred by the Council on behalf of the Fund administered by the general funds of the Council.

(9) For the purposes of this clause "employment" shall have the same meaning as in clause 19 (5).

(10) *Forfeiture of unclaimed Holiday Pay Bonus Fund contributions:* Five years after the date of receipt thereof, all contributions paid to the Council for an employee in terms of sub-clause (1) (a) shall, if not claimed or otherwise legally disposed of, be forfeited to the general funds of the Council.

(11) In the event of –

(a) the Council incorrectly paying a holiday pay bonus to an employee or employer as a result of the employer's failure to comply with any of the provisions of this Agreement, or an error made by the employer; or

(b) the Council incorrectly paying a holiday bonus to an employee as a result of an error, the Council may invoke the provisions of the Exemptions and Dispute Resolution Collective Agreement to recover the amount incorrectly paid.

(12) *Exemption*

(a) For a 1 (one) year trial period, the Exemptions Committee, assisted by a person with financial expertise and who is acceptable to the Executive committee as defined in the Council Constitution, shall grant an employer a 1 (one) year exemption to pay holiday bonuses direct to its employees in the event that:

(i) the employer provides, on a annual basis, a guarantee from a banking institution that the employer has the funding available to

cover the accrued holiday bonus liability failing which the bank will make good the liability; or

- (ii) the employer provides a certificate from its auditors that it has made adequate provision in its accounts to cover the accrued holiday bonus liability; and
- (iii) the employer has conducted business for at least 3 (three) years; and
  - (aa) the employer has an acceptable record of payment compliance to the Council; and
  - (ab) the Exemptions Committee is satisfied that the employer is financially stable; and
  - (ac) the Exemptions Committee is satisfied that the employer has consulted appropriately with its employees on the direct payment.

(b) Any employer who is granted exemption to pay holiday bonus pay directly to employees shall do so on or before 15 December.

## 22. SICK AND ABSENCE FUND

In the A Area -

(1) (a) The Sick Fund established under Government Notice No. R. 1238 of 12 June 1953 is hereby continued and for the purposes of this clause "employee" means an employee categorised in clause 7 (1) (a). Every employer shall pay as contributions to the Sick Fund by not later than the 20th day of each month, in respect of each employee employed by him who has completed or accrued 21 shifts during the preceding month, an amount calculated as follows, with the normal basic weekly wage being the wage rate earned by the employee at the time the 21st shift was completed or accrued:

Number of 21-shift cycles completed during month x  $\frac{\text{Normal weekly basic wage}}{45}$  x  $\frac{9}{1}$

- (i) A temporary employment service may, in lieu of the contributions due in terms of

paragraph (a), pay to each of its temporary employees who is provided to a client an amount based on the following formula for

every ordinary hour, or part thereof, worked in each job category:

$$\frac{\text{Total basic wage for week}}{45} \times \frac{9}{195}$$

(ii) An employer of -

(aa) a part-time employee who works less than 15 hours per week; or

(ab) a relief employee who has been employed for more than 90 days in a 52-week period, shall, in lieu of the contributions due in terms of paragraph (a), pay to such employee an amount based on the formula in subparagraph (i) for every hour, or part thereof, worked.

(iii) An employer of a part-time employee who works an average of 15 or more ordinary hours per week shall, in respect of the contributions due in terms of paragraph (a), base the calculation on the employee's normal basic weekly wage using the following formula:

$$\text{Normal basic weekly wage} = \frac{\text{Total basic weekly wage due for month}}{1} \times \frac{3}{13}$$

(b) Shortfall shifts, being shifts worked in a month amounting to less than 21, or shifts worked or accrued in excess of the 21-shift cycle referred to in paragraph (a), in any month shall be carried forward to the next succeeding month.

(c) An employer shall effect payment of the contributions due in terms of paragraph (a) at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of the following month, a monthly return (Annexure D) with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.

(2) (a) *Sick leave benefit payments*: The Council shall pay out of the Sick Fund to each employee who is absent from work through illness or accident not resulting from his own misconduct or neglect, an amount equal to one contribution received in terms of sub-clause (1) (a) for every working day of absence on sick leave on a basis of "first contribution in, first contribution out": Provided that

-

- (i) the Council holds Sick Fund moneys to his credit;
  - (ii) he produces a medical certificate or any other suitable medical evidence, in respect of his absence from work through illness or accident for more than one day;
  - (iii) he shall only qualify for sick pay after his first 30 days of employment in the Industry with the same employer and thereafter he shall be entitled to sick pay as prescribed in paragraph (a);
  - (iv) no sick pay shall be payable for any absence of less than eight hours' working time on any working day;
  - (v) an employer shall pay to an employee who is absent owing to injury in an accident in the course of his duties for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, not less than 75 per cent of his normal basic wage for a maximum period of three months and recover such payments from the amounts payable to the employee in terms of the said Act; and
  - (vi) an employee shall be credited with shifts in respect of a period of absence from work through illness on the basis prescribed in clause 19 (5) (e).
- (b) (i) *Sick leave bonus payments:* On completion of 504 shifts after commencing employment, an employee shall be entitled to a sick leave bonus consisting of the sick leave contributions remitted for him in terms of sub-clause (1) (a) in respect of the first 252 shifts of employment, less any sick leave benefits paid to him during the initial 504 shift period.
- (ii) On completion of a further shift cycle of 252 shifts (third annual shift cycle), an employee shall be entitled to a sick leave bonus consisting of any sick leave contributions remaining from the second annual shift cycle after payment of the first bonus and the benefits in terms of subparagraph (i), less any further sick leave benefits paid to him during the last (third) annual shift cycle.
- (iii) The next and all subsequent sick leave bonuses shall be calculated and payable on the basis prescribed in subparagraph (ii).
- (c) *Accrued or pro rata Sick Fund payments:* (i) (aa) An employee who is discharged from, or who leaves, his employment in accordance with the provisions of clause 27 before he has qualified for annual leave in terms of clause 19 (2) (a), shall be entitled to accrued Sick Fund pay held by the

Council, equivalent to 25 per cent of his actual weekly wage for each completed 21-shift cycle of employment reckoned from the date of commencing employment with the employer or from the commencement date of his last annual leave.

(bb) Accrued Sick Fund pay due to an employee in terms of subparagraph (i) (aa) shall not be handed to or accepted by him, but shall immediately upon termination of services be remitted to the Secretary of the Council, Private Bag X69, Braamfontein, 2017.

