

MAIN AGREEMENT

PART I

CONDITIONS OF EMPLOYMENT

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed—
 - (a) in the Iron, Steel, Engineering and Metallurgical Industry throughout the Republic of South Africa;
 - (b) in the Provinces of the Transvaal and Natal by the section of the Industry concerned with the installation, repair and servicing of radios, refrigerators and domestic electrical appliances;
 - (c) in the Magisterial Districts of Durban, East London, Johannesburg, Pietersburg, Pinetown and The Cape by the section of the industry concerned with radio manufacture;
 - (d) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions.
- (2) Notwithstanding the provisions of clauses 1(1)(d) and 2, the terms of this Agreement shall not apply to employers and employees who are not members of the employers organizations and trade unions, respectively.
- (3) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall not apply to the following:
 - (a) the installation, repair and servicing of radios and domestic electrical appliances in the Provinces of the Cape of Good Hope and the Orange Free State.
 - (b) the manufacture, for sale, of standard high-speed cutting tools made from high-speed steel by means of plant and/or equipment and/or methods specifically adapted and/or designed for production by repetitive processes, in the Magisterial Districts of Boksburg, Johannesburg, Pietermaritzburg and Vereeniging.
 - (c) the manufacture of aluminium sheet and/or foil, and interrelated operations.
 - (d) the installation and/or repair and/or maintenance of electrical lifts and escalators.
 - (e) the production of iron and/or steel and/or ferro-alloys.
 - (f) the installation, maintenance and repair of electrical equipment referred to in paragraph (a)(ii) of the definition 'Electrical Engineering Industry' in clause 3 of Part I of the former Agreement in the Provinces of the Cape of Good Hope and the Orange Free State.
 - (g) the manufacture of tungsten carbide (hard metal).
 - (h) the assembling, servicing, installation, maintenance and/or repair of appliances, equipment, machines, devices and apparatus, whether utilising manual, photographic, mechanical, electrical, electrostatic or electronic principles, or any combination of such principles, that are primarily intended for use in accounting and/or business and/or calculation and/or office and/or educational procedures.
 - (i) the Venetian Blind and Allied Products Manufacturing Industry in the Province of the Transvaal.
 - (j) the installation and/or repair of burglar and/or other similar alarm systems in the Provinces of the Cape of Good Hope and the Orange Free State.
 - (k) the manufacture of plumbers' and/or engineers' brassware by means of gravity die-casting and/or pressure die-casting and/or hot pressing and/or machining.
 - (l) the undertaking of Union Steel Corporation of South Africa (Pty) Limited, in the Magisterial District of Vereeniging, Transvaal.
 - (m) the Locksmithing Trade in the Magisterial Districts of Benoni, Boksburg, Durban, Germiston, Johannesburg, Krugersdorp, Lower Umfolozi, Pinetown, Port Elizabeth, Pretoria, Randburg, Roodepoort, Springs and The Cape.
 - (n) the production, for sale, of welding electrodes by means of plant and/or equipment and/or methods specifically adapted and/or designed for production by repetitive processes, in the Magisterial Districts of Brits, Germiston, Kempton Park and Pretoria.
 - (o) the undertaking of Billiton Aluminium S.A. (Pty) Ltd in the Magisterial District of Lower Umfolozi.
 - (p) the erecting, on site, of products referred to in the preamble to Division D/7 of Part II of the Agreement published under Government Notice R.404 of 31 March 1998 (but shall exclude the manufacture on site of palisade fencing).
 - (q) the servicing and/or maintenance and/or repairing of lawn-mowing machines, cultivators, sickle-cutters, grass-cutters, edge-trimmers, chainsaws and/or parts and/or components thereof.
- (4) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall apply to

- (a) apprentices only to the extent to which they are not inconsistent with the provisions of the Manpower Training Act, 1981, and learners in terms of chapter iv of the Skills Development Act 97/1998, or any contract entered into or any conditions fixed thereunder; and
 - (b) trainees under training in terms of section 30 of the Manpower Training Act, 1981, only in so far as they are not inconsistent with the provisions of the Act or any conditions fixed thereunder.
- (5) Notwithstanding the limitation of the Agreement to the operations therein scheduled—
- (a) the provisions of the clauses relating to Leave Pay, Additional Leave Pay and Leave Enhancement Pay of Part I of the Agreement published under Government Notice No. R.404 of 31 March 1998 shall apply to all employees employed in operative processes receiving a rate of pay equivalent to or more than that prescribed from time to time in the Agreement for Rate D employees, whether paid weekly or monthly, but excluding payment for overtime;
 - (b) no person directly employed in a manufacturing or production process shall be paid a wage less than Rate H as prescribed from time to time in Part II of this Agreement.
- For the purposes of this subclause, ‘employed in a manufacturing or production process’ shall apply to those employees whose rate of pay is not scheduled in this Agreement but whose activities are directly concerned with the creation of the engineering goods and/or services as covered by the scope of application of this Agreement. This provision shall not apply to the work carried out by administrative staff and/or those employees employed in non-production operations.
- (6) The conditions of employment of watchmen shall be regulated by the provisions of this Agreement, except in respect of ordinary working hours, which shall be a maximum of 44 hours per week.
- (amended by Government Notice R.1165 of 8 October 2004)
- (amended by Government Notice R.59 of 28 January 2005)
- (amended by Government Notice R.819 of 11 August 2006)
- (amended by Government Notice R.839 of 14 September 2007)
- (substituted by Government Notice R.1041 of 3 October 2008)
- (substituted by Government Notice R.899 of 11 September 2009)
- (substituted by Government Notice R.628 of 23 July 2010)
- (substituted by Government Notice R.748 dated 23 September 2011)

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of clause 32 of the Labour Relations Act, 1995, and shall remain in force until 30 June **2014**.

(renewed by Government Notice R.868 of 9 September 2005).

(amended by Government Notice R.839 of 14 September 2007).

(amended by Government Notice R.1041 of 3 October 2008).

(amended by Government Notice R.899 of 11 September 2009)

(amended by Government Notice R.1181 of 18 December 2009)

(substituted by Government Notice R.628 of 23 July 2010)

(substituted by Government Notice R.748 dated 23 September 2011)

SPECIAL PROVISIONS

The provisions contained in clause 28 of the Agreement published under Government Notice **No. R.628 of 23 July 2010**. (hereinafter referred to as the “former Agreement”) shall apply to employers and employees.

GENERAL PROVISIONS

The provisions contained in clauses 3 to 27, and 29 to 47 of Part I and Part II of the Former Agreement shall apply to employers and employees.

3. DEFINITIONS

Any reference in this Agreement to the Republic of South Africa and/or the Provinces of the Cape of Good Hope, the Transvaal, Natal and the Orange Free State shall be deemed to be the Magisterial Districts of those areas and/or provinces as they existed immediately prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference to an Act shall include any amendments to such Act; further, unless inconsistent with the context—

‘**abnormally dirty work**’ means work in connection with diesel engines from the cross-head down, used marine boilers,

furnaces, combustion chambers, smokeboxes, in bilges and in fuel tanks, performed on board ship;

‘Act’ means the Labour Relations Act, 1995 (Act 66 of 1995);

‘apprentice’ means an employee serving under a written contract of apprenticeship registered or deemed to have been registered under the Manpower Training Act, 1981 and includes a minor employed on probation in terms of the Act or a trainee in terms of the Atrami Agreement as well as a learner in terms of Chapter IV of the Skills Development Act, No.97 of 1998; (substituted by G.N. R.1374 of 3 October 2003)

‘continuous employment’ means any period during which an employee has been continuously employed by the same employer, and for this purpose periods of employment with the same employer broken by not more than 12 months from date of termination of employment to re-engagement of the employee owing to the discharge or retrenchment of the employee by the employer shall be deemed to be continuous employment, but shall not apply for the purposes of calculating severance pay entitlement.

(Substituted by Government Notice R.748 dated 23 September 2011)

‘CCMA’ means the Commission for Conciliation, Mediation and Arbitration established in terms of Section 112 of the Act; **(inserted per Government Notice R.570 of 2 May 2003)**

‘Council’ means the Metal and Engineering Industries Bargaining Council registered in terms of clause 29 of the Act;

‘day shift’ means, subject to the definition herein covering ‘two-shift system’ and ‘three-shift system’, any period worked by an employee between the hours of 06:00 and 18:00 on Mondays to Fridays, inclusive, and any period worked between the hours of 06:00 and 12:00 on Saturdays.

(Substituted by Government Notice R.941 of 6 August 1999)

‘employee’ means an employee whose minimum rate of pay is scheduled in this Agreement or an employee employed under exemption from this Agreement or under conditions determined by the Council, or an apprentice;

‘employer’ means any person whosoever, including a temporary employment service as defined in clause 198(1) of the Act, who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person whosoever in any manner to assist him in the carrying on or conducting of his business;

‘employ of the same employer’ and **‘employment with the same employer’** shall, for the purposes of clause 12(3)(a) and clause 13(1) of Part 1 of this Agreement, include unbroken employment in the same business carrying out activities which fall within the industry, whether or not the ownership of that business has altered as a result of sale, change of control, amalgamation, reconstruction, liquidation, compromise with creditors or otherwise;

‘establishment’ means any premises wherein or whereon the industry, or part thereof, as herein defined, is carried on;

‘hourly rate’ means the rate per hour for the class of work scheduled in this Agreement or, the actual rate per hour the employee is receiving whichever is the greater: Provided that where a ‘rate per week’ is specified, the hourly rate of the employee shall be his rate per week for his class of work scheduled in this Agreement or the actual weekly rate of the employee, whichever is the greater, divided by the number of ordinary hours worked in the establishment concerned;

‘ordinary hourly rate’ means the hourly rate for ordinary time;

‘Iron, Steel, Engineering and Metallurgical Industry’ means (subject to the provisions of any demarcation determination made in terms of section 62 of the Labour Relations Act, No 66 of 1995 and section 76 of the Labour Relations Act, 1956) the industry concerned with the production of iron and/or steel and/or alloys and/or the processing and/or recovery and/or refining of metals (other than precious metals) and/or alloys. from dross and/or scrap and/or residues; the maintenance, fabrication, erection or assembly, construction, alteration, replacement or repair of any machine, vehicle (other than a motor vehicle) or article consisting mainly of metal (other than a precious metal) or parts or components thereof, and structural metalwork, including steel reinforcement work; the manufacture of metal goods principally from such iron and/or steel and/or other metals (other than precious metals) and/or alloys, and/or the finishing of metal goods; the building and/or alteration and/or repair of boats and/or ships, including the scraping, chipping and/or scaling and/or painting of the hulls of boats and/or ships; and general woodwork undertaken in connection with ship repairs, and includes the Electrical Engineering Industry, the Lift and Escalator Industry and the Plastics Industry, but does not include the Motor Industry.

For the purposes of this definition—

“(1)(a) **‘Electrical Engineering Industry’** means the industry concerned with—

- (i) the manufacture and/or assembly from component parts of electrical equipment namely generators, motors, convertors, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signalling equipment, radio or electronic equipment and other equipment utilising the principles used in the operation of radio and electronic equipment, incandescent lamps, electric cables and domestic electrical appliances, and includes the manufacture of component parts of the aforementioned equipment;

- (ii) the installation, maintenance and repair of the equipment referred to in paragraph (i) above, but does not include the Electrical Industry;
- (b) **‘Electrical Contracting Industry’** means the industry in which employers and the employees are associated for any or all of the following:
- (i) The design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent part of buildings or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;
 - (ii) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the purpose for which a building or structure is used, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;
 - (iii) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the construction, alteration, repair and maintenance of buildings or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere”;
- (definition of Electrical Engineering Industry substituted by G.N R.899 of 11 September 2009).
- (2) **‘Lift and Escalator Industry’** means the industry concerned with the manufacture and/or assembly and/or installation and/or repair of electrical lifts and escalators;
- (3) **‘Plastics Industry’** means the industry concerned with the conversion of thermoplastic and/or thermosetting polymers, including the compounding or recycling thereof, or the manufacture of articles or parts of articles wholly or mainly made of such polymers into rigid, semi-rigid or flexible form, whether blown, moulded, extruded, cast, injected, formed, calendared, coated, compression moulded or rotation moulded, including in-house printing on such plastics by the manufacturers, and all operations incidental to these activities.
- (substituted by R.1128 of 17 November 2000)
- ‘plastics ’** means any one of the group of materials which consist of or contains as an essential ingredient an organic substance of a large molecular mass and which, while solid in the finished state, at some stage in its manufacture has been or can be forced, i.e. cast, calendared, extruded or moulded into various shape by flow, usually through the application, singly or together, of heat and pressure including the recycling or compounding thereof, but only where such compounding and/or recycling is as a result of the conversion for manufacture by the same employer, but shall exclude all extrusions into mono- and multi-filament fibres and other activities falling under the scope of the National Textile Bargaining Council.. (amended by R.1165 of 8 October 2004)
- (4) **‘Motor Industry’** means (subject to the provisions of any demarcation determination made in terms of clause 76 of the Labour Relations Act, 1956 and/or section 62 of the Labour Relations Act 66/1995) the industry concerned with—
- (a) assembling, erecting, testing, remanufacturing, repairing, adjusting, overhauling, wiring, upholstering, spraying, painting and/or reconditioning carried on in connection with—
 - (i) chassis and/or bodies of motor vehicles;
 - (ii) internal combustion engines and transmission components of motor vehicles;
 - (iii) electrical equipment connected with motor vehicles, including radios;
 - (b) automotive engineering;
 - (c) repairing, vulcanising and/or retreading tyres;
 - (d) repairing, servicing and/or reconditioning batteries for motor vehicles;
 - (e) the business of parking and/or storing motor vehicles;
 - (f) the business conducted by filling and/or servicing stations;
 - (g) the business carried on mainly or exclusively for the sale of motor vehicles or motor vehicle parts and/or spares and/or accessories (whether new or used) pertaining thereto, whether or not such sale is conducted from premises which are attached to a part of an establishment in which the assembly or repair motor vehicles is carried out;
 - (h) the business of motor graveyards;
 - (i) the business of assembly establishments;

- (j) the business of manufacturing establishments where motor vehicle parts and/or spares and/or accessories and/or components thereof are fabricated,
- (k) vehicle body building.

