

CONSOLIDATED PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE KWAZULU-NATAL REGION

Herewith follows the complete Agreement published under Government Notice R.1516 in Government Gazette No 19505 of 27 November 1998, duly updated as per the under-mentioned Amending agreements subsequently published:

Amended	Government Notice	Government Gazette	Date of Publication
Amended	R.1281	20562	29.10.1999
Re-Enacted & Amended	R.399	24603	28.03.2003
Amended	R.782	25082	20.06.2003
Cancellation Notice	R.1288	25456	19.09.2003
Re-Enacted & Amended	R.1289	25456	19.09.2003
Correction Notice	R.1572	25625	31.10.2003
Correction Notice	R.21	25908	16.01.2004
Amended	R.521	26279	30.04.2004
Correction Notice	R.708	26423	11.06.2004
Cancellation Notice	R.1168	26878	15.10.2004
Re-Enacted & Amended	R.1169	26878	15.10.2004
Amended	R.591	27686	24.06.2005
Renewed from 07/10/05 to 31/08/06	R.969	28084	07.10.2005
Renewed from 08/09/06 to 31/08/07	R.887	29174	08.09.2006
Cancellation Notice	R.1080	29332	03.11.2006
Re-Enacted, Amended and Extended further to 31/08/08	R.1081	29332	03.11.2006
Correction Notice	R.1231	29434	08.12.2006

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DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in all respects, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

The text of the agreement, amendments thereto and correction notices where applicable, as published in the abovementioned Government Notices are binding in terms of each thereof.

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. [R. 1516](#)

27 November 1998

[GovNR1516y1998]

LABOUR RELATIONS ACT 66 OF 1995[a66y1995]

CLOTHING INDUSTRY (NATAL): EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Clothing Industry (Natal) and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from 30 November 1998 to 30 June 2005 and from 7 October 2005 to 31 August 2006.

M. M. S. MDLADLANA
Minister of Labour

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SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE KWAZULU-NATAL REGION

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the
Natal Clothing Manufacturers' Association

(hereinafter referred to as the "employers", or the "employers' organisation"), of the one part, and the
Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"), of the other part, being the parties to the National Bargaining Council for the Clothing Manufacturing Industry.

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Clothing Industry by all employers and employees who are engaged or employed:
 - (a) are members of the employers' organisations and the trade union, respectively, and are engaged or employed in the Industry;
 - (b) are subject to the scope of Part C of the National Main Collective Agreement of the National Council, being those in the Metro;
 - (c) are subject to the scope of Part I (Non-Metro) of the National Main Collective Agreement of the National Council, but only those in the Metro.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall:
 - (a) apply in respect of employees for whom wages are prescribed in Parts C and I of the National Main Collective Agreement;
 - (b) not apply in respect of employees whose basic wages exceed two and a half times the wage rate for a qualified Grade 1 employee.
- (3) The terms of this Agreement shall also cover all garment knitting employees.
- (4)
 - (a) The purpose of this Agreement is to make provision for retirement, disability, death and retrenchment benefits.
 - (b) Employers employing five employees or fewer shall, upon application to the Council be exempted from this Agreement.
 - (c) Where an employer or an employee can satisfy the Council that any of the provisions of this Agreement are restricting entry into the industry, the Council may exempt such employer or employee from the provisions of this Agreement.
 - (d) Clauses 1 (1) (a), 2 and 3 of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act,

SPECIAL PROVISIONS

The provisions of clause 15B and 18 (5) of the Agreement published under Government Notice No. R. 1169 of 15 October 2004, as amended, shall apply.

GENERAL PROVISIONS

The provisions contained in clauses 3 to 15A, 16 to 18 (4) and 18 (6) to 20 of the Former Agreement (as further amended and re-enacted from time to time), shall apply to employers and employees.

3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, or the Main Agreement shall have the same meaning as in those measures, and unless the context otherwise indicates, words importing the masculine gender shall include the feminine; further unless inconsistent with the context-

"Act" means the Labour Relations Act, No. 66 of 1995, as amended;

"basic weekly wage" means the remuneration usually payable in money to an employee in respect of the ordinary hours of work set out in clause 9 (1) of the Main Collective Agreement for the KwaZulu-Natal Region of the Council, regardless of the hours actually worked by an employee;

"beneficiary" means either a dependant or nominee, entitled to benefits under the fund;

"child" shall mean a child as defined in the group funeral policy;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employees

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including

A. and Includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts thereof;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial government or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or

- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employ
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in wh

B. but excludes

- (a) belts, braces, garters, suspenders and armllets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of indi
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"complying employer" means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund Contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

"contributor" means any persons, who falls under the scope of this Agreement and is employed in the Clothing Industry, or who does not fall under the scope of the Agreement, but who the parties to the Agreement have agreed shall be permitted to participate in the Fund, and from whose wages deductions have been made or are required to have been made in terms of this Agreement;