(ii) Accrued Sick Fund pay remitted to the Council on behalf of an employee in terms of subparagraph (i) (bb) shall be paid to him on application upon the expiry of four weeks after being discharged from his employment or after leaving his employment in the Industry, as the case may be.

(iii) Accrued Sick Fund pay held by the Council on behalf of an employee who is retrenched, or who for health reasons or any other incapacity has become unable to continue his work, shall be paid immediately to the employee and accrued Sick Fund pay due in the event of the death of an employee shall be paid immediately to his estate.

(iv) Any accrued or pro rata Sick Fund pay to be remitted to the Council in terms of subparagraph (i) (bb) shall be calculated after the employee has been credited with shifts pro rata to the period of leave he would have been entitled to in terms of clause 19 (2) (a) according to the following formula:

Number of shifts to be credited since commencing =  $\frac{X}{12} \times \frac{15}{1}$  where X = the number of completed 21-shift cycles employment or commencing the last period of leave.

(v) In the event that an employer, contrary to the provisions of subparagraph (ii) above or subclause (1) (a) or (c), pays accrued Sick Fund pay to an employee, this will not absolve him of his obligation to remit the amount to the Council and no set-off will be permitted.

(3) The Council shall, by not later than the 7th day of each month, pay from the Sick Fund contribution credits of an employee who is a member of the Motor Transport Workers' Union (South Africa), the South African Transport Workers' Union or the Professional Transport Workers' Union of South Africa and who has completed 21 shifts during the preceding month, to a registered insurance company nominated by such employee's trade union, an amount agreed upon between such union and such insurance company as the premium payable by such employee

**in respect of the union's death and burial insurance scheme: Provided that -**

- (i) if requested by the Secretary of the Council to do so, the trade union shall furnish proof of current membership of any employee who is claimed to be a member of such union; and**
- (ii) the employer's relevant monthly contribution cheque has been honoured by his bank.**

**(4) *Banking account:* All moneys paid into the Sick Fund shall be deposited in a special bank account to be operated for and in the name of the Sick Fund.**

**(5) *Investments of funds:* Any money that belongs to the Sick Fund and that are not required for immediate use may be invested by the Council from time to time in terms of section 53 (5) of the Act. Income earned on invested moneys shall accrue directly to the Council in reimbursement of expenses incurred by the Council on behalf of the Funds administered by Council.**

**(6) (a) To the Sick Fund Reserve Fund on the Balance Sheet of the Fund.**

**(b) Payments from the Sick Fund shall be by cheque signed by two persons duly authorised thereto by the Council.**

**(c) Payments in terms of subparagraphs (a) (ii) and (iii) shall be subject to the availability of interest derived in terms of paragraph (a) and moneys forfeited in terms of sub-clause (11).**

**(7) A registered auditor, whose fees shall be determined by the Council, shall be appointed annually by the Council and shall audit the accounts of the Sick Fund at least once a year and prepare a statement showing all moneys received and expenditure incurred under all headings during the 12 months ended 28/29 February of the preceding year, together with a balance sheet showing the assets and liabilities of the Fund as at that date. The audited statement and balance sheet, countersigned by the Chairman of the Council, together with any report made thereon by the auditor, shall lie for inspection at the offices of the Council and true copies thereof shall be transmitted to the Registrar of Labour Relations within three months of the close of the period covered thereby.**

**(8) (a) In the event of the expiry of this Agreement, or of any extension or renewal thereof, by efflux of time or any other cause and a subsequent Agreement of the Council providing for the continuation of the Sick Fund not being negotiated within a period of 12 months from the date of**

such expiry, or the Fund not being transferred by the Council within such period to any other fund established for the same purpose as that for which the original Sick Fund was established, the Fund shall be liquidated and shall during such period of 12 months, or until such time as it is so continued by a subsequent Agreement or so transferred to another fund, be administered by the Council.

(b) In the event of the dissolution of the Council, or of its ceasing to function during the currency of this Agreement, the Registrar of Labour Relations may appoint a committee consisting of an equal number of representatives of employers and employees in the Industry for the purposes of administering the Sick Fund. Any vacancies occurring on the committee may be filled by the Registrar from among representatives of employers or employees in the Industry, as the case may be. Where the committee is unable or unwilling to discharge its duties the Registrar may appoint one or more trustees to administer the Fund. The committee, or trustee or trustees, so appointed shall have the powers vested in the Council for the purposes of administering the Fund. If there is no Council in existence upon the expiry of this Agreement, the Fund shall be liquidated and any moneys remaining to its credit shall be disposed of in accordance with paragraph (c).

(c) Upon liquidation of the Sick Fund in terms of paragraph (a) or (b) the moneys remaining to the credit of the Fund shall, after payment of all claims against the Fund, including administration and liquidation expenses, be paid into the general funds of the Council and, if on such liquidation the affairs of the Council have already been wound up and its assets distributed, any moneys remaining to the credit of the Fund shall be distributed in terms of section 59 (5) of the Act as if they formed part of the general funds of the Council.

(9) No deductions from Sick Fund dues shall be made as a set-off against any moneys that may be owing to an employer by an employee.

(10) For the purposes of this clause "employment" shall have the same meaning as in clause 19 (5) and an employee, other than a relief employee and a temporary employee of a temporary employment service, shall be credited with one shift for each day of absence on sick leave amounting in the aggregate to not more than 24 shifts in a two-year cycle.

**(11) Forfeiture:** Five years after the date of receipt thereof, all contributions paid to the Council as sick leave contributions in terms of this Agreement or any other wage-regulating measure shall, if not claimed or otherwise legally disposed of, be forfeited and used for the purpose specified in sub-clause (6) (a)

**(12) (a) Mortality and special grants:** In the event of the death or permanent disability of an employee, other than a relief employee or a temporary employee of a temporary employment service for whom no contributions have been paid to the Fund, the Council may, in its sole discretion, on application pay as benefits from the Sick Fund an amount as set out in the Schedule of Grants referred to in paragraph (b) below, or any such lesser amount as the Council may decide, to -

- (i) the dependants of the deceased employee; and/or
- (ii) a trustee or trustees appointed to manage the affairs of the deceased employee's dependants; and/or
- (iii) such heirs of the deceased employee as the Council may consider entitled to receive such benefits; or
- (iv) the disabled employee:

Provided that no benefits shall be paid unless contributions to the Sick Fund in terms of sub-clause (1) (a) have been paid in respect of the employee for a period of at least 252 shifts.