For the purposes of this definition—

- (i) **‘automotive engineering’** means the reconditioning of internal combustion engines or parts thereof for use in motor vehicles in establishments mainly or exclusively so engaged, whether such establishment is engaged in the dismantling and repair of motor vehicles or not;
- (ii) **‘motor vehicle’** means any wheeled conveyance propelled by mechanical power (other than steam) or electrically, and designed for haulage and/or for the transportation of persons and/or goods and/or loads, and includes trailers and caravans, but does not include any equipment designed to run on fixed tracks, trailers designed to transport loads of 27 273 kilograms or over, or aircraft; and
- (iii) **‘vehicle body building’** means any or all of the following activities carried on in a vehicle body building establishment:
 - (aa) the construction, repair or renovation of cabs and/or bodies and/or any superstructure for any type of vehicle;
 - (ab) the manufacture or repair of component parts for cabs and/or bodies and/or any superstructure, and the assembling, adjusting and installation of parts in cabs or bodies or on the superstructure of vehicles;
 - (ac) fixing cabs and/or bodies and/or any superstructure to the chassis of any type of vehicle;
 - (ad) coating and/or decorating cabs and/or bodies and/or any superstructure with any preservative or decorative substance;
 - (ae) equipping, furnishing and finishing off the interior of cabs and/or bodies and/or superstructures;
 - (af) the building of trailers, excluding the manufacture of wheels or axles therefor; and
 - (ag) all operations incidental to or consequent upon the activities referred to in paragraphs (aa) to (af) included;

and for the purposes of this definition, ‘vehicle’ does not include an aircraft, and **‘Motor Industry’** as defined above does not include the following:

- (i) The manufacture of motor vehicle parts and/or accessories and/or spares and/or components in establishments laid out for and normally producing metal and/or plastic goods of a different character on a substantial scale;
- (ii) the assembling, erecting, testing, repairing, adjusting, overhauling, wiring, spraying, painting and/or reconditioning of agricultural tractors, except where carried on in establishments rendering similar service in respect of motorcars, motor lorries, or motor trucks;
- (iii) the manufacture and/or maintenance and/or repair of—
 - (aa) civil and mechanical engineering equipment and/or parts thereof, whether or not mounted on wheels;
 - (ab) agricultural equipment or parts thereof; or
 - (ac) equipment designed for use in factories and/or workshops: Provided that for the purposes of (aa), (ab) and (ac) above, ‘equipment’ shall not be taken to mean motorcars, motor lorries and/or motor trucks;
 - (ad) motor vehicle or other vehicle bodies and/or superstructures and/or parts or components thereof made of steel plate of 3,175 mm thickness or thicker, when carried on in establishments laid out for and normally engaged in the manufacture and/or maintenance and/or repair of civil and/or mechanical engineering equipment on a substantial scale;

‘jig’ or **‘fixture’** or **‘stop’** means a device which definitely locates the work with respect to a tool and/or a tool to the work and/or the relative position of parts while being joined together, so as to produce articles that are interchangeable within certain tolerances;

‘journeyman’ means an employee who has completed a contract of apprenticeship under the Manpower Training Act, 1981, or a contract of apprenticeship recognised by the Council in any one of the classes of work specified under Rate A or category 5 in Schedule G or under Group Z in Schedule F of Part II of this Agreement, or an employee who is over 21 years of age and in possession of a certificate recognised or issued by the Council enabling him to be employed as a journeyman;

‘juvenile’ means an employee between the age of 16 and 19 years employed on any of the classes of work specified in clause (a)(ii) of Schedule G of Part II of this Agreement;

‘law’ includes common law;

‘learnership’ means the period in which a graduated wage scale is provided for specific tasks performed over a period of time, and employees employed on operations that provide for learnership periods shall receive the graduated wage rate as specified in the operation(s) according to the period of time spent on the operation(s);

‘Locksmithing Trade’ means the trade in which employers and employees are associated for the opening and closing of locks for others by means other than with keys normally used, the repair, replacement, re-building or adjustment of locks and their mechanical parts, the manufacture, by non-repetitive methods, of parts designed for use in locks and the cutting of keys, but excluding the manufacture of locks and keys;

‘machine’ means any appliance, irrespective of the material of which it is made, but does not include an agricultural tractor;

‘metal goods’ does not include agricultural tractors;

‘n.e.s’ means not elsewhere specified;

‘night shift’ means, subject to the definition herein covering ‘two-shift system’ and ‘three-shift system’, any period worked by an employee between the hours of 18:00 and 06:00, from starting time on Monday until starting time on Saturday, except in marine work where any three or more nights worked consecutively may constitute night-shift work; (Substituted by Government Notice R941 of 6-8-99)

‘ordinary hourly rate’ means the hourly rate for ordinary time;

‘precious metals’ means the precious metals gold, silver, platinum and/or palladium, and/or any alloy containing the said precious metals or any of these in such proportion with any other metals as to be the greater part in value of such alloy;

‘public holiday’ means New Year’s Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers’ Day, Youth Day, National Women’s Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill, as specified in Schedule 1 of the Public Holidays Act, 1994 (Act 36 of 1994): Provided that whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday;

‘pupil engineer’ and/or **‘approved student’** means a person who is in possession of educational qualifications recognised by the Council and obtained through an educational institution likewise recognised by the Council, but shall not include a person undergoing prescribed vocational training in the course of his studies;

Note: The magisterial districts demarcation of Regions is only for purposes of determination of the borders of Regional Councils”.

“REGION A means the Western Cape Province and the Northern Cape Province but excluding the following magisterial districts in the Western Cape: Calitzdorp, Murraysburg, Oudtshoorn, and Uniondale and excluding the following magisterial districts in the Northern Cape: Barkly West, De Aar, Gordonia, Hartswater, Herbert, Hopetown, Kimberley, Kuruman, Postmasburg and Warrenton, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Cape Region), P O Box 6096, Roggebaai, 8012, or 1st Floor, Harbour Place, 7 Martin, Hammerslag Way, Foreshore, Cape Town, 8001;

REGION B means the following magisterial districts in the Eastern Cape Province: Albert, Aliwal North, Barkly East, Bizana, Butterworth, Cala, Cathcart, Cofimvaba East London, Elliot, Engcobo, Flagstaff, Hoffmeyer, Idutywa, Indwe, Keiskammahoek, Kentani, King William’s Town, Kwabhaca, Komga, Lady Grey, Libode, Lusikisiki, Maclear, Matatiele, Mdantsane, Middelndrift, Mount Ayliff, Mount Fletcher, Mqanduli, Ngqeleni, Nqamakwe, Queenstown, Qumbu, Seymour (Mpofu), Sterkstroom, Stutterheim, Tsolo, Tsomo, Umtata, Umzimkulu, Whittlesea, Willowvale, Wodehouse, Victoria East and Zwelitsha and for the purposes of these particular areas, the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Border Region), PO Box 13162, Vincent, 5217, or Malcomess Park, Office No 7, St Georges Road, Southernwood, 5201.

REGION C means the Province of KwaZulu Natal and for the purposes of this particular area the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (KwaZulu Natal Region), P O Box 5900, Durban, 4000, or 14th Floor, Mercury House, 320 Smith Street, Durban, 4001.

REGION D means the following magisterial districts in the Eastern Cape Province: Aberdeen, Adelaide, Albany, Alexandra, Bathurst, Bedford, Cradock, Fort Beaufort, Graaff-Reinet, Hankey, Humansdorp, Jansenville, Joubertina, Kirkwood, Middleburg, Pearston, Port Elizabeth, Somerset East, Steytlerville, Steynsburg, Uitenhage, Venterstad and Willowmore and the following magisterial districts in the Western Cape Province: Calitzdorp, Murraysburg, Oudtshoorn, Uniondale, and the following magisterial districts in the Northern Cape Province: Colesburg, Hanover, Noupoot and Richmond and for the purposes of these

particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Midland Region), PO Box 12848, Centrahill, 6006, or 6th Floor, old Mutual Building, 64 Govan Mbeki Avenue, Port Elizabeth, 6001.

REGION E means all the magisterial districts in the Gauteng Province, Mpumalanga Province, Northern Province (Limpopo) and North West Province, but excludes the following magisterial districts in the North West Province: Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp, Vryburg and Wolmaransstad, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Gauteng Region), P O Box 3998, Johannesburg, 2000 or Union Corporation Building, 1st Floor, 77 Marshall Street, Johannesburg, 2001.”

REGION F means all the magisterial districts in the Free State and includes the following magisterial districts in the North West Province: Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp, Vryburg and Wolmaransstad, and includes the following magisterial districts in the Northern Cape Province: Barkly West, De Aar, Gordonia, Hartswater, Herbert, Hopetown, Kimberley, Kuruman, Postmasburg, and Warrenton, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Free State and Northern Cape Region), PO Box 30095, Moreskof, 9462, or Wessels & Smith Building, 2nd Floor, 26 – 28 Heeren Street, Welkom, 9459.

(Definitions of Regions substituted by Government Notice R.819 of 11 August 2006)

(Definitions of Regions substituted by Government Notice R.899 of 11 September 2009)

‘repetition work’ means work performed by an employee constantly engaged on one or more repetitive processes;

‘templet’ means a device for indicating the position of holes and/or attachments on the work and/or the form and/or contour of work;

‘temporary employment service’ means any person who, for reward, procures for or provides to a client other persons—

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

‘trainee’ means an employee under training in terms of clause 30 of the Manpower Training Act, 1981, on work classified at Rate A or Category 5 in Schedule G or under Group Z in Schedule F of Part II in this Agreement or an employee under training in terms of the provisions of a contract issued or recognised by the Council, which includes contracts under the Artisan Training and Recognition Agreement for the Metal and Engineering Industries, as published under Government Notice R.1706 of 13 August 1982, enabling such employee to be employed on work classified at Rate A or Category 5 in this Agreement, or work classified in Group Z in Schedule F of this Agreement;

‘two-shift’ and/or **‘three-shift system’** means the methods of operation in establishments working two or three shifts in any period of 24 hours for not less than three months in a single period;

‘Venetian Blind’ and **‘Allied Products Manufacturing Industry’** means the industry in which employers and the employees are associated for the carrying on of any one or more of the following activities in the Province of the Transvaal:

The design and/or assembly and/or manufacture of—

- (a) venetian blinds, whether manufactured of wood, metal, bamboo, cloth or synthetic materials; and/or
- (b) any other type of blind manufactured of such materials; and/or
- (c) any other article or articles providing or used for sun control, other than articles manufactured wholly or mainly from plastics: Provided that the first-mentioned articles are intended for use in the interior of buildings; and/or
- (d) folding doors containing wood, cloth, leather, leather-cloth or any synthetic material with a wooden, synthetic wood or metal framework, but excluding canvas awnings, canvas sunblinds and Holland blinds; and for the purposes of this definition—
 - (i) **‘canvas’** means a woven material made from cotton, flax, jute, hemp or similar decorticated vegetable or acrylic fibres or mixtures thereof;
 - (ii) **‘watchman’s work’** means guarding and/or patrolling property and/or premises;
 - (iii) **‘welding electrodes’** means any flux-coated or cored filler metal made from ferrous or non-ferrous material in stick or continuous form used in electric arc welding.

4. HOURS OF WORK

- (1)(a) The ordinary hours of work shall not exceed 40 in any one week for—
- (i) employees on day shift and/or night shift;
 - (ii) employees working on the two and/or three-shift system.
- (Substituted by Government Notice R.1082 of 16 August 2002)
- (b) The ordinary hours per shift shall not exceed –
- (i) nine hours in any day if the employee works for five days or fewer in a week; or
 - (ii) eight hours in any day if the employee works on more than five days in a week.
- Note: An employee's ordinary hours of work in terms of subclause (1)(a) may by agreement be extended by up to 15 minutes in a day but not more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.
- (2) An employer may, to facilitate the keeping of a record of the starting and stopping times and hours of work of his employees, require them to clock in and out of work and may, before paying to any employee any wages and/or remuneration for any period not recorded by the clock, require that employee to show satisfactory proof of having been at work: Provided that an employee shall be paid in terms of this Agreement for all time recorded by the clock which falls within the starting and stopping times of the shift for that day of the week, excluding meal breaks, as notified by the employer to his employees in terms of subclause (6) and for all time which he is required by the employer to work which does not fall within such starting and stopping times.
- (3) Overtime shall be voluntary and unless otherwise authorised by the Council, the maximum overtime that may be worked by an employee in any week, including work on Sundays, shall not exceed 10 hours per week: Provided that in establishments that operate a three-shift continuous-process system, which includes up to a maximum of eight hours' overtime in the normal week, an employee shall be deemed to have agreed to regard such overtime as compulsory overtime if he accepts work at such an establishment. The additional hours worked by the employee, as a consequence of the reduction in working time in the Industry provided for in subclause (7) below, shall be paid at ordinary rates of pay.
- (amended by Government Notice R.1082 of 16 August 2002)
- (4) In any establishment working a two-shift or three-shift system, no employee may work at night time for more than 12 consecutive working shifts and no employee may work more than one shift in any period of 24 hours except when a change in the rotation of shifts makes this necessary.
- (5) An employee shall not be required or permitted to work for more than five hours continuously without an uninterrupted interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work: Provided that—
- (a) an employer and his employees may, by mutual consent of not less than 75 per cent of his employees, agree—
 - (i) to reduce the period of the interval to not less than 30 minutes, in which case the employer shall grant to each of his employees a rest interval of not less than 10 minutes as nearly as practicable in the middle of each work period before and after the interval, during which periods the employee shall not be required or permitted to perform any work. Such rest intervals shall be deemed to be part of the ordinary hours of work of the employee concerned; or
 - (ii) to reduce the period of the interval to not less than 30 minutes and to observe a 10-minute rest interval as nearly as practicable to the middle of the morning work period and may further agree to dispense with the afternoon 10 minute rest interval, subject to the proviso that such an arrangement shall mean that the normal finishing time on Fridays shall be advanced by 60 minutes and employees paid for the equivalent time not so worked;
 - (iii) when, by reason of any overtime worked, an employer is required to give employees a second interval, such interval may be reduced to an interval of not less than 15 minutes;
 - (b) except as provided for in (a) (i), (ii) and (iii) hereof, periods of work interrupted by intervals of less than 60 minutes shall be deemed to be continuous.
- (6) An employer who requires an employee to perform night work on a regular basis after 23:00 and before 06:00 the next day must –
- (a) inform the employee in writing or orally if the employee is not able to understand a written communication, in a language that the employee understands –

- (i) of any health and safety hazards associated with the work that the employee is required to perform; and
- (ii) of the employee's right to undergo a medical examination in terms of paragraph (b);
- (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning the hazards referred to in (a)(i) above –
 - (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
- (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;
 - (ii) it is practicable for the employer to do so.

For the purpose of subclause (6), 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 months or 50 times per year. (previously sub section (7) deleted by Government Notice R.868 of 9 September 2005)

(7) Alternative Working Time Arrangements

1.1 Intention and Purpose:

- (a) The purpose and intention of this section of the agreement is to encourage industry employees and employers to discuss and agree working time arrangements which are mutually convenient to themselves and to move away from the fixed working time provisions set out in section 4 hereof.
- (b) The nature and extent of these alternative working arrangements depend on what is mutually acceptable at individual company level and may include the following types of alternative arrangements:
 - Annualisation (the calculation of an employee's hours on an annual basis);
 - Averaging of the working week;
 - Working an unpaid additional hour each week during the year in return for an agreed number of additional days' paid annual leave;
 - The operation of shifts at ordinary rates over weekends;
 - Compressed working weeks (employees work up to 12 hours per day without receiving overtime payment in return for a shorter workweek); and
 - Any other alternative working time arrangement agreed between workers and management.

1.2 Implementation Process:

- (a) It is the intention of the parties that the decision to introduce flexible working hours and the nature of this arrangement should be a voluntary one on both sides.
- (b) The details of the agreed alternative working time arrangement must be recorded in writing and must be signed by the representatives of the affected parties.
- (c) Where consensus on the introduction of alternative working time arrangements cannot be reached between management and employees then the following procedure shall be implemented:

Step 1:

The matter shall be referred to the relevant Regional Council for conciliation. Two assessors, one from the employer side and one from the trade union side may, by mutual agreement, be appointed to assist the conciliator. The assessors shall be selected from outside the workplace.

Step 2:

Where Step 1 is unsuccessful in resolving the dispute, both parties or either party may refer the matter to arbitration in an attempt to settle the dispute. The costs of the conciliation and subsequent advisory arbitration process (where this is undertaken) shall be negotiated at establishment level. Two assessors, one chosen by the trade unions and one by the employers, will be appointed to assist the arbitrator. The assessors shall be selected from outside the workplace. (substituted by Government Notice R.1051 of 26 October 2001)

Step 3:

Should Step 2 not be successful, the arbitrator will then decide the matter in terms of advisory arbitration.

Step 4:

Where the parties choose not to follow the conciliation/advisory arbitration process set out in Steps 2 and 3 above or should either party not be prepared to accept the advisory arbitration decision, they will be free to pursue the matter in terms of legal industrial action. Alternatively, the parties may agree in advance that the arbitration decision will be final and binding, in which case no legal industrial action may be implemented.”

(new subclauses (7) and (8) inserted by R.1128 of 17 November 2000)

- (9) Every employer shall display in his establishment in a place readily accessible to his employees a notice specifying the starting and finishing times of work for each shift or shifts of the week and the meal hours.

5. OVERTIME AND PAYMENT FOR WORK ON SUNDAYS

- (1) Except as provided for in clause 6(5) of this Part of the Agreement, time worked by employees after the completion of the usual shifts in the establishment concerned shall be regarded as overtime and be paid for as follows:
- (a) At one and one-half times the hourly rate until the usual starting time of the employee’s next normal shift: Provided that in the case of establishments working a five-day week, time worked on Saturdays shall be paid for at one and one-half times the hourly rate.
- (b) Where overtime is worked after the completion of the normal hours of a shift, the employee must be allowed a rest period of at least eight hours after completing the overtime before the next normal shift starts. Where the rest period extends into the next shift then the overlapping period into the shift shall be regarded as a paid period which the employee is not required to work.
- (substituted by Government Notice R.1082 of 16 August 2002)
- (2) Whenever an employee is called out on urgent work any time after six hours of having completed his normal shift, he shall be paid at one and one-half times his hourly rate for time worked from the time he commenced work until the usual starting time of his next normal shift: Provided that an employee who is called out on urgent work shall in any case be paid at one and one-half times his hourly rate for time worked from midnight until the usual starting time of his next normal shift.
- (3) Whenever an employee is required to report for work before the usual starting time for that day of the week, he shall be paid at one and one-half times his hourly rate for time worked until the usual starting time of the shift.
- (4) In any case in which an employee starts work on Saturday earlier than the usual starting time at his own request, an employee working a five-day week shall be paid at one and one-half times his hourly rate, reckoned from when he starts work and an employee working a six-day week shall be paid at his ordinary hourly rate for the period of the ordinary hours of work on a Saturday and be paid thereafter as provided for in subclause (1): Provided that if the employee starts more than two hours earlier than the usual starting time, any time worked up to two hours before the usual starting time shall be paid for at one and one-half times the hourly rate of the employee. For purposes of this subclause ‘usual starting time’ means the usual starting time on an ordinary working day. (substituted by Government Notice R.1082 of 16 August 2002)
- (5) Whenever an employee (other than an employee engaged on urgent maintenance and/or urgent repairs) works on a Sunday, he shall be paid at double the hourly rate for time worked, with a minimum payment of double the hourly rate for the hours of a normal shift: Provided that where the employer provided for work to occupy the employee for the hours of a normal shift and the employee fails or refuses to work the full period required of him, such employee shall be entitled to payment only for the period actually worked.
- (6) (a) Employees engaged on urgent maintenance and/or urgent repairs (referred to hereafter as ‘urgent work’) shall be paid for work on Sundays at not less than double the hourly rate for the hours worked, with a minimum payment of not less than four hours’ pay at double the hourly rate in respect of the hours worked. Where such work extends into the afternoon period, a minimum payment of eight hours at double the hourly rate shall apply.
- (b) **‘Urgent work’** means and shall be limited to urgent maintenance or repair work in connection with an employer’s own plant and/or machinery and/or Sunday work in connection with ships, where such repairs are necessary to avoid delay to the ship or are essential to the proper functioning thereof.
- (7) The provisions of this clause relating to payment for work on Sundays shall not apply in respect of shifts commencing on Sunday night in establishments working a two-shift or three-shift system, which shall be paid for as follows:
- (a) For the hours worked before midnight, at one and one-half times the ordinary hourly rate, plus 15 per cent;

(b) after midnight until completion of the shift, at the ordinary hourly rate, plus 15 per cent.

(8) For the purposes of this clause—

(a) **‘a normal shift’** is one-fifth of the ordinary weekly hours of work of an establishment working a five-day week or one-sixth of the ordinary weekly hours of work of an establishment working a six-day week;

(b) **‘usual starting time’** means the starting time on an ordinary working day.

(c) **‘overtime payment’** shall be made in accordance with clause 5(1)(a); and

(d) Unless otherwise agreed overtime shall be worked on a voluntary basis.

(subclause (c) and (d) inserted by Government Notice R.899 dated 11 September 2009)

(9) Notwithstanding the provisions of subclause (1), where in any one week an employee absents himself from work during any or all of the ordinary hours of a shift or shifts observed in the establishment concerned, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked and the hours so deducted shall be paid for at the employee’s ordinary rate: Provided that—

(a) if the number of ordinary hours of work on which the employee is absent in any one week is in excess of the number of overtime hours worked, all such overtime hours shall be paid for at the employee’s ordinary hourly rate; and

(b) where an employee is absent from work with the permission of his employer or absent on account of sickness in accordance with clause 34 or circumstances beyond his control, the provisions of this subclause shall not apply and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked: Provided that an employer may call on an employee for a medical certificate in proof of cause of absence.

Payment under this subclause shall be made as provided for in clause 8 of this Part of the Agreement.”

(9(b) substituted by Government Notice R.899 dated 11 September 2009)

(10) Notwithstanding the provisions of subclause (1), where in any one week an employee absents himself from work during any or all of the ordinary hours of a shifts observed in the establishment concerned, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked. The hours so deducted shall be paid for at the employee’s ordinary rate and shall be regarded as ordinary hours worked for the purpose of calculating the contributions to be submitted to the Engineering Industries Pension Fund, the Metal Industries Group Pension Fund, Metal Industries Provident fund and the National Bargaining Council the Iron, Steel, Engineering and Metallurgical Industry Sick Pay Fund in terms of the Agreements regulating these Funds: Provident that-

(a) the provisions of this clause shall not apply to hours worked by an employee on a Sunday; and

(b) where an employee is absent from work with the permission of his employer or absent on account of sickness **in accordance with clause 34** or circumstances beyond his control, the provisions of this subclause shall not apply and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked: Provided that an employer may call on an employee for a medical certificate in proof of cause of absence.

Payments under this subclause shall be made as provided for in clause 8 of this Part of the Agreement.”

(subclause 10 substituted by Government Notice R.899 of 11 September 2009)

6. SHIFT WORK

(1) Night-shift work shall be paid for at the ordinary hourly rate applicable, plus 15 per cent.

(2) In order to be on night-shift work an employee must work three or more consecutive nights between 18:00 on Monday and 06:00 on Saturday of the same week, except in marine work where any three or more nights worked consecutively may constitute night-shift work.

(3) Not less than six hours shall elapse between the employment of an employee on night shift and on day shift: Provided that an employee may work during such interim period of six hours if overtime is paid at one and one-third times the ordinary hourly rate.

(4) In establishments working a two-shift system or three-shift system, payment shall be as follows:

(a) ***Two-shift system:***

(i) Work ordinarily performed on the shift commencing in the morning shall be paid for at ordinary hourly rates: Provided that if the shift commences before 06:00, time worked prior to 06:00 shall be paid for at the ordinary hourly rate, plus 15 per cent;

- (ii) work ordinarily performed on the second shift shall be paid for as follows:
 - (aa) When the hours for the complete shift fall wholly within any period from 18:00 to 06:00, at the ordinary hourly rate plus 15 per cent;
 - (ab) **When the hours for the complete shift do not fall wholly within any period from 18:00 to 06:00, at the ordinary hourly rate, plus 8 per cent, until midnight, and after midnight, at the ordinary hourly rate, plus 15 per cent.”**
(subclause 4(a)(ii)(ab) amended by G.N. R.839 dated 14 September 2007)

(b) **Three-shift system:**

Work ordinarily performed on the—

- (i) second shift, shall be paid for at the ordinary hourly rate, plus 8 per cent;
 - (ii) third shift, shall be paid for at the ordinary rate, plus 15 per cent.
- (c) The employer and employee(s) will by mutual arrangements agree on how work performed on Sundays and public holidays will be paid. A copy of the Agreement will be lodged with the Regional Council.

In the absence of such an Agreement, work performed on a Sunday and on a Public Holiday will be paid in accordance with sections 5 and 11 of this Agreement.”

(new (c) inserted by Government Notice R.899 of 11 September 2009)

- (5) Time worked by employees on shift systems after the completion of the usual shift in the establishment concerned shall be regarded as overtime and be paid for as follows:

- (a) At one and one-half times the increased hourly rate;

For the purposes of the above, ‘increased hourly rate’ means the ordinary hourly rate plus the amount per cent payable thereon at the concluding time of the shift. (Substituted by R.1082 dated 16 August 2002)

- (6) Notwithstanding the provisions of subclause (5), where in any one week an employee absents himself from work during any or all of the ordinary hours of a shift or shifts observed in the establishment concerned, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked and the hours so deducted shall be paid for at the employee’s ordinary rate: Provided that—

- (a) if the number of ordinary hours of work on which the employee is absent in any one week is in excess of the number of overtime hours worked, all such overtime hours shall be paid for at the employee’s ordinary hourly rate; and
- (b) where an employee is absent from work with the permission of his employer or absent on account of sickness or circumstances beyond his control, the provisions of this subclause shall not apply and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked: Provided that an employer may call on an employee for a medical certificate in proof of cause of absence.

Payment under this subclause shall be made as provided for in clause 8 of this Part of the Agreement.

- (7) Notwithstanding the provisions of subclause (5), where in any one week an employee absents himself from work during any or all of the ordinary hours of a shift or shifts observed in the establishment concerned, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked. The hours so deducted shall be paid for at the employee’s ordinary rate and shall be regarded as ordinary hours worked for the purposes of calculating the contributions to be submitted to the Engineering Industries Pension Fund, the Metal Industries Provident Fund and the National Bargaining Council for the Iron, Steel, Engineering and Metallurgical Industry Sick Pay Fund in terms of the Agreements regulating these Funds: Provided that—

- (a) the provisions of this subclause shall not apply to hours worked by an employee on a Sunday; and
- (b) where an employee is absent from work with the permission of his employer or absent on account of sickness or circumstances beyond his control, the provisions of this subclause shall not apply and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked: Provided that an employer may call on an employee for a medical certificate in proof of cause of absence.

Payment under this subclause shall be made as provided for in clause 8 of this Part of the Agreement.

- (8) An employer may only require or permit an employee to perform night work (meaning work performed after 18h00 and before 06h00 the next day) if transportation is available between the employee’s place of residence and the workplace at the commencement and conclusion of the employee’s shift.

(New subclause – publication awaited)

7. SHORT-TIME

For the purpose of this clause, “**short time**” means the implementation of reduced working time, i.e. fewer number of hours per day and/or fewer number of days per week, owing to a shortage of work and/or materials and any other justifiable contingencies and/ or unforeseen contingencies and/or circumstances beyond the control of the employer.

(1) Notification:

- (a) An employer shall, **subject to 2(b)**, give the Regional Council, affected employees and affected party trade unions **five calendar days’** notice of the intention to implement short time hours. The employer shall, during the five calendar day notification period, consult with the representatives of the officials of the trade union and/or elected shop stewards on the manner in which the short time working will operate. The union officials shall make themselves available to meet with the employer over the five day period and, where not available within this time period, then the employer must consult directly with the elected shop stewards.
- (b) The employer shall, as far as practicable, spread the work available amongst the employees affected.
- (c) An employer shall not be required to pay wages to his employees, except for the periods actually worked.
- (d) An employer shall, give the Regional Council, affected employees and affected party trade unions two clear working day’s notice of the intention to increase or reduce short time hours.
- (e) An employer shall notify the Regional Council and affected party trade unions if short time is to continue for more than six weeks from the date of original implementation.

(Subclause (1) substituted by Government Notice R.748 dated 23 September 2011)

(2) General:

- (a) The provisions of clause 5 of this Agreement relating to overtime payments shall not apply in respect of time worked in excess of specified daily short-time hours, but less than the ordinary working hours for such working day of the week: Provided that should the employer require an employee to work in excess of the daily short-time hours, but fails to give the notice prescribed in subclause (1)(d) then such period so worked shall be remunerated at a penalty rate equivalent to the applicable overtime rate for the period so worked beyond the short-time hours for a maximum period of two days.
- (b) For the purposes of this clause, the notice prescribed in subclause (1)(a) shall not apply in respect of short time working caused by unforeseen contingencies and/or circumstances beyond the control of the employer including but not limited to power problems, interruptions and/or failures, machinery breakdown, theft, fire and/or flood: Provided that;
 - (i) Where the employer elects to send employees home they shall receive not less than four hours’ work or pay in lieu thereof, in respect of such day; and
 - (ii) Where the employer believes resumption of work can be effected and expressly instructs his employees to present themselves for employment on a particular day, they shall receive not less than four hours’ work or pay in lieu thereof, in respect of such day.
 - (c) Unforeseen contingencies and/or circumstances referred to above shall not include inclement weather.
 - (d) The purpose of the five day notification period is to allow the employer and the representatives of the trade union and/or elected shop stewards to meet in order to consult on the manner in which the short time working will operate. This may include meetings convened on a Saturday and/or Sunday.”

(new clause 7 inserted by G.N R.899 of 11September 2009)

8. PAYMENT OF EARNINGS

- (1) (a) Except as provided for in subclause (2), any amount due to an employee in terms of this Agreement shall be paid weekly, in cash, on Friday. Payment shall be made by not later than the ordinary stopping time, and shall include all payments due to the employee, calculated up to and including the shift completed on the preceding Tuesday of the same week: Provided that where employment terminates before the ordinary payday, all payments due to the employee in terms of this Agreement shall be paid to him on his employment so terminating.

- (b) Every employee shall, on payment, be given a statement showing the name and address of the employer, the name and occupation of the employee, his total earnings, ordinary time and overtime payments, allowances, deductions and the number of shifts accrued towards holiday leave.
(1)(b) substituted by Government Notice R.59 of 28 January 2005)
- (c) An employer and elected shop stewards shall communicate the prevailing method of payment observed in an establishment to a newly employed employee and draw the employee's attention to subclause (2)(e), if applicable. (new (c) inserted by Government Notice R.899 of 11 September 2009)
- (2) (a) Notwithstanding the provisions of subclause (1)(a), an employer may, with the consent of or at the request of an employee, agree that any amount due to the employee in terms of this Agreement shall be paid weekly, fortnightly or monthly in cash or by cheque or to the credit of such employee with a bank, building society or registered deposit-receiving institution as nominated by the employee: Provided that where employment terminates before the ordinary pay day applicable to such an employee, the employer shall pay all payments due to such an employee in terms of this Agreement—
- (i) upon his employment so terminating; or
 - (ii) where the employer and employee concerned mutually agree to a termination of employment period longer than the period provided for in this Agreement, by not later than the last day of the termination of employment period agreed upon.
- (b) An employer may, with the mutual consent of at least 75 per cent of his employees, agree that the provisions of this subclause shall apply to all employees in the establishment.
- (c) Where, by mutual agreement, the method of payment of employees changes from weekly to monthly, the Council shall be deemed to have approved such agreement: Provided that—
- (i) all payments due to the employee(s) in terms of this Agreement shall be payable to the employee(s) two banking days before the last working day of each calendar month;
(2 (c)(i) substituted by Government Notice R.899 of 11 September 2009)
 - (ii) the monthly remuneration of employee(s) shall not be less than the amount the employee(s) would have been entitled to, had such employee(s) been paid weekly;
 - (iii) employee salaries shall be increased by not less than the equivalent of any statutory increase payable in terms of any Council agreement from time to time;
 - (iv) all other provisions of the Agreement shall continue to apply unless otherwise exempted;
 - (v) all contributions payable in terms of any Council agreement applicable to such employee shall be maintained unless the employee(s) or the establishment is legally exempted or excluded from payment of such contributions.
- (d) The provisions of subclause (2)(b) may be implemented with immediate effect in respect of those employees in favour of monthly payment procedures, subject to the Regional Council concerned being advised in advance. In respect of those employees not in favour of monthly payment procedures the employer shall, before implementing the provisions of subclause (2)(b), give the employees and the Regional Council at least three months' notice in advance of the introduction of monthly payment procedures in respect of those employees and specify the manner in which payment of earnings will be made.
- (e) Any employee entering into employment in an establishment where the provisions of subclause (2)(b) apply, shall be deemed to have accepted such monthly payment as a condition of employment.
- (f) Notwithstanding anything to the contrary contained in this Agreement, payment of leave pay and leave enhancement pay may be made in accordance with the provisions of subclause (2) in the same manner as that by which payment of earnings is made.
- (3) Except as otherwise provided in this Agreement, no deduction of any description, other than the following, may be made from the amount payable in terms of this Agreement to any employee:
- (a) For board or lodging or both in accordance with clause 1(2) of Part II of this Agreement;
 - (b) for canteen services where the deduction is authorised by stop order terminable by the employee at not more than 28 days' notice of termination of his agreement to this deduction;
 - (c) where an employee is absent from work, including absence during any unpaid leave granted in extension of the paid leave provided for in this Agreement, a pro rata amount for the period of such absence;

- (d) with the written consent of the employee, deductions for sick benefit, insurance, pension and provident funds or contributions to recreation funds;
 - (e) contributions to funds levied in terms of Bargaining Council Agreements;
 - (f) any amount paid by an employer, compelled by law, ordinance or legal process, to make payment on behalf of an employee;
 - (g) where an employer, due to clerical or accounting or administrative error, or miscalculation, pays an employee any remuneration in excess of the amount legally payable, the employer shall be entitled to recover the amount of overpayment by deduction from subsequent wages or earnings, subject to the following provisions:
 - (i) The deductions may be made from one or more payments of wages or earnings, but no one deduction may exceed 15 per cent of the wages or earnings from which it is deducted;
 - (ii) no such deduction shall be made from any leave pay or leave enhancement pay payable under this Agreement either to the employee or to the Council;
 - (iii) no such deduction or deductions shall be made unless the employer, in writing, notifies the employee prior to the time of the first deduction, and the Council within seven days of the first deduction, of the circumstances under which the overpayment was made, the amount thereof, and the amount of the proposed deduction or deductions;
 - (h) upon the written request of the employee, deductions required by him for the purpose of reducing his liability on a loan which has been made for the purchase or improvement of immovable property of the employee or the redemption of any loan to the employee against the security of such property, whether such property is held or to be held by the employee freehold or on leasehold, sectional title or otherwise: Provided that—
 - (i) such property is occupied or will be occupied by the employee or a dependant of the employee;
 - (ii) no deduction shall be made from any leave enhancement pay or termination leave pay payable under the Agreement either to the employee or to the Council;
 - (iii) no single deduction shall exceed 25 per cent of the earnings, before all other deductions, but excluding any payment for overtime;
 - (iv) the loan creditor is the employer, a pension or provident fund acting in terms of its rules, a building society, any other organisation approved by the Council or any one or more of such persons or bodies acting jointly;
- (4) With the written consent of the employee, deductions in respect of subscriptions to a trade union party to the Council shall be deducted by the employer from the wages of an employee.
- Any subscriptions so deducted shall be paid by the employer to the trade union concerned by no later than the 15th day of the month immediately following the month to which the subscriptions relate, and shall be accompanied by a written statement containing the following details in respect of each employee from whose wages subscriptions are being deducted:
- (i) Surname and initials;
 - (ii) Identity number, if available;
 - (iii) Amount deducted;
 - (iv) Period in respect of which subscriptions were deducted.
- (new subclause (4) inserted by Government Notice R.1491 of 27 November 1998)
- (5) No premium for the training of an employee shall be charged or accepted by an employer: Provided that this subclause shall not apply in respect of training schemes to which the employer is legally required to contribute.
 - (6) Where in any establishment or place, work is performed by employees organised in sets or teams, each employee shall be paid his earnings by the employer.
 - (7) The employer shall keep a record of each payment to each employee for a period of not less than 3 years. The record must reflect the employee's name, date of birth, job grade, date of engagement, date of termination (where applicable), rate of pay, nature of each payment and, in the case of wages, the total earnings, ordinary time and overtime payments, allowances, deductions and number of shifts accrued towards holiday leave.
- (new subclause (7) inserted by Government Notice R.1491 of 27 November 1998)