**(b) Schedule of mortality and special grants:** For each completed year of service during which contributions have been received, up to a maximum of 30 years:

- (i) Drivers and security officers, grade A and grade B: R150,00 per completed contribution service year; and
- (ii) all other employees: R100,00 per completed contribution service year.

**(c) Medical expenses grants:** In addition to the grants provided for in paragraph (a) the Council may, in its sole discretion, in circumstances of extended illness or hardship, on application approve the payment of -

- (i) between 50 per cent and 100 per cent of the medical expenses incurred during the period of six months immediately preceding the death or permanent disability of an employee:

Provided that no such payment shall exceed the relative service period grant prescribed in

paragraph (b) and that it shall be assessed on medical expenditure documentation; or

- (ii) up to an equivalent of 50 per cent of an employee's Sick Fund contributions for a 252-shift cycle period by way of assisting him to defray non-refundable medical expenses incurred during absences through illness exceeding 24 shifts: Provided that the employee has completed at least three years' service in the Industry and has substantiated his application with medical expenditure documentation.

(d) Payments in terms of this sub-clause shall be spread over such period as the Council in its sole discretion may decide and shall be subject to the availability of funds obtained in terms of sub-clauses (6) (a) and (11).

(13) In the event that -

- (a) the Council incorrectly pays a sick leave bonus or benefit to an employee or employer as a result of the employer's failure to comply with any of the provisions of this Agreement, or an error made by the employer; or

- (b) the Council incorrectly pays a sick leave bonus or benefit to an employee as a result of an error, the Council may invoke the provisions of the Exemptions and Dispute Resolution Collective Agreement to recover the amount incorrectly paid. In addition, the employer shall be liable for all costs incurred by the Council in recovering the amount.

(14)(i) The Sick and Absence Fund in the A area shall be extended to the B area and phased in over a period of four years. Employers in the B area shall, for the duration of this agreement, contribute 6 (six) days sick leave to the Sick and Absence Fund and the employee's sick leave entitlement shall be reduced pro rata by 6 (six) days for the duration of this agreement.

- (ii) An employee shall, at the end of his or her sick leave cycle, be entitled to payment of the balance of the sick leave days contributed by the employer after sick leave and unauthorized days of absence taken by the employee have been deducted.

(15) The amount deducted from the employee's Sick and Absence Fund payout in respect of unauthorized days of absence shall be refunded to the employer by the Fund at the time of the payout

to the employee. If an employee disputes the amount of the payout, a designated agent shall investigate the dispute and the Council shall act upon the designated agent's recommendation.

### **23. SICK LEAVE**

Repealed as from 01 June 2009.

### **24. STUDY LEAVE**

(1) An employer shall grant his employee, other than a relief employee and a temporary employee of a temporary employment service, paid study leave of not less than two shifts per subject up to a maximum of four subjects per year, subject to the following conditions:

- (a) The course shall be approved by the employer;
- (b) the course shall be accredited by the Transport Education and Training Authority;
- (c) such study leave granted shall include the day on which the examination is written; and
- (d) the employee shall achieve a pass in the examination.

(2) The employer shall provisionally grant the study leave, credit the employee with one shift for each day of such leave and pay him his normal wage for the two days on the first pay day following the examination.

(3) On receipt of the examination results the employee shall immediately furnish the employer with a copy thereof.

(4) In the event of an employee's failing an examination, the employer shall be entitled to recover the provisional payment made in terms of sub clause (2) from his wage and deduct shifts credited in terms of the said sub clause.

### **25. FAMILY RESPONSIBILITY LEAVE**

(1) An employer shall grant his employee, including a part-time employee, up to a maximum of five shifts' leave per year on full pay for the following occurrences:

- (a) Death of an immediate family member which includes, in-laws and grandparents, as specified in clause 2 Definitions; or
- (b) Serious illness of an immediate family member, which includes in-laws and grandparents, as specified in clause 2 Definitions.; or
- (c) the birth of a child where the employee is the biological father.

(2) The employee shall provide satisfactory proof of each occurrence in the form of a death, medical or birth certificate to his employer.

(3) In the event of an employer's failing to accept proof of an occurrence, the employee may, on good cause shown, appeal to the Council which shall, after due consideration of all the facts relating to such failure, either uphold or reverse the employer's decision.

(4) An employee shall be credited with one shift for each day's leave granted in terms of subclause (1).

## 26. MATERNITY LEAVE

(1) An employee is entitled to at least four consecutive months' maternity leave subject to the following conditions:

- (a) During the period of maternity leave the employee shall be entitled to 33 per cent of her normal basic wage and this amount shall be paid by the employer weekly on the usual pay day: Provided that the employee shall have completed at least 6 months or more unbroken service with the employer as a class of employee specified in clause 7 (1);
- (b) an employee may commence maternity leave:
  - (i) At any time from four weeks before the expected date of birth, unless otherwise agreed; or
  - (ii) On a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (e) An employee must notify an employer in writing, unless the employee is

unable to do so, of the date on which the employee intends to –

- (i) Commence maternity leave; and
  - (ii) Return to work after maternity leave.
- (f) Notification in terms of sub clause (e) must be given –
- (i) At least four weeks before the employee intends to commence maternity leave; or
  - (ii) If it is not reasonably practicable to do so, as soon as is reasonably practicable.

## **27. TERMINATION OF CONTRACT OF EMPLOYMENT**

- (1) An employer or an employee, other than a relief employee or a temporary employee of a temporary employment service, may terminate the contract of employment only on notice of not less than –
- (a) one week, if the employee has been employed for 26 weeks or less, or by paying or forfeiting in lieu thereof an amount equal to one week's wages;
  - (b) two weeks, if the employee has been employed for more than 26 weeks but not more than 52 weeks, or by paying or forfeiting in lieu thereof an amount equal to two weeks' wages;
  - (c) four weeks, if the employee has been employed for more than 52 weeks, or by paying or forfeiting in lieu thereof an amount equal to four weeks' wages.
- (2) Notice of termination of contract of employment shall be in writing in the form of Annexure H.
- (3) Nothing contained in sub-clauses (1) and (2) shall affect -
- (a) the right of an employer or an employee to terminate the contract of employment without notice for any cause recognised by law as sufficient; or
  - (b) any agreement between an employer and an employee that provides for a period of notice of equal duration on both sides of longer than one week, two weeks or four weeks, as the case may be: Provided that if an agreement has been entered into in terms hereof, the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

(4) Provisions regarding the termination of a contract of employment of a temporary employee of a temporary employment service who is provided to a client, shall be contained in the document handed to the employee when he is assigned to the client.