9. MATERNITY LEAVE OR LEAVE i.r.o. THE ADOPTION OF A CHILD UNDER TWO YEARS OF AGE

Notwithstanding anything to the contrary contained in this Agreement, the following special provisions shall apply to an employee who is unable to continue working due to pregnancy and adoption of a child under two years of age:

- (1) For the purposes of this clause:
 - (a) 'employee' means an employee who is unable to continue working owing to pregnancy or the adoption of a child under two years of age and includes employees employed in a manufacturing or production process whose rate of pay is not scheduled in this Agreement but whose activities are directly concerned with the creation of the engineering goods and/or services as covered by the scope of application of this Agreement, but does not apply to the work carried out by administrative staff and/or those employees employed on non-production operations;
 - (b) 'permanent employee' means any employee other than an employee who is specifically employed on a short-term contract, as provided for in terms of this clause, to substitute for an employee who is unable to continue working owing to pregnancy or the adoption of a child under two years of age.
 - (c) 'substitute employee' means any employee other than an employee who is specifically employed on short term contract, as provided for in terms of this clause, to substitute for an employee who is unable to continue working owing to pregnancy or the adoption of a child under two years of age.
- (2) A permanent employee shall be entitled to the following benefits when such employee is unable to continue employment owing to pregnancy or the adoption of a child under two years of age:

	Period of unpaid Leave		
	Pregnancy	Stillborn confinement	Adoption of children under two years of age
Employees with one year or more continuous service with the same employer.	26 weeks	12 weeks	26 weeks
Employees with less than one year's continuous service with the same employer	18 weeks	8 weeks	18 weeks

Note:

A qualifying permanent employee, falling under the scope of the Metal and Engineering Industries Sick Pay Fund Agreement, shall receive a benefit from the Sick Pay Fund equating to 100% of her wages.

- (3)(a) The employer and employee shall enter into a written agreement specifying –
 - (i) the date of return to work mutually agreed upon between the employer and employee;
 - (ii) that should the employee wish to return to work earlier than the date referred to in (i), the employee shall give the employer not less than four weeks' prior notice of such intention;
 - (iii) provided the employee is so entitled, the benefits the employee is eligible for, from the Metal and Engineering Industries Sick Pay Fund or in respect of the employee's participation in any other fund, organization or scheme providing benefits in respect of pregnancy or adoption of a child under two years of age and in respect of which exemption has been granted or is granted, from the provisions of the Metal and Engineering Industries Sick Pay Fund Agreement; and the employer shall provide the employee with such claim forms as may be necessary in respect of the benefits due to the employee and should assist the employee to complete the claim(s) prior to the date of proceeding on maternity leave or leave in respect of the adoption of a child under two years of age in order that such claims may be submitted on proceeding on maternity leave;
 - (iv) the details of the employee's occupation and rate of pay at the time of proceeding on maternity leave.

A female employee seeking to utilize the adoptive leave provisions shall notify the employer of the institution of the adoption proceedings and shall keep the employer informed of progress in the adoption process, including the anticipated date that the adoption will take effect.
- (4) Provided the employee returns to work on the date referred to in paragraph (3)(i) or (3)(ii) of this clause, the employer shall place the employee -
 - (i) in the same or in a similar position to the position held prior to her proceeding on maternity or adoption leave;
 - (ii) on a rate of wages and conditions of employment not less favourable than the rate of wages and conditions of employment that applied prior to the maternity or adoption leave.
- (5) On returning to work the employee shall—
 - (i) be treated as having unbroken service, except that the period of absence shall not be counted as service for the purpose of leave pay and leave enhancement pay calculation in that leave cycle;
 - (ii) not suffer any prejudice for the purpose of promotion and/or merit increases as a result of the absence;

- (iii) be entitled to any increase prescribed for the job grade in any collective agreement which comes into operation during the period of absence;
 - (iv) not suffer any decrease in status relative to other employees as a result of the period of absence.
- (6) During the period of maternity or adoption leave provided for in this clause, the employer shall be entitled to employ a substitute temporary employees on a short-term contract of employment as provided for in the Annexure to this clause at rates of pay not less than the rate of pay prescribed in this Agreement for the work undertaken by the substitute temporary employee, or where there is no rate prescribed in this Agreement, at the rate normally paid to an employee employed for work in operative or manufacturing processes. Short-term contracts for substitute temporary employees shall inform the employee at the time of engagement that the contract shall terminate—
- (i) on the return to work of the employee who is absent;
 - (ii) on being given not less than three weeks’ written notice that the employee who is absent has given the employer notice of an earlier return to work, as provided for in sub clause (3)(a)(ii) above.

The substitute temporary employee shall signify acceptance of these conditions in writing. If, at the end of the short-term contract, the substitute temporary employee continues in the employment of the employer, the provisions of this Agreement shall replace the conditions of the short-term contract where applicable.

- (7) During an employee’s pregnancy an employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if the employee is required to perform night work (between the hours of 18h00 and 06h00) and it is practical for the employer to do so.
- (8) For the purposes of any retrenchment or reduction in the workforce that may arise during the absence of any employee, the employee shall be classified and dealt with as an employee in employment. Should such circumstances arise, all substitute temporary employees shall be retrenched before permanent employees.
- (9) The provisions of clause 12(5) of this Agreement in respect of leave pay and clause 14(3) in respect of leave enhancement pay shall be applied on proceeding on maternity leave.
- (10) The provisions of section 25, “Maternity Leave” of the Basic Conditions of Employment Act shall apply, as changed by the context of this clause.

ANNEXURE

**SHORT-TERM CONTRACT OF EMPLOYMENT FOR
SUBSTITUTE TEMPORARY EMPLOYEES**

In terms of clause 9 of the Main Agreement

CONTRACT OF EMPLOYMENT

The employer hereby agrees to engage the services of
(the substitute temporary employee) and the substitute temporary employee hereby agrees to accept service with the employer on the following terms and conditions:

- (i) The duration of this Contract of Employment shall be for a maximum period of six months from to or shall terminate upon re-employment of (the permanent employee) in terms of clause (ii) below.
- (ii) The Contract of Employment shall terminate on the agreed date of return of(the permanent employee) or three weeks after the substitute temporary employee has been given written notice that the permanent employee has given the employer notice of an earlier return to work, as the case may be, as provided for in clause 3(a)(ii) of the Main Agreement.
- (iii) For the purpose of any retrenchment or reduction in the workforce that may arise during the absence of the permanent employee, all substitute temporary employees shall be retrenched before permanent employees.
- (vi) On completion of the contract period as detailed in (i) or (ii) above, this contract shall automatically terminate. Such termination shall not be construed as being retrenchment but shall be completion of contract.
- (v) The remaining conditions of employment, not expressly detailed above, shall be the existing employer policy, rules and regulations and the general conditions of employment as contained in the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry.
- (vi) Where employment continues after the return of the permanent employee (.....), this contract shall automatically terminate and the provisions of the Main Agreement shall apply.

The substitute temporary employee hereby acknowledges that he understands and accepts the contents of this contract.

Signed at.....on.....19

Employer.....

Employee

Witness

(clause 9 substituted by Government Notice R.1041 dated 3 October 2008)

10. INCENTIVE BONUS WORK

Subject to the general conditions set out below, an employee may work for his employer under the following system of incentive bonus work:

- (1) The conditions contained in this Agreement relating to overtime, night-shift work and work on Sundays and public holidays shall apply and wages shall be calculated at the hourly rate for that class of work scheduled in this Agreement.
- (2) An employee engaged on incentive bonus work shall be allowed a rest period of 10 minutes as near as possible to the middle of the morning and afternoon work periods, such rest periods to be reckoned as working time and paid for at the hourly rate for that class of work scheduled in this Agreement.
- (3) Incentive bonus work rates shall be fixed by mutual arrangement between the employer and the employee who is to perform the work, and the shop steward shall be consulted if desired by either of the parties: Provided that incentive bonus work rates in foundries shall be fixed by mutual arrangement by a pricing committee, which shall consist of the employer and/or his representative and three employees, one of whom shall be the shop steward and one an employee who is engaged or is to be engaged on the incentive bonus work.
- (4) In the event of a dispute concerning the incentive bonus work rate and failing an arrangement being come to in settlement between the parties, the matter shall forthwith be referred to the Bargaining Council by one or both of the aggrieved parties.
- (5) Pending an arrangement being come to on the incentive bonus work rate, or in the event of the incentive bonus work rate being referred to the Council in terms of subclause (4), the employee shall proceed with the job in accordance with the incentive bonus work rate allowed by the management.
- (6) Any adjustment resulting from the Council's decision which is in favour of the employee shall be applicable to him as from the date on which the matter was referred to the Council.
- (7) Time during which an employee is abnormally prevented from proceeding with his work, shall, if the employee is required to stand by, be paid for at the hourly rate for that class of work scheduled in this Agreement with Agreement conditions in respect of overtime and night shift when applicable. Time during which an employee is standing by shall not be taken into account in calculating bonus earnings.
- (8) No payment shall be made for delays which are normal in the establishment concerned and which have been considered when fixing the time allowance.
- (9) No rate agreed upon between an employer and an employee shall be considered satisfactory if such rate does not enable an average employee engaged on the particular bonus rate work to earn not less than 10 per cent above the rate for that class of work scheduled in this Agreement.
- (10) In all cases, the employee shall be guaranteed the hourly rate for his class of work, irrespective of earnings, for the hours worked.
- (11) An employee working on incentive bonus work shall be paid on the normal pay day of each week.
- (12) Incentive bonus work rates or basis times once established may not be altered except for the following reasons:
 - (a) A mistake in the calculation of either side; or
 - (b) a change in the material, means or methods of production or the quantities; or
 - (c) a mutual arrangement has been come to between the employer and the employee in the same way as a new bonus work rate is arranged.
- (13) The Council may, for any reason it deems fit, prohibit any establishment from working incentive bonus work or from working under any system which the Council considers to be a system of incentive bonus work.
- (14) With the coming into operation of this Agreement, incentive bonus rates shall be re-negotiated: Provided that the arrangement applicable shall not be less favourable than that provided for in subclause (9).
- (15) Apprentices may not be employed on incentive bonus work unless the prior permission of the Council has been obtained and the apprentice has completed his first two years' apprenticeship or has obtained the full N2 certificate.

11. PAYMENT FOR PUBLIC HOLIDAYS

- (1) (a) If an employee does not work on a public holiday that falls on a day which otherwise is an ordinary working day for such an employee, including periods of short time and lay offs, he shall be paid at his ordinary rate for the ordinary working hours of that day of the week.
(1)(a) substituted by Government Notice R.59 of 28 January 2005)
- (b) If an employee works on a public holiday which falls on a day which otherwise is an ordinary working day for such an employee, he shall be paid for the number of hours payable in terms of subclause (1)(a) and shall, in addition, be paid at one and one-third times the hourly rate for time worked up to the said number of hours. Thereafter he shall be paid two and a half times the hourly rate until the usual starting time of the next day.
- (c) If an employee works on a public holiday that falls on a Sunday, he shall be paid in accordance with the provisions of clause 5 of this Agreement which relates to payment for time worked on Sundays. Notwithstanding the provisions of this subclause time worked on a Christmas Day which falls on a Sunday shall be paid in terms of subclause (1)(d) of this clause.
- (d) If an employee works on a public holiday which falls on a day which otherwise is not an ordinary working day for such an employee, he shall be paid an amount which shall be not less than the wage payable to such an employee in respect of the time which is ordinarily worked by him on a working day and shall, in addition, be paid at one and one-third times the hourly rate for time worked up to the said number of hours. Thereafter he shall be paid two and a half times the hourly rate until the usual starting time of the next day.
- (2) The provisions of subclause (1)(b) shall not apply in establishments working a two and three shift system in respect of the hours worked on a public holiday which forms part of the normal shift: Provided that the normal shift immediately prior or subsequent to that on which such hours have been worked shall be regarded as the public holiday to which the provisions of this clause shall apply.
- (3) For the purposes of this clause, the ordinary hourly rate of employees employed on incentive bonus work shall be the hourly rate for the class of work scheduled in this Agreement.

12. LEAVE PAY

- (1) Except in the case of employees employed on incentive bonus work, leave payments provided for in this clause shall, subject to (a), (b), (c) and (d) hereof, be computed at the hourly rate as defined in this Agreement which the employee is receiving or entitled to receive on the date of qualification for his paid leave.
- (a) The leave pay of an employee who takes leave on the date on which he becomes entitled thereto, or who takes leave within four months from the date on which he becomes entitled thereto, as provided for in clause 12(3)(g) of Part I of this Agreement, shall be calculated at the rate applicable as at the date on which he became entitled to such leave: Provided that if the employee's leave is deferred at the request of the employer and is taken within four months from the date of qualification, the employee shall be paid his leave pay calculated at the rate applicable on the date on which he proceeds on leave: Provided further that if any statutory increase occurs during the period between the qualification date and the date of return from leave, his leave pay shall, not later than seven days after he has returned from leave, be adjusted retrospective from the date of coming into force of such increase.
- (b) The leave pay of an employee in respect of whom the Council has granted an exemption at his own request to take his leave after the four-month period provided for in clause 12(3)(g) of Part I of this Agreement, shall, subject to the conditions contained in the certificate of exemption, be calculated at the rate applicable on the date on which the employee became entitled to leave: Provided always that for purposes of this calculation, the rate applicable shall, subject to subparagraphs (i) and (ii) hereof, include such statutory increase which came into effect subsequent to the date on which the employee qualified for leave.
- (i) In the case of an employee entitled to three consecutive weeks' paid leave in terms of clause 12(3) of Part 1 of this Agreement, the leave pay shall be adjusted from the date of coming into force of any statutory increase which became effective within a period of three weeks from the date on which the employee qualified for the leave.
- (ii) In the case of an employee entitled to four consecutive weeks' paid leave in terms of clause 13 of Part I of this Agreement, the leave pay shall be adjusted from the date of coming into force of any statutory increase which became effective within a period of four weeks from the date on which the employee qualified for leave.

- (c) The leave pay of an employee whose leave, at the request of the employer, and only after an exemption has been applied for and been granted by the Council, is postponed beyond the four-month period provided for in clause 12(3)(g) of Part I of this Agreement, shall, subject to the conditions contained in the certificate of exemption, be calculated at the rate applicable on the date on which the employee actually proceeds on leave. If any statutory increase occurs whilst the employee is on leave, the employer shall, not later than seven days after the employee has returned from leave, adjust the leave pay retrospective from the date on which such increase became effective by the amount of such increase.
- (2) Leave payments of employees employed on incentive bonus work shall be computed on the average weekly earnings exclusive of overtime over the last three months actually worked on incentive bonus work prior to the leave becoming due or over the number of weeks actually worked during the period of employment on incentive bonus work, whichever is the lesser period.
- (3) Every employee shall be entitled under this Agreement to three consecutive weeks' paid leave, subject to the following conditions:
- (a) The qualification for the paid leave (whether worked for one or more employer) shall be 283 shifts, exclusive of overtime, actually worked on a six-day week basis, or 234 shifts, exclusive of overtime, actually worked on a five-day week basis: Provided that—
- (i) except as is otherwise provided for in proviso (ii), employment with the same employer for less than 25 shifts on a six-day week basis or 20 shifts on a five-day week basis, as the case may be, shall not count for the paid leave: Provided that an employee whose employment is terminated after working 13 shifts on a six-day week basis or 10 shifts on a five-day week basis, as the case may be, shall be credited for purposes of paid leave with the number of shifts he has actually worked for that employer: Provided further that where an employee's service is broken in terms of this proviso and he resumes work for the same employer he shall, if he does not work for another employer in the interim, be credited for purposes of paid leave with the total number of shifts worked for such employer;
- (ii) when, in the case of employees employed in marine work and/or turnaround work, the employment is terminated by the employee, employment with the same employer for less than 25 shifts, on a six-day week basis or 20 shifts on a five-day week basis, as the case may be, shall not count for paid leave, but where the employment is terminated by the employer, all shifts worked and/or as allowed for in terms of proviso (iii) shall count for paid leave;
- (iii) periods of absence on account of sickness aggregating not more than 52 shifts on a six-day week basis or 43 shifts on a five-day week basis, as the case may be, in any one qualifying period for paid leave, shall count for the paid leave: Provided that an employer shall be entitled to call upon the employee for a medical certificate in proof of cause of absence. Periods of absence on account of an accident arising out of and in the course of the employee's employment shall count for leave purposes if such accident has been admitted as falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993, and the periods of absence counting for purposes of paid leave shall be the periods of disablement admitted by the said Act;
- (iv) periods of absence on the additional week's paid leave or accumulation thereof provided for in clause 13 of this Part of the Agreement shall count for purposes of paid leave to the extent of the number of shifts which would normally have been worked during those periods by the employee concerned;
- (v) short shifts worked whilst working short time shall count as shifts actually worked. Employees working 27 hours or more, spread over three or four days, and employees on a three-shift system working three or four shifts per week, shall—
- (aa) be credited with the full shifts for an ordinary week for purposes of the paid leave referred to in this clause (for up to three 3 months in any calendar year); and
- (ab) thereafter, be credited with one additional shift per week over and above those shifts actually worked for purposes of the paid leave referred to in this clause.
- (vi) Periods of absence on account of lay-offs in terms of item 2 of Annexure "A" aggregating not more than 48 shifts on a six-day week basis or 40 shifts on a five-day week basis, as the case may be, in any one qualifying period for paid leave, shall count for paid leave.
- (new subclause (vi) inserted by Government Notice R.868 of 9 September 2005).

(vii) Periods of absence whilst participating in protected industrial action in terms of Section 64 of the Labour Relations Act, shall count for paid leave.

(new subclause (3)(a)(vii) inserted by G.N. R.839 dated 14 September 2007)

- (b) The leave shall include four weekends and be for one unbroken period.
- (c) Should an employee proceed on leave, the employer shall, for each public holiday which falls within the employee's period of leave and which otherwise would have been an ordinary working day for such an employee extend the leave period by one working day with full pay."
(clause 3(c) substituted by Government Notice R.899 dated 11 September 2009)
- (d) Payment for each such public holiday as contemplated in 12(3)(c) above shall be paid to the employee in a manner as provided for in clause 8 of this Agreement by his employer on his ceasing work to go on leave or in such manner as agreed between the employer and the employee. (inserted by G.N. R.1374 of 3 October 2003)
- (e) Should an employee who is required by his employer to work away from his usual place of domicile be about to take his paid leave, the leave shall, provided the employee returns to his place of domicile, commence and terminate at the place of domicile of that employee.
- (f) Application for the leave shall be made by an employee within one month of the date on which he becomes entitled thereto.
- (g) The leave shall be granted by the employer so as to commence within a period of four months of the due date.
- (h) An employee shall be entitled to and shall take his leave within a period of four months from the due date, unless exemption is granted by the Council.
- (i) No employee shall engage in any employment for gain during the period of his leave.
- (4) (a) When an employee is about to take his paid leave, the moneys payable to him for the purpose thereof shall be paid to him in a manner as provided for in clause 8 of this Agreement by his employer on his ceasing work to go on leave.
- (b) The employer shall, at the time of making the payment referred to in (a) and in clauses 13 and 14 of this Part of the Agreement, forward to the Council a leave pay and leave enhancement pay receipt drawn up in a form acceptable to the Council and containing the employee's signature as a receipt for the payment.
- (5) When the employment of an employee terminates before he becomes entitled to paid leave in terms of subclause (3), he shall, according to whether the establishment works a six-day week or a five-day week, be paid leave pay pro rata to the number of shifts worked or, at his request, be furnished with a voucher drawn up in a form acceptable to the Council setting out the number of shifts which count for leave purposes. In such case, the employee shall receive the voucher at the same time as he leaves the employer's service and the employer shall immediately forward to the Secretary of the Regional Council for the area in which the employee was engaged the money equivalent of the leave to which the employee is so entitled, computed as provided for in subclause (1) or subclause (2), whichever is applicable, less any deduction compelled by law for income tax.
- (6) When an employee dies or is, in the course of his work, incapacitated from continuing at his trade, the amount which is due in respect of leave pay shall be payable to his estate or himself, as the case may be.
- (7) (a) After not less than 49 weeks have elapsed, reckoned from the date upon which the period of employment covered by the voucher commenced, an employee who has been furnished with a voucher in terms of subclause (5) and is no longer employed in the Industry shall be entitled, subject to paragraph (b), on presenting the voucher to the Council in the region of origin, to payment thereon of any unpaid balance standing to his credit in the books of the Council.
- (b) Any voucher issued to an employee in terms of subclause (5) shall be valid for a period of two years from the date of the last shift worked by such employee, and amounts standing to the credit of an employee in the books of the Council shall, on the expiration of such period, accrue to the Council. Amounts so accruing to the Council shall be credited to a Fund designated 'The Trust Fund Advances Fund' from which the Council in its absolute discretion may—
- (i) advance to employees the money equivalent of the paid leave entitlement forwardable to the Council in terms of subclause (5) and/or the money equivalent of the leave enhancement pay entitlement forwardable to the Council in terms of clause 14 of this Part of the Agreement, as the case may be; or

- (ii) pay to employees in whole or in part wages and/or earnings and/or the money equivalent of any paid leave and/or leave enhancement pay entitlement in cases where such moneys or part thereof would otherwise be lost to employees by reason of the insolvency or liquidation of any employer: Provided that—
 - (aa) any amounts accruing to the Council in terms of paragraph (b) which the Council may regard as being in excess of a sufficient reserve in the Trust Fund Advances Fund may be accrued to the Council funds, but shall not be accrued to the Trust Fund Advances Fund or to the Council funds until a further period of six months has elapsed after the expiration of the two-year period, and any valid claims presented during such six-month period shall be paid by the Council;
 - (ab) the Council shall consider any claim that may be made by any employee after the expiration of such six-month period, and may in its discretion make *ex gratia* payments from the Trust Fund Advances Fund (or from such amounts accrued to Council funds in the event of the depletion of the Trust Fund Advances Fund) to such employees as are referred to herein.
- (8) Except as otherwise provided herein employment for the purposes of this clause shall be deemed to commence from the date on which an employee enters the employer's service or the date on which he last became entitled to the paid leave, whichever is the later.
(subclause (8) substituted by Government Notice R.1491 of 27 November 1998)
- (9) The Council may make reciprocal arrangements with any other industry for the interchange of leave pay vouchers to the benefit of employees leaving the Industry.

13. ADDITIONAL PAID LEAVE

- (1) Subject to subclause (3), an employee qualifying after the date of coming into operation of this Agreement for his fourth or subsequent consecutive paid leave deriving from continuous employment with the same employer as provided for in terms of clause 12(3) of this Part of this Agreement shall, at that date and each year thereafter, whilst in the employ of the same employer, at the option of the employee, be entitled to an extra week's paid leave at the employer's convenience or to the equivalent value thereof; Provided that by mutual arrangement between the employer and the employee—
 - (a) the paid leave referred to in clause 12(3) of this Part of this Agreement may be extended by an extra week; or
 - (b) the extra week's paid leave may be deferred from the year of qualification and accumulated by the employee until he qualifies for three such weeks' paid leave.
- (2) Whenever the employer and the employee come to the arrangement provided for in subclause (1)(b) and the employee has qualified for three such extra weeks' paid leave (hereinafter referred to as 'the accumulated paid leave'), the employer shall grant and the employee shall take the accumulated paid leave when he is given and takes the paid leave provided for in clause 12(3) of this Part of this Agreement, unless the employer and the employee agree to the accumulated paid leave being taken at a different time, in which case the employer shall enable the employee to take the accumulated paid leave in the period before he next qualifies for paid leave. Should the employee fail to take the accumulated paid leave within such period, the employer shall, upon the employee proceeding on the next paid leave in terms of clause 12(3), pay out the equivalent value of the accumulated leave forthwith to the employee, whereupon his title thereto shall cease.
- (3) Where an employee qualifying for his fourth period of paid leave in terms of subclause (1) was in the employ of the employer concerned for part only of the qualifying period for the first period of paid leave, he shall be entitled to a proportion of the extra week's paid leave or the equivalent value thereof *pro rata* to the leave qualification completed with that employer in respect of the first period of paid leave. On qualification for any subsequent consecutive period of paid leave the provisions of subclauses (1) and (2) shall *mutatis mutandis* apply.
- (4) Upon the termination of the employment of an employee who has become entitled to but has not yet received the equivalent value of the additional period of paid leave provided for in this clause, he shall be paid for such extra paid leave as he has qualified for and not received: Provided that when the employment of such an employee terminates during his fourth or subsequent consecutive years of continuous employment with the same employer, he shall, according to whether the establishment works a six-day week or a five-day week, be paid for the additional leave pay *pro rata* to the number of shifts worked, subject to the provisions of subclause (3) above.

(new clause 13 inserted by Government Notice R.868 of 9 September 2005)

14. LEAVE ENHANCEMENT PAY (L.E.P.)

“For the purposes of this section –

‘**Leave Qualification**’ shall have the meaning ascribed to it in Sections 12(3)(a) and 16(5)(a) respectively in Part I of this Agreement;

‘**Annual Shutdown**’ means a Company level arrangement in terms of which all employees proceed on leave at the same point in time;

‘**Staggered Leave**’ means a Company level arrangement in terms of which leave qualification is determined by date of employment of every individual employee;

‘**L.E.P.**’ means Leave Enhancement Pay;

- (1) (a) Every employee shall be entitled under this Agreement to L.E.P. calculated at 8.33% of the actual hourly rate applicable on the date on which the employee proceeds on leave, which shall be calculated according to the following formulae:
- Employees working a five-day week:

$$\text{Actual ordinary weekly wage} \times 52 \text{ weeks} \times 8.33\% \times \text{number of shifts worked divided by } 234;$$
(excluding allowances)
- Employees working a six-day week:

$$\text{Actual ordinary weekly wage} \times 52 \text{ weeks} \times 8.33\% \times \text{number of shifts worked divided by } 283;$$
(excluding allowances)

Note: For purposes of calculating leave enhancement pay, periods of absence provided for in subclauses 12(3)(a)(iii) to (vi) must be taken into account. (note inserted by Government Notice R.868 of 9 September 2005).

- (b) The leave enhancement pay of an employee who terminates his service or whose employment is terminated by the employer shall be calculated at 8.33% of his actual hourly rate at the date of termination of such employment and shall be calculated according to the following formulae:
- Five-day week actual ordinary weekly wage rate $\times 52$ weeks $\times 8.33\%$ \times number of shifts worked divided by 234 (excluding allowances).
- Six-day week actual ordinary weekly wage rate $\times 52$ weeks $\times 8.33\%$ \times number of shifts worked divided by 283 (excluding allowances).
- (c) Where employees and employers agree to the electronic transfer of their wages into a bank account on a monthly basis, then the provisions of the Agreement requiring the working of a stipulated number of qualifying shifts as set out in subclause (a) and (b) above, for purposes of leave pay and leave enhancement pay, will not apply to these employees. (subclause (c) inserted by G.N. R.1374 of 3 October 2003)

Important Notes.

- (a) For purposes of the above calculations the figures “234” and “283” constitute the maximum number of shifts any employee can work in order to qualify for leave and is dependant on whether a five or six day working week is in operation;
- (b) For purposes of calculating L.E.P. the term “Actual Ordinary Weekly Wage” excludes any allowances payable to employees.
- (2) Whenever an employee to whom this subclause applies qualifies for and takes his paid leave after the date of coming into operation of this Agreement, he shall at the same time be paid leave enhancement pay pro rata from the date of engagement in the case of an employee qualifying for his first period of paid leave in the service of an employer.
- (3) Whenever the employment of an employee terminates before he becomes entitled to paid leave, the employee shall be paid leave enhancement pay, proportionate to the number of shifts credited to him for leave purposes or, at his request, he shall be credited with a share of the leave enhancement pay calculated in the same manner.
- (4) No leave enhancement pay shall be credited for periods of employment which in terms of clause 12(3)(a)(i) and (ii) of this Part of the Agreement do not count towards the paid leave.
- (5) Every employer in the industry is required to make an adequate monthly financial provision for the payment of employees leave enhancement pay. The parties to this Agreement regard full compliance with this provision as being of particular importance.

- (6) An employer may enter into an arrangement with the Bargaining Council to transfer the employees' monthly leave enhancement pay entitlement to the Bargaining Council for collection, safekeeping and distribution to the affected employees when due, in terms of this section.
- (7) **Monthly Contribution Scheme.**
- (a) As from 1 January 2003 employers in the industry shall, on a voluntary basis, be entitled to submit to the Council a monthly contribution towards the annual L.E.P. entitlements of their employees;
 - (b) Whilst the provisions of this Clause provide for contributions in respect of the annual L.E.P. entitlements of employees, nothing herein contained shall preclude employers from making similar monthly contributions towards the employees annual leave pay entitlement.
 - (c) The Council's monthly L.E.P. collection scheme, as referred to in (a) above, shall be available in respect of all scheduled and unscheduled employees for whom the employer makes such monthly L.E.P. contributions. All employees for whom contributions are paid over to the Council must be identified by name, I.D. number and the bank account number of the employee;
 - (d) For purposes of sub-clauses (b) and (c) hereof the Council shall establish a L.E.P. fund into which all contributions received from employers will be deposited. Whilst participation in the Council's monthly contribution scheme will be the employers' discretion, continued participation shall be compulsory once contributions commence in respect of the particular year in which contributions are made;
 - (e) The employer may elect to discontinue participation in the Council's monthly contribution scheme in a specific year only after all employees on whose behalf the employer had paid over L.E.P. contributions qualified for and received their annual L.E.P. entitlements.
 - (f) Any interest earned in the L.E.P. fund account resultant from the monthly contributions shall accrue to the Council and will be transferred to the Council's general account for its disposal.
 - (g) Should any firm contributing on a monthly basis to the Council L.E.P. scheme be placed under provisional Liquidation the Council shall, provided it is made aware thereof, inform the liquidator of the monies standing to the L.E.P. credits of all affected employees;
 - (h) Due to administrative costs the Council will not pursue the failure by an employer to make the monthly contributions;
 - (i) The Council shall, when so requested by the employer at the time of qualification for L.E.P., pay over to the employer or into the individual employees' bank accounts the contributions paid over by the employer to the Council as L.E.P. monies. The Council shall not accept responsibility for any shortfall in employee L.E.P. entitlements at qualification dates and its responsibility will be for payment of contributions made.
 - (j) Complaints lodged by employees alleging short payment of L.E.P. monies shall be treated as a contravention of a Collective Agreement of the Council. Should the Council investigation identify deliberate underpayments, the Council reserves the right to charge the employer a fee for services rendered.
 - (k) The date/s on which such L.E.P. monies become payable by the Council shall be determined by the employer subject to a 30-day notice period. Where employment terminates prior to employee's qualification for paid leave and L.E.P., the employer shall be required to make such pro-rata payments and reclaim such monies from the Council.
 - (l) The manner in which the Council shall transfer the employees' entitlements shall either be by direct transfer into the employers or employees' bank account or alternatively, by a bank guaranteed cheque. For purposes hereof the Council shall be guided by the employers request.
 - (m) The Council shall deem employers who do not wish to participate in the Council's L.E.P. monthly contribution scheme as financially capable of meeting their obligations in this regard." (new Clause 14 inserted by GN R.1082 of 16 August 2002)
- (8) **Exemptions:**
- (a) **Exemptions from leave enhancement will only be granted under exceptional circumstances;**
 - (b) **The exemption application must be supported by appropriate financial statements showing sufficient financial hardship to warrant the exemption sought;**
 - (c) **If granted, the employer should then be obliged to become a compulsory contributor to the monthly contribution scheme as set out in sub clause (7) above.**

- (d) **Exemption applications, from establishments observing annual shutdown arrangements, must be submitted to the Bargaining Council on or before 31 October each year.”**
(new subclause (8) inserted by G.N. R.839 of 14 September 2007)

15. SPECIAL LEAVE PAY AND LEAVE ENHANCEMENT PAY PROVISIONS

Notwithstanding the provisions of clauses 12 and 14 an employee whose conditions of employment cease to be regulated by this Agreement due to promotion or change in occupation to an occupation not provided for in this Agreement, shall be entitled to leave pay and leave enhancement pay calculated in accordance with the provisions of clauses 12 and 14 which shall be paid to him on termination of employment, or the date when he next proceeds on leave, or the date on which he would have been entitled to go on leave had this Agreement continued to regulate his conditions of employment, whichever is the earlier date.