(5) An employer shall, upon termination of any contract of employment, furnish the employee with a form in the form of Annexure E duly completed.

## **28. CERTIFICATE OF SERVICE**

(1) Except where an employee deserts, or is a relief employee or a temporary employee of a temporary employment service, the employer shall, upon termination of any contract of employment, furnish the employee with a Certificate of Service in the form of Annexure B.

(2) A copy of the Certificate of Service shall be forwarded by the employer to the Council by not later than the 20th day of the month following the termination of the employee's contract of employment.

## **29. SEVERANCE PAY**

(1) Severance pay will be regulated in terms of the LRA, 66 of 1995 and the BCEA 75 of 1997 (as amended).

## **30. AGENCY SHOP AGREEMENT**

(1) Subject to the provisions of this clause a fee, to be known as an agency shop fee, shall be deducted by an employer from the wages of all permanent employees who are not members of any registered trade union and are employed -

(a) in the Industry;

(b) in an establishment in which one or more party unions represent a majority of the employees covered by this Agreement;

(c) in a job category covered by this Agreement.

(2) The agency shop fee shall be equivalent to the current membership subscription fee as determined by the party unions from time to time in terms of their constitutions. Where two or more party unions jointly have a majority of employees as members, the agency shop fee shall be equivalent to the current membership subscription fee set by the party union with the highest subscription at the establishment and in such case the apportionment of the

**agency shop fee between the party unions shall be proportionate to their membership.**

- (3) **Subject to the provisions of clause 6, deductions in respect of agency shop fees shall be implemented by an employer in terms of subclause (1) on receipt of written notification from the Secretary of the council detailing a party union’s majority representation of employees. A copy of the notification shall be forwarded to the union.**
- (4) **An employer shall effect payment of the amount due in terms of subclause (1) at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of each month, a monthly return (Annexure D) with the particulars in the form specified by the Council for this purpose, including each employee’s full names, surname, date of birth and identification number.**
- (5) **The Secretary of the Council shall deposit all monies received in terms of subclause (4) in a bank account administered by the Council.**
- (6) **Party unions will notify the Secretary of the Council of any change in membership subscription fees and furnish the Secretary with a copy of the letter forwarded to the Minister of Labour advising such change.**
- (7) **The Secretary of the Council shall, within seven days of receipt of the notification, advise all affected employers and employees in writing of the change by means of a letter to employers and a general notice to employees, to be placed on staff notice boards.**
- (8) **A change in the agency shop fee shall be implemented by the employer in the pay period following receipt of the notification from the Secretary of the Council and shall not be retrospective.**
- (9) **The agency shop fee shall be deducted by an employer for as long as the party union or unions represent a majority of the employees covered by this Agreement as members in good standing. For the purposes of this Agreement “good standing” means as defined in the constitution of the union or a member being not more than 13 weeks in arrear with the payment of membership subscriptions.**
- (10) **An employer who requires verification of party union membership prior to the implementation of agency shop fees shall notify the Secretary of the Council at Private Bag X69, Braamfontein, 2017, thereof.**

**(11) On receipt of the notification referred to in sub clause (10) the Secretary of the Council shall cause a membership verification to be conducted, unless by mutual agreement the employer and the party union agree to another third party conducting the verification exercise. Verification shall be based on, but not limited to, a verification of stop orders.**

**(12) Following completion of the membership verification where necessary, the Secretary of the Council shall, within seven days, notify both the employer and the union or unions in writing of the outcome thereof, which shall be binding on both parties.**

**(13) In the event of the membership verification establishing that the union or unions have majority representation as specified in sub-clause (1) (a) to (c), the employer shall implement the agency shop fee deductions with effect from the pay period following receipt of the letter of outcome from the Secretary of the Council.**

**(14) Should the employer at any time have reason to believe that membership of the party union or unions has fallen below the specified majority, he shall notify the union or unions and the Secretary of the Council in writing by registered post, telefax or hand delivery, of his intention to cease deductions. The union or unions will have sixty days from the date of receipt of the notification, unless a longer period is agreed upon between the parties, to either rectify the lack of majority, or dispute the employer's claim, by requesting the Secretary of the Council to conduct a membership verification in terms of sub-clauses (11) and (12).**

**(15) During the period of membership verification conducted by the Secretary of the Council in terms of sub clause**

**(14), the employer shall continue to deduct agency shop fees and may cease deductions only on receipt of the letter of outcome from the Secretary of the Council confirming a lack of majority representation by the party union or unions.**

**(16) The Secretary of the Council shall, not later than the 10th day of each month, transmit to the trade unions the total agency shop fees received by the Council during the preceding month and each union shall, on receipt thereof, deposit such amounts in a separate account administered by such union.**

**(17) Employees who are not members of a representative trade union are not compelled to become**

members of any such union.

(18) No agency shop fee deducted may be –

(a) paid to a political party as an affiliation fee;

(b) contributed in cash or kind to a political party or a person standing for election to any political office; or

(c) used for expenditure that does not advance or protect the socio-economic interests of employees.

(19) This clause remain in full force until such time as the Agency Shop Collective Agreement has come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act 66 of 1995.

### **31. TRADE UNION AND EMPLOYERS' ORGANISATION SUBSCRIPTIONS**

(1) *Trade union subscriptions:* (a) Every employer shall each week deduct from the wages of his employees who are members of a trade union that is a party to this Agreement, the current union subscriptions referred to in paragraph (b) and payable by such employees to such union and shall transmit the total amount so deducted, together with a monthly return (Annexure D) in the form specified by the Council for this purpose, to the Secretary of the Council, Private Bag X69, Braamfontein, 2017, by not later than the 2 0th day of each month following that to which it relates.

(b) The trade union subscriptions to be deducted from the wages of employees in terms of paragraph (a) shall be approved by the Registrar of Labour Relations and be circulated from time to time to all employers by the Secretary of the Council.

(2) The Secretary of the Council shall, by not later than the 10th day of each month, transmit to the trade unions the total union subscriptions received by the Council in terms of subclause (1) (a) during the preceding month.