16. ANNUAL SHUTDOWN

- (1) Except as provided for in subclauses (2) and (3), every employer who wishes to observe an annual shutdown of the establishment or department thereof in terms of the provisions of this clause shall apply to the Regional Council concerned at least nine months in advance of the intended shut-down of the establishment or department thereof, as the case may be, and shall have first obtained the consent of the Regional Council Committee before implementing these provisions of the Agreement.
- (2) Employers who were observing an annual shutdown arrangement for the purpose of the paid leave prior to the coming into operation of this Agreement shall be deemed to be observing an annual shutdown and are not required to advise the Regional Council concerned of the observance of that arrangement.
- (3) Every employer entering the Industry after the commencing date of this Agreement shall, within one month of commencing operations, advise the Regional Council concerned whether the leave provisions of the Agreement or, alternatively, an annual shutdown, will be observed.
- (4) Where an annual shutdown is to be observed, the establishment (or department, as the case may be) shall be closed for such unbroken period as will enable employees who have qualified for paid leave in terms of clause 12(3) of this Part of the Agreement to take their full paid leave extended by any days that must be added in terms of clause 12(3)(c), and the period of the closure shall, as near as practicable, fall between the same dates in each 12-month period.
 - (a) Any employee who at the date of the closing of an establishment in terms of subclause (4), is not entitled to the full period of the paid leave prescribed in clause 12(3) of this Part of the Agreement shall be paid leave pay and the leave enhancement pay referred to in clause 14 of this Part of the Agreement proportionate to the qualification for the paid leave completed at the date of the closing of the establishment. The employment of any employee thus affected shall be deemed to commence from date of re-opening of the establishment (or department, as the case may be) for the purpose of his qualification for his next paid leave.
 - (b) Notwithstanding anything to the contrary contained in this Agreement, any employee who actually worked all available shifts during the period from the first day after the previous year's annual shutdown up to and including the last shift preceding the current shutdown shall be entitled to full pay and leave enhancement pay as provided for in this Agreement: Provided that for the purposes of this subclause, all shifts not actually worked but for which an employee is entitled to credit towards his/her leave qualification in terms of this Agreement shall be counted as shifts actually worked.
- (6) Nothing herein contained shall operate to preclude an employer from employing the services of employees required for essential work during the period of the shutdown: Provided that the names of the employees whose services are required for essential work (other than maintenance work as herein defined) and the reasons therefore shall be notified to the Council at least one month in advance of the employees' services being required: Provided further that any such employees whose services are retained during the period of the shutdown shall be given their paid leave in conformity with the remaining provisions of the Agreement.
‘Maintenance Work’ referred to herein means and shall be limited to urgent maintenance or repair work in connection with an employer's own plant and/or machinery.
- (7) Where an employer observes an annual shutdown, he shall display in the establishment nine months before the date of the shutdown a notice setting out the date of the next annual shutdown.
- (8) Every employer who elects to observe the annual shutdown shall be bound to carry on with that arrangement and shall not depart therefrom except by giving at least 12 months' notice to his employees of his intention to depart from the arrangement and by obtaining the consent of the Regional Council Committee to the proposed change.

- (9) Where an employer who observes an annual shutdown in terms of this clause terminates the employment of an employee and the proportionate period of paid leave accrued to the employee at the date of termination would extend from that date into the annual shutdown and the employer re-engages the same employee within one month after the re-opening of the establishment, the employee shall be entitled to payment as provided for in clause 11 (1) of this Part of the Agreement in respect of the public holidays referred to in that subclause which fell within that period of the paid leave accrued to the employee at date of termination that would have extended into the period of the annual shutdown, and the employer shall, upon his re-engaging the employee after the re-opening of the establishment, make such payment to the employee if it has not already been made.
(clause 16 substituted by Government Notice R.899 of 11 September 2009)

17. ALLOWANCES

(1) ***Traveling and subsistence allowance:***

- (a) This clause makes provision for traveling and subsistence provisions and allowances in respect of the following categories or classes of employees:
- (i) **Group A**
Employees who are occasionally required to work away from their usual place of work.
 - (ii) **Group B**
Site work employee: A site work employee is an employee who by reason of his employment is normally required to live away from his usual place of residence. For purposes of this clause the place where the employee first presents himself for employment shall be regarded as his usual place of residence.
 - (iii) **Group C**
The provisions of clause 17(A) shall not apply in respect of the following categories of employees:
 - (aa) Employees who are recruited, or who present themselves at a site for employment, at that specific site.
 - (ab) Employees who by reason of their employment are normally required to work in various sites but are not required to live away from their usual place of residence.
- (b) **Group A**
This clause applies to employees who are occasionally required to work away from their usual place of work.
- (i) Where an employee is required to work away from his usual working place, the employee shall be provided with transport conforming to applicable local road ordinance requirements, at the employer's expense, or be reimbursed by the employer for traveling expenses as mutually agreed between the employer and employee if the employer does not provide transport.
 - (ii) The employee shall be paid at his normal hourly rate for traveling during ordinary hours of work and at half his normal hourly rate outside the ordinary hours of work.
 - (iii) Where the employee is required to work or travel in excess of three hours of the commencement or of the completion of such employee's normal working hours the employer shall reimburse the employee for substantiated meal expenses incurred during this period of traveling.
 - (iv) Where overnight stay is required, the employer shall provide and pay for all accommodation and meals, but where accommodation only is provided the employer shall pay the subsistence allowance as set out in Part II clause 2(a), for each night of overnight stay.
- (c) **Group B**
This clause applies to site work employees, i.e. employees who by reason of their employment are normally required to live away from their usual place of residence.
- (i) The employer shall provide the employee with transport conforming to applicable road ordinance requirements, at the employer's expense, or if the employer does not provide transport to reimburse the employee for traveling expenses as mutually agreed between the employer and employee under the following circumstances:

- (aa) *On transfer to site:* From the place where the employee first presents himself for employment to the site.
 - (ab) *On termination of employment:* From the site to the railway station nearest the employee's usual place of residence. This shall not apply where the termination occurs within the first month of employment, provided such termination is not as a result of the completion of the work for which the employee was employed.
 - (ac) *On annual leave:* From the site to the railway station nearest to the employee's usual place of residence on proceeding on annual leave and return to the site following completion of the annual leave.
 - (ad) *On transfer to a new site:* From that site to a new site where the employee accepts employment at the new site.
- (ii) The employer shall pay for meals whilst traveling in terms of (i) above. Bedding shall also be provided if overnight rail travel is necessary.
 - (iii) The employer shall provide accommodation and meals on site. Where accommodation is provided but no meals are supplied then the employee shall be entitled to the subsistence allowance set out in Part II clause 2(a).
 - (iv) Where employees engaged to work at one place are required to work at another place and to report at an assembly point to be transported to such other place before the normal starting time, such employees shall be paid "traveling rates" at half rates for all time spent in being transported to and from the job outside of normal working hours and/or be paid at ordinary rates for any time during which they are being transported during ordinary hours of work.
- (2) ***Abnormally dirty work allowance*** (for 'abnormally dirty work' as defined):
- (a) Where an employee (other than an employee expressly engaged as a cleaner) is required to work on abnormally dirty work, he shall be paid an allowance, in addition to any other remuneration to which he is entitled under this Agreement, of 60c per shift or part thereof.
 - (b) Where an employee has completed the hours of an ordinary shift on abnormally dirty work, he shall when he works overtime on abnormally dirty work for not less than four hours, be paid a further 60c.
(subclause (2) substituted by G.N R.899 of 11 September 2009)
- (3) ***Height allowance:*** Whenever an employee who does not customarily work aloft is required to work on ships and/or floating vessels, whether afloat or dry, at a height of over 6 m above top deck level in circumstances necessitating the use of a safety belt, he shall, in addition to any other remuneration to which he is entitled under this Agreement and for the period for which he is so occupied or for one hour, whichever is the greater, be paid an allowance of 8 per cent of his hourly rate.

18. TERMINATION OF EMPLOYMENT

Note: The periods of notice in respect of retrenched employees are set out in Annexure A of this Agreement" (annotation inserted by G.N R.868 of 9 September 2005)

1. **A contract of employment terminable at the instance of the employer or the employee may be terminated only on notice of not less than -**
 - (a) **one week, if the employee has been employed for six months or less;**
 - (b) **Two weeks, if the employee has been employed for more than six months but not more than one year with the same employer;**
 - (c) **Four weeks, if the employee has been employed for more than one year with the same employer".**
2. **Provided that this shall not affect -**
 - (a) **The right of an employer or employee to terminate a contract of service without notice for any good cause recognized by law as sufficient;**
 - (b) **Any agreement between an employer and employee providing for a longer period of notice than the periods referred to in sub-clause 1(a), (b) and (c) above.**
3. **Provided further that an employer may pay to an employee wages for and in lieu of the prescribed or agreed period of notice.**
4. **Whenever the contract of service is terminated by the notice period referred to in sub-clauses 1(a), (b), (c) or 2(b) above and the employee fails to give notice or to work such notice period, the employer may deduct pay in lieu of such notice period in the establishment concerned.**

5. **For the purposes of this clause, “week” shall be a week consisting of the ordinary hours of work as referred to in clause 4(1)(a)(i) and (ii) of this Agreement. Notice must be given on the first day at the commencement of the working week for the employee.**
6. **The termination of employment by an employer on notice in terms of the Main Agreement does not prevent employee challenging the fairness or lawfulness of the termination or dismissal.**
7. **The services of an employee shall not be terminated only on the grounds that the employee is HIV positive (human Immunodeficiency Virus). (substituted by G.N. R.839 dated 14 September 2007)**

19. EMPLOYMENT OF JUVENILES AND ISSUE OF CERTIFICATES, ETC

- (1) No employer shall employ a juvenile under clause (a)(ii) of Schedule G of Part II of this Agreement without obtaining the prior approval of the Council and a certificate from the Council in such form as it may determine.
- (2) Any permission given in terms of subclause (1) may be withdrawn by the Council for any good and sufficient reason it deems fit, and on receipt of notification from the Council the employer shall forthwith dispense with the services of the juvenile to whom the notification refers or, as the case may be, retain the juvenile’s service at the full rate prescribed for the class of work performed.
- (3) When permission is withdrawn in terms of subclause (2), the employer shall forthwith return the certificate to the Council for cancellation.
- (4) No employer shall, as from the date of coming into operation of this agreement, employ any person on work classified at Rate A, or Category 5 in Schedule G or under Group Z in Schedule F of this agreement, other than an apprentice, trainee or a learner in terms of the Skills Development Act, No.97 of 1998, or an employee who has completed an apprenticeship contract in terms of the Manpower Training Act, 1981, or an employee in possession of a certificate issued or recognised by the Council which enables such an employee to be employed as a journeyman on any of the classes of work specified at rate A, Category 5 in Schedule G or under Group Z in Schedule F of Part II of this agreement. (subclause (4) substituted by G.N. R.1374 of 3 October 2003)

20. OUTWORK, TEMPORARY EMPLOYMENT SERVICES AND LIMITED DURATION CONTRACTS

Notwithstanding anything to the contrary contained in this agreement, the following special provisions shall apply:

- Employers must endeavour to minimize the use of temporary employment services in the Industry;
- Employers must endeavour to enter into permanent employment relationships

(Inserted per Government Notice R.748 dated 23 September 2011)

- (1) Subject to the provisions of clause 198 of the Act—
 - (a) no employer shall require or allow an employee to undertake any class of work covered by this Agreement elsewhere than in his establishment, except where such work is in execution or completion of any order placed with that employer, and no employer shall require or allow any employee of any other employer to undertake on his behalf any class of work covered by this Agreement, except where such work is in execution or completion of an order placed by that employer with the other employer; and
 - (b) no employee shall solicit or take orders for or undertake any class of work covered by this Agreement for sale and/or for gain either on his own account or on behalf of any other person or firm whilst he is in the employ of any employer engaged in the Industry.
- (2) Every employer undertaking to execute or complete any work in any region other than the region in which his establishment is registered with the Council shall notify the nature and place of work in writing to the Regional Council for the area in which the work is done within seven days of the commencement of such work and shall maintain at such place of work a register of the hours worked by all employees and their remuneration in respect thereof.
- (3) No employer shall utilize the services of workers within the meaning of section 198 of the Act unless the temporary employment service provides proof of the employer of -
 - (a) the company’s CIPC (companies Intellectual Property Commission) registration document and details;
 - (b) the registration number issued by the MEIBC in respect of the temporary employment services in pursuance of the Council’s Registration and Administration Expenses Agreement (MIBFA number);
 - (c) An Accredited certificate issued by the MEIBC certifying that the TES has undergone a verification audit and has met all the accreditation criteria as developed by the MEIBC, permitting the TES to operate as a Temporary Employment Service Provider in the Industry.

- (d) An affidavit warranting compliance with regard to Legislation and Collective Agreements and that Correct rates are being paid to placed staff, and correct deductions are being made according to the MEIBC collective agreements and including all benefits;
- (e) Physical business address of the TES;
- (f) A list of the TES's clients which will remain confidential between the member and the MEIBC;
- (g) Copies of current exemptions to the Main Agreement, if applicable;
- (h) Client service and employee employment contracts to be available for inspection;
- (i) Letter of good standing from the Compensation Commissioner;
- (j) Letter of good standing from the Unemployment insurance Fund;
- (k) Tax clearance certificate from SARS;
- (l) Proof of submission of Employment Equity reports if applicable;
- (m) BEE certificate;
- (n) The registration number allocated by the Director-General of Labour and/or a certificate of registration in respect of section 24 of the Skills Development Act;
- (o) Confirmation from the Metal Industries Benefit Fund Administrators that the TES is up to date with all fund contributions and levy payments;
- (p) Any other matter agreed.

(Amended per Government Notice R.748 dated 23 September 2011)

- (4) An employer who procures a worker or workers within the meaning of section 198 of the Act from a temporary employment service shall notify the region as defined in clause 3 of this Agreement in writing of the business name and physical business address of the temporary employment service concerned within seven days from the date on which the services of the worker or workers procured are utilised within that region or, if the services of such workers are already being utilised at the date of coming into operation of this subclause, within seven days of the date of coming into operation of this subclause.
- (5) An employer who procures a worker or workers within the meaning of clause 198 of the Act from a temporary employment service shall complete a form in the format determined by the Council in respect of each such worker and such form shall be signed by both the employer and the worker concerned declaring that the particulars therein are correct.
- (6) The form referred to in subclause (5) above shall contain the following particulars:
 - (a) The name, telephone number, residential address and identity number of the worker;
 - (b) the business name, business telephone number and physical business address of the temporary employment service concerned;
 - (c) the date from which the employer utilises the services of the worker and the expected termination date;
 - (d) the site or workshop address where the services of the worker will be utilised;
 - (e) the anticipated normal hours and overtime to be worked by the worker;
 - (f) whether the worker will be engaged on work scheduled in this Agreement as Rate A work;
 - (g) the scheduled occupation in terms of this Agreement applicable to the worker.
- (7) The employer shall submit the form referred to in subclause (5) above to the region as defined in clause 3 of this Agreement within seven days after he has commenced utilising the services of the workers concerned.
- (8) The temporary employment service and the client shall be jointly and severally liable if the temporary employment service, in respect of any of its employees, contravenes—
 - (a) a collective agreement, concluded in a Bargaining Council that regulates terms and conditions of employment;
 - (b) a binding arbitration award that regulates terms and conditions of employment;
 - (c) the Basic conditions of Employment Act, or
 - (d) a determination made in terms of the Wage Act.

Any employer who utilises the services of a temporary employment service should, in view of the possible financial risk involved, ensure that the temporary employment service is complying with the Collective Agreement of the Council.

- (9) A worker supplied by a temporary employment service to an employer in the industry and who performs work scheduled in this Agreement shall be regarded as an employee for purposes of this Agreement.