(3) *Employers' organisation subscriptions:* Subscriptions due to the employers' organisation, as approved by the Registrar of Labour Relations, shall be transmitted to the Secretary of the Council at the address referred to in sub-clause (1) (a) by not later than the date referred to in that sub-clause and the Secretary shall, by not later than the 10th day of each month, transmit such subscriptions received during the preceding month to the employers' organisation.

### **32. EXPENSES OF THE COUNCIL**

**(1) The expenses of the Council shall be defrayed from moneys obtained in the following manner:**

**(a) An amount equivalent to 0,4 per cent per week of an employee's normal basic weekly wage shall be deducted by an employer from the wage of every employee, including a part-time employee, a relief employee and a temporary employee of a temporary employment service, in his or its employ who works one or more days in a week. To the amount so deducted the employer shall add a like amount and pay the total by not later than the 20th day of each month following that to which it relates, at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg.**

**(b) For the purposes of calculating the amount to be deducted in terms of paragraph (a) in respect of a relief employee or a temporary employee of a temporary employment service, the wage of such employee on which the calculation will be based shall be the total basic wage earned during the week, including the additional premium of 10 per cent in the case of a relief employee.**

**(c) The total basic weekly wages earned by employees referred to in paragraph (b) during a month shall be reflected in the wage column of the monthly return (Annexure D) to be submitted to the Council in terms of sub clause (2).**

**(d) The wage on which the deduction in terms of paragraph (a) for a part-time employee is to be based, shall be calculated in accordance with the formula in clause 11 (5) and be reflected in the wage column of the monthly return (Annexure D).**

**(e) An owner-driver shall pay 32c per week in respect of himself as owner and driver in the manner referred to in paragraph (a).**

**(2) An employer shall, when remitting the amount payable in terms of sub clause (1), also submit to the Secretary of the Council a separate monthly return (Annexure D), for each of his establishments, with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number. Part-time employees and relief employees shall be identified as such on the Annexure by inserting a "P" or an "R", respectively, before the job category in the "Category" column. In the event of an employer rendering a computer generated monthly return, the format thereof shall comply with Annexure D,**

failing which the Secretary of the Council is authorised to reject the form at his discretion.

(3) Temporary employees of a temporary employment service shall be identified by inserting a “T” in the “Category” column of the monthly return (Annexure D).

### **33. PROFESSIONAL DRIVING PERMIT**

(1) A driver shall be responsible for ensuring that his Professional Driving Permit is valid at all times.

(2) An employer shall refund a driver the prescribed fees for the renewal of his Professional Driving Permit and the costs of a medical certificate and fingerprinting, if officially required, on the driver’s furnishing a receipt as proof of payment thereof.

(3) In the event of a driver’s terminating his employment of his own accord within six months of the date of renewal of his Professional Driving Permit, the employer shall be entitled to recover a pro rata amount of the fee refunded in terms of sub-clause (2) by means of a deduction from such driver's wage.

### **34. UNIFORMS**

(1) An employer shall supply free of charge any uniform, overall, gumboots, cap or other protective clothing that he is required by any law to provide to his employee or that his employee is required by any law to wear.

(2) An employer to whom subclause (1) does not apply but who nevertheless, explicitly or implicitly, requires his employee to wear any such protective clothing, shall supply it free of charge.

(3) Any such protective clothing that has been provided to an employee free of charge shall remain the property of the employer.

(4) Quality and quantity to be negotiated at plant level and or establishment.

### **35. DISHONoured CHEQUES**

(1) Whenever an employer pays any amount that is due to the Council in terms of this Agreement in any manner other than in cash and such payment is dishonoured for any reason whatsoever, the Council may impose a penalty equal to 1,5 per cent of such amount on such employer. Any penalty due to the Council in terms of this subclause shall be payable on demand.

(2) Notwithstanding subclause (1), in the event that an employer's banker dishonours a cheque drawn by such employer in favour of the Council for any payment due in terms of this Agreement, the Secretary of the Council may rule that all future such payments to the Council by such employer be effected in cash or by means of a bank-guaranteed cheque, postal orders or electronic fund transfer.

### **36. ENFORCEMENT / LEGAL COSTS**

Whenever it becomes necessary or expedient for the Council to institute proceedings in any competent forum for the recovery of any amount of money deducted by an employer from any moneys due to an employee, but not paid over to the Council, or money due to be deducted and paid over to the Council by an employer, including in both instances money which an employer is required to pay on behalf of his employees, then and in such event the employer shall be liable for all costs incurred by the Council in recovery of the amount due, including costs on attorney and client scale in the event of a legal practitioner having being instructed by the Council to collect the amount.

### **37. INTEREST**

Whenever any amount payable to the Council in terms of this Agreement is not paid on the due date, interest shall be payable on such amount or on any lesser amount as may be unpaid, calculated from the due date to the final date of payment at the rate of two per cent per 30-day period.

### **38. SUBCONTRACTING**

(1) In the event that an employer contemplates engaging the services of a subcontractor that may result in -

- (a) reduction in employment; or
- (b) a material change in the terms and conditions of employment of employees,

the following procedure shall be adopted:

- (i) The employer shall give the trade union or unions representing affected employees, or the affected employees themselves in the case of non-unionised employees, at least four weeks' written notice of his intention; and
- (ii) a meeting between the parties shall be convened by mutual agreement within seven

days of the date of receipt of the notice referred to in subparagraph (i) by the trade union or unions or employees, at which meeting the parties shall enter into consultations regarding the need and motivation for the contemplated subcontract.

- (2) An employer who subcontracts work falling within the Council's registered scope shall be jointly and severally liable, together with the subcontractor, for the subcontractor's compliance with the provisions of this Agreement.

### **39. PROHIBITION OF EMPLOYMENT**

An employer shall not -

- (i) employ any person under the age of 15 years; or
- (ii) require or permit any female employee to work during the period commencing -
  - (a) eight weeks in the A Area; and
  - (b) four weeks in the B Area,
 prior to the expected date of her confinement and ending 17 weeks after commencement of her maternity leave.

### **40. EMPLOYMENT OF ILLEGAL IMMIGRANTS**

An employer shall not knowingly employ a person who is an illegal immigrant.

### **41. EMPLOYEE REPRESENTATIVES ON THE COUNCIL**

Employee representatives on the Council shall be given every reasonable facility by their employers to attend to their duties in connection with the work of the Council.