- (10) Where the employee reasonably expected the employer to renew a fixed-term contract of employment on the same or similar terms, but the employer offered to renew it on less favourable terms or did not renew it, such employee shall be regarded as having been dismissed. In such cases the date of dismissal shall be the date on which the employer offered the less favourable terms or the date on which the employer notified the employee of the intention not to renew the contract.
- (11) The following special provisions shall apply in respect of the use of workers supplied by Temporary Employment Service providers.
- (a) Temporary Employment Service providers (TES) who comply with the following may be permitted to operate in the Industry;
- Who have met the requirements set out in subclause (3) above;
 - Who have undergone a verification audit conducted by the MEIBC.
- (b) The current provisions set out in Annexure A(3) of the Main Agreement dealing with Limited Duration Contracts of Employment obligating the TES to utilize the same terms and conditions of employment that would be applicable to a company – when engaging an employee on a fixed term or limited duration contract of employment for a company; namely:
- Site work
Employment in terms of a contract which specifies that employment is in respect of a specific construction site for the duration of the site contract or a specific portion or section thereof.
 - Turnaround work:
Employment in terms of a contract of employment which specifies that employment is for the duration, or portion thereof, of
 - A contract secured by the employer to carry out specified installation, maintenance, overhaul or development work on existing equipment or on an installation not owned by the employer, or
 - Major maintenance, overhaul or development work on equipment or an installation owned by the employer necessitating the recruitment of employees over and above the normal complement.
 - Ship repair work:
Employment in terms of a contract of employment that specifies that employment is for the duration or portion thereof of a specific contract secured by the employer to carry out repairs on a particular vessel.
 - Short-term fluctuations in workload:
Employment in terms of a contract of employment which arises out of a situation where the employer is necessitated to take on additional employees through a temporary employment service provider, as a result of having secured additional work of a short term nature. This employment will be limited in duration to a period not exceeding four months. Provided that if a longer period is required to complete a specific task or activity, then the period of the specific task or activity shall be specified in the limited duration contract of employment.
- (c) All employees including those employed on a limited duration contract will have access at plant level to social facilities including canteens, toilet and ablution facilities.
- (d) No employer shall require the procurement of employees from a Temporary Employment Service for any period beyond that which is envisaged in the Limited Duration Contract of Employment.
- (e) Where a worker works for a period beyond the terms of the contract such worker shall become permanent.
- (f) All workers procured through Temporary Employment Service will enjoy all existing terms and conditions of employment outlined in the Collective Main Agreement. Workshop and/or factory based employees may not be granted a package rate exemption, which takes into account all benefits payable to employees as an hourly rate of pay, other than overtime and Sunday time.
- (g) Procured workers may not elect the option of choice in becoming members of the retirement schemes offered to employees in the Metal and Engineering Industries.
- (h) To better monitor the prevalence of employees procured by Temporary Employment Service, a separate monthly return to the Metal Industries Fund Administrators must be endorsed by a client in the industry whose workers have been procured through a temporary employment service to confirm the period for which employees are procured and the number thereof in each instance of procurement.

- (i) Where an employer intends to use Temporary Employment Service workers in scheduled occupations in the direct production process on a permanent basis, then clause 37 should not be construed to limit the parties' right to take industrial action in accordance with the provisions of the Labour Relations Act.
- (j) All Temporary Employment shall make use of the model Limited Duration Contract below:

**MODEL CONTRACT FOR USE BY TEMPORARY EMPLOYMENT SERVICES
LIMITED DURATION CONTRACT OF EMPLOYMENT
Schedule referred to in clause 3(a) of Annexure A to the Main Agreement
CONTRACT OF EMPLOYMENT**

(The employer) agrees to engage the services of (the employee) and the employee hereby agrees to accept service with the employer on the following terms and conditions:

(i)(a) The contract of employment in terms of clause 3 of Annexure A to the Main Agreement shall be for a maximum period of months / weeks from date of employment, for the purpose of site work / turn-around work / ship repair work (delete whichever is not applicable) from to or completion of the specific work detailed hereunder:

.....
.....

(b) The contract of employment for short-term fluctuations in workload shall not exceed a period of four months from date of employment, viz from to Or completion of the specific work detailed hereunder:

(Note: Should a period longer than four months be required to complete a specific task or activity, the period and the specific task or activity must be specified hereunder):

.....
.....

(ii) On completion of the contract detailed in (i) above, this contract shall automatically terminate. Such termination shall not be construed as being retrenchment but as completion of contract.

(iii) The remaining conditions of employment, not expressly detailed above, shall be existing employer policy, rules and regulations and the general conditions of employment as contained in the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, subject to the limitation set out in (ii) above.

(iv) Where employment continues after completion of this contract in terms of (i) above this contract shall become null and void and the provisions of the Main Agreement shall apply.

(v) Subject to the amendment of the general conditions of employment as set out in (ii) above, the engagement conditions shall be:

- (a) Occupation
- (b) Rate of pay
(which shall not be less than the rate scheduled in the Main Agreement)

The employee acknowledges that he/she understands the contents of this contract and signifies acceptance thereof.

Signed at on2011.

Employer:.....

Employee:.....

Witness:.....

Note: The employer and employee shall, during the period of employment in terms of this contract, observe the provisions of the applicable Benefit Fund Agreements.

(Amended per Government Notice R.748 dated 23 September 2011)

- (12) Employers who have been granted a "flat-rate" exemption in terms of which all employee entitlements are incorporated into a single, comprehensive hourly wage may only apply this to employees engaged on work construction sites. It may not be used in manufacturing establishments.
- (13) This Agreement shall apply to all Labour Brokers in the Industry and employees of Labour Brokers will enjoy the wage structures and all the benefits of the Bargaining Council Agreements."

21. EMPLOYMENT OF PERSONS UNDER 15 YEARS OF AGE

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

22. INSURANCE OF TOOLS

Every employer shall take out an insurance policy with a registered insurance company insuring tools, which are the private property of his journeyman, apprentice and machinist employees, against damage or destruction on the employer's premises by fire. The maximum cover under this clause for insurance of tools shall be R2,500.00 per employee referred to above.

(substituted by G.N. R.839 of 14 September 2007)

23. EXEMPTIONS

1. *General*

- (a) Any person bound by this Agreement may apply for exemption.
- (b) The authority of the Council is to consider applications for exemptions and grant exemptions.
- (c) Applications for wage increase exemptions must be submitted to the Bargaining Council on or before 31 July each year in respect of wage increases
- (d) Additional special provisions shall apply in respect of applications for exemption from the payment of Leave enhancement Pay, as set out at sub clause 14(7) of this Agreement".
(subclause (1) substituted by G.N. R.839 of 14 September 2007)

2. *Fundamental principles for consideration*

- (a) All applications must be in writing and fully motivated and sent to the Regional Office of the Council for the area in which the applicant is located.
- (b) In scrutinising an application for exemption the Council will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- (c) The employer must consult with the workforce, through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application.
Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.
Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- (d) The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of this Agreement in the Industry.
- (e) Wage and wage related exemptions shall not generally be granted beyond the expiration of the Agreement provided that the Council may at its discretion and on good cause shown agree to a longer period (but not an indefinite period).
- (f) Applications for exemptions involving monetary issues may not be granted retrospectively.
- (g) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

3. *Urgent applications*

- (a) In cases of urgent applications, details may be faxed or delivered to the Council in the region where the applicant is located.
- (b) The Council or Chairperson and Vice Chairperson will consider the application, make a decision and communicate that decision to the applicant without delay.
- (c) The applicant is expected to put forward a substantive explanation as to the urgency of the application.

4. *Process*

- (a) The Council shall issue to every person to whom exemption has been granted an exemption licence, setting out the following:
 - (i) the full name of the person or enterprise concerned;
 - (ii) the provisions of this Agreement from which the exemption has been granted;
 - (iii) the conditions subject to which exemption is granted;
 - (iv) the period of the exemption;
 - (v) the date from which the exemption shall operate; and
 - (vi) the area in which the exemption applies.
- (b) The Council shall ensure that –
 - (i) all exemption licences issued are numbered consecutively;
 - (ii) an original copy of each licence is retained by the Council;
 - (iii) a copy of the exemption licence is sent to the applicant.

Unless otherwise specified in the licence of exemption, any exemption from this Agreement shall be valid only in the region of the Council in which the application was made.

- (c) The Council may withdraw the exemption at its discretion.

5. Appeals

- (a) An independent body, referred to as the Independent Exemptions Appeal Board (the Board), shall be appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption in respect of parties and non-parties.
- (b) The Council Secretary shall, on receipt of an appeal against a decision of the Council, submit it to the Independent Exemptions Appeal Board for consideration and finalisation.
- (c) In considering an appeal the Board shall consider the recommendations of the Council, any further submissions by the employers or employees and shall take into account the criteria set out above and also any other representations received in relation to the application.
- (d) Should the appeal be successful an exemption licence shall be issued in terms of subclause (4)(a) and (b) above and shall be subject to subclauses (4)(c) and (d).”
(Exemptions clause substituted by R1128 of 17 November 2000)
(Section (5) substituted by R570 of 2 May 2003)

24. EXHIBITION OF AGREEMENT

Every employer shall obtain and, on request from any employee, make available for perusal a legible copy of this Agreement plus all subsequent amendments thereof, in a format approved by or acceptable to the Council.

25. MANUFACTURING CERTIFICATES

For the purposes of this clause ‘manufacturing engineering’, means the production of articles or parts or components thereof by means of tools and/or equipment and/or methods specifically adapted and/or designed for production by repetitive processes, in separate manufacturing establishments or departments or annexures separated from general engineering activities by effective enclosures.

- (1) Every employer engaged in the Industry at the date of coming into operation of this Agreement and every employer entering the Industry after such date shall, prior to applying the special conditions relating to manufacturing activities contained in Schedules M and D of Part II of this Agreement, make application to and obtain from the Council a certificate of registration of his establishment or part thereof, as the case may be, as a ‘manufacturing engineering establishment’ specifying the wage schedule(s) or wage division(s) applicable to that establishment or part thereof. Such certificate shall be displayed in the establishment concerned or that part thereof in respect of which it was obtained from the Council.
- (2) Any employer who fails to register with the Council in terms of subparagraph (1) shall be deemed to be conducting a ‘general engineering establishment’.

26. ADMINISTRATION OF AGREEMENT

The Council shall be the body responsible for the administration of this Agreement.

27. WORKING PARTNERS

All working employers and/or working partners who are employers in the Industry shall observe the hours of work prescribed for employees in this Agreement.

28. AGENTS

- (1) The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement. For the purpose of enforcing or monitoring compliance with this Agreement, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and question the employer and/or his employees in any manner that he deems appropriate, provided that such rights be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with the Agreement.
- (2) After each inspection of an employer’s records and operations the agent shall prepare a report for the attention of the employer, worker representatives and in the case of an individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, 1995.

- (3) A designated Agent shall have powers set out in sections 33 and 33A of the Act and in Schedule 10 of the Act. (subclause 3 inserted by G.N. R.1374 of 3 October 2003)

29. INJURY ON DUTY ALLOWANCE

Payment in respect of Injury on Duty

1. Where an employer in terms of Section 47(3) of the Compensation for Occupational Injuries and Diseases Act 1993, is of reasonable belief that an employee's absence from work resulting from an injury on duty will be compensable under that Act, the employer shall pay an amount, to the employee equivalent to 75% of the employee's actual hourly rate for such absence up to a maximum period of three months from the date of the accident. The employer shall recover this payment from the Compensation Commissioner.
2. **Whenever an employee is absent from work through occupational sickness or injury not recognised as compensable in terms of Compensation for Occupational Injuries and Diseases Act, 1993 [see Section 22(2)] he shall be paid on the basis of the employee's actual hourly rate of pay for any period of absence up to a maximum of three working days. Such payment made to the employee concerned shall be recoverable from the Metal and Engineering Industries Sick Pay Fund by the employer".**
(subclause (2) substituted by G.N. R.839 dated 14 September 2007)

30. UNAUTHORISED EMPLOYMENT

Notwithstanding anything to the contrary in this Agreement, no provision which prohibits the engagement or employment of an employee on any class of work or on any conditions shall be deemed to relieve the employer from paying the remuneration and observing the conditions which he would have had to pay or observe had such engagement or employment not been prohibited, and the employer shall continue to pay such remuneration and observe such conditions as if such engagement or employment had not been prohibited.

31. PROHIBITION OF CESSION AND/OR SET-OFF

No claim whatever by any employee against the Council shall be capable of being ceded, and no purported cession thereof shall be binding upon the Council.

Set-off shall not operate and is expressly excluded as between any amounts payable to an employee as referred to in clause 8(3) and any amount payable by such employee, the deduction of which is prohibited by that clause; and this provision shall be deemed to be a term of every contract of employment between employer and employee.

32. CERTIFICATE OF SERVICE

Every employer shall provide each employee on the termination of his employment with a certificate of service showing full names of the employer and employee, the nature of the employment, the dates of commencement and termination of the contract and the rate of remuneration at the date of such termination, and shall forward a copy of such certificate of service to the Regional Council concerned: Provided that where in this Agreement the wage of any employee is determined by length of service it shall be incumbent on the employee to produce a certificate of service to his new employer on change of employment in order to become entitled to such remuneration prescribed for length of service.

33. TECHNOLOGICAL CHANGES AND WORK REORGANISATION

- (1) If during the currency of the Agreement representations are at any time made to the Council that any job description in respect of the performance of any work is unsuitable as the result of technical changes introduced subsequent to the date of coming into force of this Agreement, such representations shall be considered at the first ensuing meeting of the Council, which shall decide whether the conditions shall be amended or whether circumstances warrant a recommendation being made to the independent exemptions body for an exemption to be granted so as to authorise the application of more appropriate conditions or whether the conditions applicable under the Agreement shall apply to such work without modification.
(substituted by Government Notice R.1491 of 27 November 1998)
- (2) **Technological Change:** For the purpose of this subclause 'technological change' means the introduction by the employer of manufacturing equipment substantially different in nature or type from that previously utilised at the establishment or of substantial modifications to present manufacturing equipment.
 - (a) *Notification*
Where an employer intends introducing technological change he shall notify the representative party trade union(s) and/or employee representative body not less than four months prior to the

implementation date of such change.

The notice shall be given in writing and shall contain relevant information, including:

- (i) The nature of the change;
- (ii) the approximate date on which the employer proposes to effect the change;
- (iii) the employees likely to be affected by the change;
- (iv) the anticipated effect of the change on employees working conditions and terms of employment; and
- (iv) any other relevant information relating to the anticipated effects on employees, including the change in skills.

The employer shall update the information provided, on a continuous basis, as soon as new developments arise or if any modifications are made.

(Section (a) substituted per Government Notice R.748 dated 23 September 2011)

(b) *Ergonomic committee*

- (i) An ergonomic committee shall be established at plant level, comprising of representative trade union(s), any employee representative body and a designated management representative or representatives. This committee shall have the power to review the ergonomic implications of the technological changes and take decisions in relation to how workers interact with all aspects of their work environment, including the task, and the tools and equipment used, and work organisation. **In an event an agreement cannot be reached the provisions of the industry dispute resolution procedure shall be applicable.** This shall not prevent management from implementing the proposed changes.

((2)(b)(i) substituted by Government Notice R.899 of 11 September 2009)

- (ii) This committee shall also consult in an endeavour to reach agreement on the following issues:
 - (aa) The training or re-training of employees whose jobs are adversely affected or who may be displaced from their jobs as a result of the technological change and/or work reorganisation; and
 - (ab) The impact on the health and safety and work environment of workers as a consequence of such technological change. (substituted by Government Notice R.1491 of 27 November 1998) (subclause 2(c) deleted by GN. R.1082 of 16 August 2002)

(3) *Work reorganisation*

(a) *Consultation*

Where an employer intends introducing major work reorganisation which will substantially and materially affect the work of employees, the employer shall consult, in an endeavour to reach agreement with the representative party trade union(s) and/or any employee representative body, on the implications of the work reorganisation, including:

- (i) The need to re-train employees affected by such work reorganisation; and
- (ii) any possible impact on the health, safety and work environment of the affected employees.

(b) *Notification*

The company shall notify the union(s) and/or employee representative body of any such work reorganisation not less than 30 days prior to the implementation of such change.

(subclause 3(c) deleted by GN. R.1082 of 16 August 2002)

(4) ***Outsourcing and insourcing***

(a) *Notification*

Where an employer intends to outsource or insource a part of the enterprise's activities he shall notify the regional council and the party trade unions representing the affected employees not less than 42 days prior to the implementation date. This notice shall be given in writing and shall contain the following information:

- (i) The proposed date of outsourcing and/or insourcing;
- (ii) The reason(s) for the outsourcing or insourcing; and
- (i) Any other relevant information relating to such outsourcing or insourcing.

(5) Retrenchments or redundancies:

Where the introduction of new technology, work re-organisation or outsourcing (in terms of this clause) may result in retrenchment, written notice of retrenchment must be given at least 21 days prior to the contemplated date of the retrenchment.