### **42. TIME AND WAGE REGISTERS**

- (1) Every employer shall keep available at his establishment for inspection at all times an up-to-date register containing the information prescribed in section 31 (1), (2) and (3) of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997), and regulations made thereunder, of the earnings paid to and the time worked by each of his employees. All entries in such register shall be in ink and be non-erasable.
- (2) Every employer shall retain the completed register referred to in subclause (1) for a period of three years after the date of the last entry therein.
- (3) Every employer shall on commencement of employment of every employee enter in the register

referred to in subclause (1) -

- (a) the full first names, surname and identification number of the employee;
- (b) his class of work; and
- (c) the date of commencement of his employment.

#### **43. DAILY LOGBOOK**

(1) An employer shall furnish every driver who is away from his place of residence and his employer's establishment on a journey extending over the compulsory rest interval of nine consecutive hours prescribed in clause

5 (3) (i) with a daily logbook which meets the following specifications:

- (a) The logsheets must be in duplicate folios and be serialised;
- (b) the Council's name, street address and postal address and the telephone number of the Council's nearest office to the employer's establishment where the employee is employed must appear on the driver's copy of the logsheet;
- (c) the name of the employer or owner driver must appear on each logsheet;
- (d) the following must be recorded on each logsheet -
  - (i) the date;
  - (ii) the name of the driver;
  - (iii) the name of any general worker, security officer or other employee accompanying the vehicle;
  - (iv) the signatures of the driver and the employer or the employer's authorised representative;
  - (v) the registration number of the vehicle and of any trailer;
  - (vi) the odometer readings at the commencement and end of the shift;
  - (vii) the shift commencement and finishing times;
  - (viii) the commencement and finishing times of all meal intervals;
  - (ix) the commencement and finishing times of all rest intervals;
  - (x) the number of ordinary hours worked;
  - (xi) the number of overtime hours worked; and

(xii) the number of hours worked on Sundays and public holidays; and

(e) provision must be made for the driver to record general remarks relating to his duties and any vehicle or trailer defects.

(2) A driver shall, in respect of each day's work, record the details required in terms of subclause (1) in his logbook and shall at the end of each day's work, or as soon as possible thereafter, deliver the original logsheet to his employer and retain a copy thereof as his record. A driver shall not record details in his logbook that are false and an employer shall not require or permit a driver to enter details in his logbook that are false.

(3) In the event of a driver's doing local deliveries and not being away from his place of residence and his employer's establishment on a journey extending over the compulsory rest interval referred to in sub-clause (1), the employer may utilise an attendance register instead of the daily logbook prescribed in the said sub-clause.

(4) An attendance register or the completed original folios of the daily logbook shall be retained by the employer at his registered business address for a period of three years subsequent to the date to which the register or folio refers.

#### **44. EXHIBITION OF AGREEMENT AND NOTICES**

(1) An employer shall keep available on the premises at which his motor vehicles are normally parked and at the usual place for the payment of wages, readily accessible to his employees, a legible copy of this Agreement in at least two official languages.

(2) An employer shall, at his establishment, keep affixed in a conspicuous place readily accessible to his employees a notice specifying the day of the week, or, subject to the provisions of clause 6 (1) (i), the day of the month, and the time and place at which wages will usually be paid. If wages are paid at more than one place, such notice shall contain particulars of each such place.

#### **45. AGENTS TO THE COUNCIL**

(1) One or more persons shall be appointed by the Council as agents to assist it in enforcing the provisions of its Collective Agreements.

(2) The Council may request the Minister of Labour to appoint any person to be a designated agent of the Council in terms of section 33 of the Act.

(3) A designated agent shall have all the powers conferred on a commissioner by Schedule 10 of the Act.

#### **46. EXEMPTIONS BY THE COUNCIL**

(1) Applications by non-parties for exemption from any or all of the provisions of this Agreement shall comply with the requirements prescribed in the Council's Exemptions and Dispute Resolution Collective Agreement published under Government Notice No. R. 919 of 24 July 1998, as amended and extended from time to time.

(2) The Independent Body established by the Council in terms of section 32 of the Act shall consider appeals against the refusal by the Council's Exemption Body to grant exemptions.

#### **47. RESOLUTION OF DISPUTES**

Disputes about the interpretation, application or enforcement of this Agreement shall be resolved in accordance with the procedure prescribed in the Council's Exemptions and Dispute Resolution Collective Agreement published under Government Notice No. R. 919 of 24 July 1998, as amended and extended from time to time.

#### **48. ANNUAL WAGE NEGOTIATIONS**

The Council shall annually negotiate substantive issues, excluding definitions and procedural issues, affecting all employees and endeavour to have amendments to this Agreement arising from such negotiations promulgated by not later than 1 March of each succeeding year. In the event of agreement between the parties to the Council not having been reached by 30 November of any year after three consecutive meetings, either party may invoke the dispute procedure prescribed in the Constitution of the Council.

#### **49. BARGAINING UNIT**

The inclusion of any other category of employee in the Council bargaining unit shall be subject to the following procedure:

(1) The Electoral Institute of South Africa, or any other organisation agreed upon by the parties to the Council, shall be requested by the Council to establish the exact number of trade

- union members in the additional categories ,with reference to each category and trade union, in an independent and impartial manner by a process agreed to with the parties; and
- (2) if it is established as a consequence of the procedure in sub-clause (1) that the trade union parties to the Council collectively have at least 50 per cent plus one membership in any such category, that category shall be added to the bargaining unit for future bargaining purposes.

## **50. LEVELS OF BARGAINING IN THE INDUSTRY**

(1) The forum for the negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between employers and employers' organisations on the one hand and trade unions on the other hand, shall be the Council.

(2) Non-substantive conditions of employment, operational procedures, bonuses or incentive schemes that are directly related to profit or productivity, or both, shall not be negotiated at the Council, but with employee representatives or representative trade unions at Company level. In the event of a deadlock in negotiations between the parties relating to the aforementioned issues, the provisions of Council's Exemption and Dispute Resolution Agreement may be invoked.

(3) No trade union or employers' organisation shall attempt to induce or compel, or be induced or compelled by, any natural or juristic person or organisation, by any form of strike or lockout, to negotiate the issues referred to in subclause (1) above at any level other than the Council.

(4) Any collective procedural agreement between an employer who is a member of the employers' organisation and a party trade union which contains provisions which are inconsistent with this Agreement, shall be regarded by such parties as amended to accommodate the provisions of subclauses (1), (2) and (3) above and shall not be binding to the extent that such provisions of such procedural agreement are inconsistent with the said subclauses.

## **51. RETRENCHMENT PROCEDURE**

(1) The retrenchment procedures prescribed in the Act shall apply to any retrenchment of employees contemplated by an employer.

(2) A retrenched employee shall be provided with a Certificate of Service in the form of Annexure B and a letter confirming that he has been retrenched (dismissal based on operational requirements).

(3) The employer shall, within 72 hours of an employee's being selected for and notified in writing of his retrenchment, notify the Council of the retrenchment by completing the Retrenchment Advice (Annexure G) specified for this purpose and forwarding it to the Secretary of the Council, Private Bag X69, Braamfontein, 2017.

(4) In the event of an employer contemplating a retrenchment falling within the terms of Section 189A of the Act, the Council shall appoint a facilitator in terms of any regulations made under subsection 189A(b) to assist the parties engaged in consultations if -

- (a) the employer has in its notice in terms of section 189(3) requested facilitation; or
- (b) consulting parties representing the majority of employees whom the employer contemplates dismissing have requested facilitation and have notified the Council within 15 days of the notice.

(5) Should Council be requested to provide a facilitator, all other provisions of section 189A of the Act shall apply.

## 52. PAYMENT OF CONTRIBUTIONS

To protect and/or preserve the benefits of employees who are or should be members of the Council's Provident Fund, the Secretary of the Council may, in his sole discretion, reallocate any contributions made by an employer to the Council in terms of clauses 19, 21, 22 and 32 of this Agreement to any shortfall in contributions due by such employer and employees in terms of clause 7 of the Provident Fund Agreement and the Council shall be deemed not to hold sufficient money for payment of leave pay, holiday pay bonuses or sick pay that may become payable in terms of the relevant clauses of this Agreement.

## 53. DEDUCTIONS

(1) Except where otherwise provided in this Agreement, no employee may agree to any deductions from his wages in respect of loss or damage suffered by his employer, unless -

- (i) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (ii) such deductions amount to less than R1 000,00; and
- (iii) the agreement to the deductions is embodied in a document signed in the presence of

a fellow employee of the employee's choice.

(2) (a) If an employee does not agree to such a deduction, or in the case of any deduction exceeding R1 000,00, the employer shall not make the deduction unless the employer has found the employee liable for such loss or damage after a fair inquiry at which a fair procedure was followed and the employee has been given a reasonable opportunity to show why the deduction should not be made.

(b) The total amount of any deductions shall not exceed the actual amount of the loss or damage and no deduction shall be made if it would result in an employer's being reimbursed twice for the same loss or damage.

(c) The total deduction in terms of this subclause from an employee's remuneration shall not exceed one quarter of his remuneration in money.

(d) In any period of 52 weeks, deductions for loss or damage may not exceed 20 per cent of the annual wage of an employee.

(3) In respect of any other debt, an employer may not make any deductions from an employee's remuneration unless –

(i) the deduction is required or permitted in terms of any law, collective agreement, court order or arbitration award;

(ii) the employee agrees in writing to the deduction in respect of a debt specified in such agreement; or

(iii) an agreement in respect of any goods purchased by the employee specifies the nature and quantity of such goods.

(4) An employer who deducts an amount from an employee's remuneration in terms of subclause (1) or (3) for payment to another person shall pay the amount to such other person in accordance with the time period and other requirements specified in the agreement, law, collective agreement, court order or arbitration award.

(5) An employer may not require or permit an employee to -

(i) repay any remuneration, except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(ii) acknowledge receipt of a greater amount than the remuneration actually received.

(6) Except where otherwise provided in this Agreement, whenever an employee is absent from work other than at the instance of his employer, his employer may make a deduction proportionate to the period of his absence and calculated on the basis of his wage in respect of his ordinary hours of work at the time of such absence.

(7) Subject to the consent of the Council, an employer may deduct an amount advanced to an employee on his remuneration and the cost of protective clothing or tools or equipment issued to him free of charge that he fails to return to his employer when requested to do so: Provided that the Council, when considering any claim for loss by an employer, shall consider tools and equipment to be only those items specifically issued to a driver which should remain in his possession at all times and any other usual equipment carried on a vehicle in cases where it is fixed to or locked in the vehicle.

(8) An employee who feels aggrieved by any deduction from his remuneration in terms of this clause may, on good cause shown, appeal to the Council which shall, after due consideration of all the facts relating to such deduction, either uphold or deny such appeal.

#### 54. MONTHLY RETURNS

(1) Every employer shall comply with the provisions of clauses 19, 21, 22, 30 and 32 by completing and submitting, each and every month, the monthly return in the form of Annexure D and paying to the Council the total amount due for such return by the due date.

(2) An employer shall only be deemed to have complied with the provisions of subclause (1) on receipt by the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, of the said Annexure and payment by the due date.

(3) Subject to the prior written consent of the Secretary of the Council, an employer may reproduce his own monthly return which must conform in all respects with Annexure D.

(4) In the event of an employer's submitting a monthly return which -

(a) does not conform in all respects with Annexure D;

(b) is not sufficiently legible in the opinion of the Secretary of the Council;

(c) does not correctly reflect the full particulars of the employer and his employees as required therein;

(d) does not correctly reflect or explain, where required, all other data required therein;

(e) reflects one or more incorrect contributions due in terms of the provisions referred to in sub-clause (1);

(f) does not cross cast; or

(g) does not tally with the accompanying cheque or any other remittance received by the Council in respect of the return, the Secretary of the Council, or an official designated by him, may return to the employer the monthly return and accompanying payment and the employer shall be deemed not to have complied with the provisions of the relevant clause or clauses referred to in subclause (1). The loss of time caused by so returning the monthly return and payment to the employer and by the resubmission thereof to the Council, shall be deemed to be the fault of the employer.

## **57. WELLNESS FUND**

(1) **The Council has:**

(a) conducted investigation, research, negotiation and consultation and has concluded that no existing social security, health, pension or medical scheme functioning within parameters of current legislation has the means, potential, scope or ability to provide comprehensively for the various services required by the industry, and in particular to deal with the challenges of the effects of the HIV/AIDS pandemic in the industry.