An employer and any employee or employee representative shall, at either's request and under these circumstances, consult in good faith at plant level with a view to reaching agreement of a higher severance payment than that specified in this Agreement."

(new subclause (5) inserted by GN. R.1082 of 16 August 2002)

34. PAID SICK LEAVE

NOTE:

In terms of the Basic Conditions of Employment Act of 1997 the paid sick leave provisions of the Main Agreement must be amended to meet the minimum requirements of the sick leave provisions contained in Section 22 of that Act. Section 34 of the Main Agreement has therefore been amended and the amended sick leave provisions will take effect from 1 June 2000. The most significant amendment provides for an employee's sick leave to be calculated over a three-year sick leave cycle. The old agreement specified a one-year cycle from January to December each year. The sick leave entitlement has changed from 10 working days in a one-year cycle to 30 working days in a three-year cycle. Sub-clause 34(12) deals with the transition period between the end of the old sick leave cycle on 31 December 1999 and the commencement of the new cycle on 1 June 2000.

- (1) Subject to the transitional provisions of sub-clause 34(12), with effect from 1 June 2000, "sick leave cycle" in this clause means the period of 36 months' employment with the same employer, immediately following –
 - a) An employee's commencement of employment; or
 - b) The completion of that employee's prior sick leave cycle.
- (2) Subject to the transitional provisions of sub-clause 34(12) whenever an employee is absent from work through sickness or injury (other than sickness or injury caused by his or her own misconduct) the employer shall grant, at the commencement of every sick leave cycle, the following amount of paid sick leave:
 - (i) 30 working days (in the case of an employee working a five-day week); and
 - (ii) 36 working days (in the case of an employee working a six-day week)
- (3) During the first six months of employment with an employer, an employee will be entitled to one working day's paid sick leave in respect of each 26 days worked.
- (4) The employee's entitlement to sick leave is reduced by the number of days sick leave taken in terms of sub clause (3) above.
- (5) An employer must pay the employee for each day of absence, provided for above, on the employees usual pay day an amount equivalent to what the employee would have received had he or she worked the ordinary hours of the shift for that day of the week.
- (6) The employer, before making payment of any amount payable to an employee for any period of absence from work of more than two consecutive days or on more than two occasions during an eight week period, may require the employee to produce a medical certificate, clinic note or hospital note signed by any person who is certified to diagnose and treat patients and who is registered with any Professional Council established by an Act of Parliament, stating that the employee was unable to work for the duration of the employee's absence on account of a sickness or injury.
- (7) The employer may require an employee to produce a medical certificate, clinic note, hospital note signed by any person who is certified to diagnose and treat patients and who is registered with any Professional Council established by an Act of Parliament in respect of any absence from work on a Friday or Monday or on the working day immediately before or after any paid public holiday before making payment of any amount payable in terms of this subclause.
(Subclauses (6) and (7) substituted per Government Notice R.748 dated 23 September 2011)
- (8) If it is not reasonably practical for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (6) unless the employer provides reasonable assistance to the employee to obtain the certificate.
- (9) Where an employer is by law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees in respect of any sickness or injury referred to in this clause, the amount so paid may be set off against the payment for sick leave due in terms of this clause.
- (10) An employer, who is of a reasonable belief that an employee's absence from work resulting from an injury on duty will be compensable in terms of the Compensation for Occupational Injuries and Diseases Act, must pay the employee 75% of his or her ordinary hourly rate for the period of the absence up to a maximum period of three months from the date of the accident. The employer shall recover this payment from the Compensation Commissioner.

- (11) An employee is not entitled to paid sick leave:
- a) During periods of absence from work for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act; and
 - b) On a paid public holiday as specified in this Agreement
 - c) During a period of annual leave in terms of this Agreement
 - d) In respect of periods during which the employee was absent due to the working of short time or during periods of lay-off.
 - e) During any other period of authorised absence.
- (12) *Transitional Provisions applicable to employees employed prior to 1 June 2000 who continue in the employment of the same employer after 1 June 2000*
- a) On 1 June 2000 an employee who has been in the employ of the same employer during the preceding 5 months shall be entitled to 34 days sick leave over the transitional sick leave cycle commencing 1 January 2000 to 31 May 2003.
 - b) On 1 June 2000 an employee who commenced employment with the same employer after 1 January 2000 shall be entitled to a period of sick leave amounting in total to the sum of 30 days plus 1 day for each completed period of 26 days worked from date of engagement to 31 May 2000. This entitlement shall be in respect of the transitional sick leave cycle commencing date of employment to 31 May 2003.” (substituted by R1128 of 17 November 2000)
- (13) The employer and trade union parties agree that they will recognise traditional healers for paid sick leave purposes, in terms of the Main Agreement, provided that an appropriate regulatory body is created by the Government similar to that of the Health Professionals Council.
(new subclause 13 inserted by GN. R.1082 of 16 August 2002)

35. SECURITY OF EMPLOYMENT AND SEVERANCE PAYMENT

- (1) (a) In the case of retrenchment an employer, subject to subclause (2), shall pay to each employee who is retrenched, in addition to any other amounts to which he is entitled in terms of this Agreement on termination of service, a severance payment of a minimum of one week’s wages, together with the following:
- (i) pro-rata allowance(s) where applicable;
 - (ii) pro-rata leave and leave enhancement pay; and
 - (iii) an amount equal to the weekly employer contribution to any applicable benefit funds of which the employee was a member at time of retrenchment
- In respect of each completed year’s service with the same employer.
Subject to the proviso that an employee who has more than six months service but less than a completed year’s service shall receive a severance payment equal to one week’s remuneration.
- (b) **Employees shall be entitled to the following additional ex-gratia payments:**
- **An employee with between five to ten completed years’ service with the same employer: One week’s ex gratia payment;**
 - **An employee with between eleven to fifteen completed years’ service with the same employer: two weeks ex-gratia payment; and**
 - **An employee with sixteen or more completed years service with the same employer: three weeks ex gratia payment”.**
- (c) **An employer who is retrenching as a consequence of financial difficulties and who is unable to comply with the ex gratia payment may make direct application to the independent Exemptions Appeal Board for exemption. Such exemption application must be supported by appropriate financial statements showing sufficient financial hardship to warrant the exemption sought”.**
- (d) An employer and any employee or employee representative shall at either’s request consult in good faith at plant level with a view to reaching agreement on a higher severance payment than that stipulated in subclause (1)(a).
- (2) (a) The procedure to be followed in the event of lay-offs, relocation or closure of an establishment, retrenchments, redundancies and the operation of limited duration contracts of employment shall be as provided for in Annexure A to this Agreement.
- (b) Where non-observance of the procedures provided for under Annexure A to this Agreement gives rise to a dispute, such dispute shall be dealt with by the Bargaining Council in terms of its dispute resolution procedure.”
(Substituted by GN R.531 of 18 June 2010)

36. PROCEDURES FOR THE NEGOTIATION OF AGREEMENTS AND SETTLEMENT OF DISPUTES

- (1) This Bargaining Council shall, within the sector and area in respect of which it has been registered, endeavour, by the negotiation of agreements or otherwise, to prevent disputes from arising, and to settle disputes that have arisen or may arise between employers or employers' organisations and employees or trade unions, and take such steps as it may think expedient to bring about the regulation or settlement of matters of mutual interest to employers or employers' organisations and employees or trade unions. Any dispute concerning the interpretation, application or enforcement of this Agreement shall be dealt with in accordance with subclause (2) below.
- (2) For the purposes of sub-clause (1) above the Council shall follow the procedure set out in the Metal and Engineering Industries Dispute Resolution Agreement, published under Government Notice R.836 in Gazette 29122 dated 18 August 2006 (subclause 2 substituted by G.N. R.77 dated 2 February 2007).

37. LEVELS OF BARGAINING IN THE INDUSTRY

- (1) Subject to subclause (2)—
 - (a) the Bargaining Council shall be the sole forum for negotiating matters contained in the Main Agreement;
 - (b) during the currency of the Agreement, no matter contained in the Agreement may be an issue in dispute for the purposes of a strike or lock-out or any conduct in contemplation of a strike or lock-out;
 - (c) any provision in a collective agreement binding an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer or a trade union to bargain collectively in respect of any matter contained in the Main Agreement, is of no force and effect.
- (2) Where bargaining arrangements at plant and company level, excluding agreements entered into under the auspices of the Bargaining Council, are in existence, the parties to such arrangements may, by mutual agreement, modify or suspend or terminate such bargaining arrangements in order to comply with subclause (1). In the event of the parties to such arrangements failing to agree to modify or suspend or terminate such arrangements by the date of implementation of the Main Agreement, the wage increases on scheduled rates and not on the actual rates shall be applicable to such employers and employees until the parties to such arrangement agree otherwise.
- (3) The provisions of this clauses shall apply equally to any trade unions not party to this Agreement. (subclause (3) inserted by G.N. R.1374 of 3 October 2003)

38. WORKING-IN TIME ARRANGEMENTS

- (1) For purposes of this clause 'employees covered by this Agreement' shall, in addition to all scheduled employees, include employees referred to in subclauses (4) and (5) of clause 1 of Part I of this Agreement.
- (2) An employer, with the support of not less than 75% of his employees covered by this Agreement, obtained via a ballot, may enter into an arrangement to work in time in order to achieve the extension with pay of—
 - (a) any paid holiday provided for in clause 11 of this Agreement; or
 - (b) periods not ordinarily worked by employees; or
 - (c) the annual shutdown period provided for in clause 16 of this Agreement.
- (3) An employer, subject to the ballot arrangement referred to in subclause (2), may enter into an arrangement to close his establishment—
 - (a) on any ordinary working day; or
 - (b) for any period of work forming part of any ordinary working day.
- (4) Where arrangements to work in time, as referred to in subclause (2) or (3), are entered into such arrangements shall not include working in time on Sundays.
- (5) Where employment terminates before the date for which time had been worked in, in terms of subclause (2) or (3), all hours so worked shall be deemed to be overtime hours subject to payment at the appropriate overtime rate applicable.
- (6) Time worked in by employees in terms of subclause (2) or (3) shall count towards leave pay and/or leave enhancement pay entitlements as provided for in clauses 12 to 14.
- (7) Where such working-in time arrangements are entered into the employer shall notify the Regional Council concerned thereof within 14 days of such decision, specifying—

- (a) the outcome of the ballot;
- (b) the day/days for which time will be worked in;
- (c) the day/days on which such time will be worked in.

39. STANDBY AND CALL-OUT ARRANGEMENTS

- (1) Where an employer requires an employee to be on standby the employee shall be paid an amount of not less than two hours' pay for each period of twenty-four hours or less on standby: Provided that this allowance shall be forfeited if the employee fails to respond to a call-out.
- (2) Where an employee is called out whilst on standby he shall be paid at the appropriate overtime rates for the time worked with a minimum payment of not less than two hours' overtime.
- (3) The above provisions will not affect existing arrangements at establishments.

40. PRODUCTIVITY BARGAINING

- (1) The parties have agreed that productivity Agreements may be entered into on the terms set out in Annexure D.
- (2) Any agreement entered into shall be submitted to the appropriate Regional Council for record purposes.
(inserted by Government Notice R.1491 of 27 November 1998)

CLAUSE 41. EMPLOYEE SHARE OPTION PARTICIPATION SCHEMES (ESOPS) AND THE REQUIREMENTS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT (BBEE ACT)
The provisions of Annexure E shall be observed.
 (inserted by G.N. R.839 dated 14 September 2007)

42. FAMILY RESPONSIBILITY LEAVE

For purposes of this clause, "child" means a person who is under 18 years of age, provided that for purposes of subclause 42(2)(iv)(b) this age shall not apply.

(introductory paragraph inserted by Government Notice R.628 of 23 July 2010)

- (1) This section applies to an employee who has been in the employ of the same employer for four months or longer.
- (2) An employer must, at the request of the employee, grant the employee three days' paid leave, during each annual leave cycle, which the employee is entitled to take-
 - (i) When the employee's child is born;
 - (ii) When the employee's child is sick;
 - (iii) When the employee's spouse is sick; or
 - (iv) In the event of the death of –
 - (a) the employee's spouse or life partner; or
 - (b) the employee's parent, adoptive parent, grand parent, child, adopted child, grand child, sibling and/or parents-in-law;
 - (c) The parties agree to amend the compassionate leave provision of the Sick Pay Fund Agreement to allow for an accumulation of the existing three days per annum compassionate leave over a three year cycle.

It is the intention of the parties that this mechanism in conjunction with the existing Provision on FLR in the Main Agreement will effectively entitle an employee to accumulate up to eighteen days family responsibility leave over a three year cycle.

(Subclause (iv) substituted per Government Notice R.748 dated 23 September 2011)

- (3) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (4) Before paying an employee for this leave an employer may require reasonable proof of the event contemplated in (2) above for which the leave was required.
- (5) An employee's unused entitlement to leave in terms of this section, accrues to a maximum of nine days paid leave over a three-year period of employment. This accrued leave may be used in the event of the death of any of the persons detailed in (2)(iv) above.

(clause 42 substituted by R.1374 of 3 October 2003)

43. CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT

Employers and employees shall observe the provisions of Annexure F.
(inserted by Government Notice R.1051 of 26 October 2001)

44. ATTENDANCE OF WORKER REPRESENTATIVES ON NATIONAL AND REGIONAL COMMITTEES OF THE BARGAINING COUNCIL

The provisions of Annexure G shall be observed.
(inserted by GN. R.1082 of 16 August 2002)

45. SPECIAL PROVISIONS LIMITED TO CONSTRUCTION SITES COVERED BY PROJECT LABOUR AGREEMENTS.

The special provisions and wage rates as set out in Annexure H shall apply.
(Clause 45 inserted by Government Notice R.1374 dated 3 October 2003).
(Substituted by Government Notice R.77 dated 2 February 2007).

46. TIME OFF FOR THE TRAINING OF SHOP STEWARDS AND FOR TRADE UNION OFFICE BEARERS TO ATTEND UNION MEETINGS

- (a) An employee who is an office bearer of a representative trade union, in terms of section 15 of the Act is entitled to take reasonable leave during working hours for the purposes of performing the functions of that office. The representative trade union and the employer may agree to the number of days of leave, the number of days paid leave and the conditions attached to any such leave.
- (b) A trade union representative, appointed in terms of section 14 of the Act, may, subject to reasonable conditions To be agreed at company level, be entitled to take reasonable time off with pay during working hours to be trained in any subject relevant to the performance of the functions of a trade union representative.”
(clause 46 inserted by G.N. R.1374 of 3 October 2003)
- (c) The appointment of shop stewards and health and safety representatives will be a matter for Plant Level Agreement.
- (d) Union general meetings will take place on a quarterly basis at plant level subject to the time and duration of these meetings being agreed to at plant level.
- (e) A minimum of 5 days paid leave per annum per shop steward will be granted for shop steward training.
- (f) The above provisions constitute a minimum floor of rights and any rights exceeding these at plant level will remain in place. Further rights may be agreed at plant level.
(Subclauses (c), (d), (e) and (f) inserted per Government Notice R.748 dated 23 September 2011)

47. TIME OFF FOR REPRESENTATIVES OF PARTY TRADE UNIONS WHO ACT AS TRUSTEES OF THE INDUSTRY BENEFIT FUNDS OR WHO ARE OFFICE BEARERS OF THE MERSETA, METAL AND PLASTIC CHAMBER

Employer organizations must, as far as possible encourage their members to release party trade union representatives employed at their establishments for duties as Trustees of the Industry benefit funds, accommodate such representatives for Trustee training and attendance as office bearers of the Merseta, Metal and Plastic Chamber meetings and programmes.”
(Substituted by G.N. R.839 of 14 September 2007)

48. EMPLOYEE TRAINING

- (1) Where a training committee identifies a specific training need and an employee is selected to undergo such training, then this training shall, wherever possible, be undertaken during ordinary working hours and the employee shall be paid at normal whilst undergoing this training.
- (2) The time spent on ABET training shall be shared equally between the employer and the employee trainee on a 50/50 basis, such that for example, if the training lasts two hours, one hour will be paid by the employer and the other will be an unpaid contribution of the employee.
(New clause inserted per Government Notice R.748 dated 23 September 2011)

49. INDUSTRY POLICY FORUM

The union and employer parties, having noted the significant challenges facing the Metal and Engineering Industry in the context of the imperative of creating and sustaining decent jobs and competitive manufacturing capability in the domestic and global market, have agreed to establish an Industry Policy Forum (hereinafter referred to as the IPF) under the auspices of the MEIBC as per the special provisions applicable in Annexure I.

(New clause inserted per Government Notice R.748 dated 23 September 2011)