(b) devised a comprehensive strategy to promote awareness for the provision of facilities, services and substantive and procedural rights and benefits for employees in the Industry who are diagnosed HIV positive, or who suffer from the effects of AIDS:

(2) As a result of procedures and processes conducted in terms of sub-clause (1), Council has devised a strategy which will be incorporated in an implementation plan.

- (3) **The expenses involved in implementing and maintaining the plan and any subsequent amendments, will be defrayed from moneys collected in the following manner:**
- (a) **An amount equivalent to 0.5 (half) per cent per week of an employee's normal basic weekly wage shall be deducted by an employer from the wage of every employee, including a part-time employee, a relief employee and a temporary employee of a temporary employment service, in his or its employ who works one or more days in a week. In addition, a further amount equivalent to 0.5 (half) percent of an employees normal basic weekly wage of every employee shall be deducted and added to the employees provident fund contribution in accordance with clause 7 annexure "A" of the Provident Fund Agreement, as amended.**
- To the amount so deducted the employer shall add 1 (one) percent of basic wage bill and pay the total by not later than the 20<sup>th</sup> day of each month following what to which it relates, at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg.**
- (b) **For the purposes of calculating the amount to be deducted in terms of paragraph (a) in respect of a relief employee or a temporary employment service, the wage of such employee on which the calculation will be based shall be the total wage earned during the week, excluding the additional premium of 10 per cent in the case of a relief employee.**
- (c) **The wage on which the deduction in terms of paragraph (a) for a part-time employee is to be based, shall be calculated in accordance with the formula in clause 11(5) and be reflected in the wage column of the monthly return (Annexure D).**
- (4) **An employer shall, when remitting the amount payable in terms of sub-clause (3)(a), also submit to the Secretary of the Council a separate monthly return (Annexure D), for each of his establishments, with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number. Part-time employees and relief employees shall be identified as such on the Annexure by inserting a "P" or an "R", respectively, before the job category in the "Category" column.**

**In the event of an employer rendering a computer generated monthly return, the format thereof shall comply with annexure D, failing which the Secretary of the Council is authorized to reject the form at his discretion.**

- (5) Any employer who has implemented or intends implementing a scheme or program which provides the following or substantially similar benefits or facilities, may apply in terms of clause 46 to be exempted from some or all the provisions of this clause:
  - (a) HIV education and behavioral change interventions;**
  - (b) Confidential voluntary counseling and testing;**
  - (c) Treatment and support.****
- (6) An employer who is granted an exemption may not deduct more than the percentage specified in sub-clause (3)(a) from the wage of any employee for the purpose of operating a scheme or program.**
- (7) The management and administration of the Fund shall be vested in a committee appointed by Council in terms of clause 18 of Council's Constitution, and shall consist of at least ten representatives, of whom five shall be employer representatives and five employee representatives. For each representative an alternate shall be appointed by the Council from amongst its members.**
- (8) Representatives and alternates shall hold office for a period of twelve months and shall be eligible for re-appointment.**
- (9) In performing its function and duties and exercising its powers, the AIDS Committee may contract with service providers for the provision of services, facilities, publications, support, training, counseling, presentations and all other forms of services necessary for the implementation and continuance of the plan, including but not limited to, a self-insured contingency policy with any institution registered with the Registrar of short-term insurance.**
- (10) The AIDS Committee shall, subject to the approval of the Council, direct the policy of the Fund and administer the general business and activities of the Fund in accordance with the Rules.**

- (11) **Should a dispute arise at any time as to the administration of the fund in regard to which members of the AIDS Committee are equally divided, the matter shall be referred to Council for a decision.**
- (12) **If the AIDS Committee is unable to perform its duties for any reason, the Council shall perform such duties and exercise the powers of the committee.**
- (13) **Financial Control**
- (a) **The Management Committee shall collect all revenue of the fund and shall deposit all money so received in a banking account opened in the name of the Fund.**
- (b) **Withdrawals from the Fund shall be by cheque signed by such persons as have been authorized by the Management Committee.**
- (c) **As soon as possible after February in each year the Management Committee shall cause a statement of the income and expenditure of the fund for the 12 months ended February, and a balance sheet showing the assets and liabilities as at the date, to be prepared, which shall be certified by the auditor and countersigned by the Chairperson.**
- (d) **The audited statement and balance sheet and any report made by the auditor shall thereafter be open for inspection at the offices of the Council and copies thereof shall be sent to the Director-General of Labour within three months of the close of the period covered thereby.**
- (e) **Any moneys not required to meet current payments and expenses shall be invested in –**
- (i) **savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;**
- (ii) **internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);**
- (iii) **a registered unit trust; or**
- (iv) **any other manner approved by the Registrar of Labour Relations.**

(f) All expenses incurred in the administration of the fund shall be charge against the Fund.

(14) Rules

The Management Committee shall have the power, subject to the approval of the Council, to make amend and withdraw rules governing the administration of the Fund, provided that such rules and any amendment thereof shall not be inconsistent with the provisions of this Agreement or with the provisions of any law. A copy of the rules must be forwarded to the Director-General of Labour.

(15) Access to establishments

In the event of a request by the Council or by a party union representing the majority of employees in a workplace, the employer shall, subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or prevent undue disruption of work, permit duly authorized representatives, agents, officers, trainers or presenters of service providers, access to the premises for the purposes of conducting awareness and education programs.

58. DANGER ALLOWANCE

(1) A danger allowance shall be paid to HAZCHEM employees, as defined, as from 1 March 2010. The allowance shall be 0.5% based on determined minimum wages for HAZCHEM employees calculated on either the weekly minimum wage in respect of weekly paid employees or on the monthly minimum wage in respect of monthly paid employees.

59. DAY OFF IN THE CIT SECTOR

(1) Employees employed in the CIT sector who are not absent for any reason whatsoever and have full attendance during allocated ordinary hours of work during a calendar month will qualify for a paid day off the following month on a working day agreed between an employee and his employer. Overtime still continue to commence after an employee has worked 45 normal working hours.

(2) If an employee has to work on the day off as agreed in sub clause (1) the employer may:

(a) give the employee an additional day off the following month.

(b) pay the employee for that day at the ordinary hourly rate.”

Signed at Johannesburg for and on behalf of the parties to the Council on this 21<sup>st</sup> day of April 2009.

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**T.C. SHORT**  
Chairperson of the  
Council

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**J.J. DUBE**  
Vice-Chairperson  
of the Council

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**J. LETSWALO**  
Secretary of the  
Council