"Council" for the purposes of this Agreement, means the KwaZulu-Natal Chamber of the National Bargaining Council for the Clothing M

"dependant" in relation to a nominated beneficiary, shall in all cases where a member has dependants, mean a person who depended wholly or partly upon the member;

"early retirement" shall mean retirement within 5 (five) years of normal retirement age; **"effective date"** means the date of coming into operation of this Agreement;

"employer's account" means an account established in respect of each member, in which is accumulated-

- (a) the employer's share of contributions referred to in clause 6 (12); and
- (b) the transferred employer's account;

which amounts shall be taken into account in determining the member's benefits in terms of these rules;

"exempt contributor" means a contributor in respect of whom contributions are no longer required to be made by an exempt employer;

"exempt employer" means an employer who has been exempted from contributing in respect of employees in terms of clause 15;

"Fund" means the Provident Fund provided for in terms of clause 4 of this Agreement;

"group disability benefit" shall mean a disability benefit to which a member may become entitled under a policy of insurance entered into by the Fund for the purpose of providing such benefits;

"group disability policy" means a policy of insurance entered into by the Fund in terms of clause 5 (5) (f) for the purpose of providing a disability benefit to members in terms of clause 8 (1) (e) of this Agreement;

"group funeral benefit" shall mean a death benefit to which a member or the spouse or child of such member may become entitled under a policy of insurance entered into by the Fund for the purpose of providing such benefit;

"group funeral policy" means a policy of insurance entered into by the Fund in terms of clause 5 (5) (f) for the purpose of providing a funeral benefit for members or the spouse or child of such member in terms of clause 8 (1) (c) of this Agreement;

"group life assurance benefit" means the benefit to which a member is entitled under a policy of assurance entered into by the Fund with an underwriter to provide such benefits;

"group life assurance policy" means a policy of assurance entered into by the Fund in terms of subclause 5 (f) of clause 5 to provide for benefits upon death in terms of subclause (1) (c) of clause 8 of this Agreement;

"interim rate" means the rate of return calculated in accordance with clause 10 (3) to be applied in determining benefits in terms of clause 9 for any part of a year;"

"late retirement" means retirement after the normal retirement age;

"Main Collective Agreement" means the Collective Agreement of the Council in which wages are prescribed for employees in the Industry published in terms of section 32 (2) of the Act;

"member" means a person entitled to receive benefits under the Fund and in respect of whom contributions are, or have been made and shall include expressions such as "contributor", "paid up contributor" and "exempt contributor" ;

"member's account" means an account established in respect of each member, in which is accumulated-

- (a) the member's share of contributions in terms of clause 6 (12); and
- (b) the transferred member's account;

which amounts shall be taken into account in determining the member's benefits in terms of this Agreement;

"National Council", means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;".

"nominee" means a person other than a dependant who has been nominated by a member to receive benefits under the Fund;

"old rules" means the rules which applied to the Fund at 31 August 1993;

"paid-up contributor" means a member, other than an exempt contributor in respect of whom contributions have been discontinued and who has not received a benefit to which he may become entitled;

"past service" means service in the industry prior to the establishment of this Fund on 14 February 1961 during which any member contributed to the Garment Workers' Industrial Union, Natal, Provident Fund, and who has not received any benefits from that Fund;

"record of service card" means the record of service card provided for in clause 20 of the Main Agreement; "retiring age" and **"normal retirement age"** means the age of 60 (sixty) years for all contributors;

"retrenchment benefit" shall mean the benefit determined in terms of this Agreement which is payable when a member leaves the Fund upon being retrenched;

"returns" means-

- (a) any income (received and accrued) less an allowance for any tax and, if applicable, part or all of any expenses (paid and accrued); and
- (b) any capital appreciation or depreciation (realised and unrealised);

"Secretary" means the Secretary of the Bargaining Council and includes any official appointed to act in the absence of the Secretary;

"service" means all periods of employment in the Industry, from the date a member last joined the Fund in respect of which-

- (i) contributions were made, or due to have been made, on behalf of a member by his employers;
- (ii) the member was an exempt contributor;

"spouse" shall mean a spouse as defined in the group funeral policy.

"transferred funds" means amounts of money transferred into the fund from any other Fund in respect of a member; "transferred employer's account" means the amount determined by the fund's actuary as being the balance of the actuarial reserve as at 1 September 1993, in respect of a particular member;

"transferred member's account" means the member's share under the old rules as determined by the Fund's actuary; **"underwriter"** means a life assurer -contracted by the Fund to provide insured death, disability, medical or funeral benefits;

"withdrawal benefit" means the benefit determined in terms of these rules payable when a member leaves the Fund other than through death, retirement or retrenchment.

4. PROVIDENT FUND

The Fund established in terms of the Agreement, published under Government Notice No. 692 of 12 May 1961, for the purpose of providing benefits for members as provided in this Agreement and known as the Clothing Industry (Natal) Provident Fund, hereinafter referred to as the "Fund", is hereby continued.

The Fund shall consist of-

- (a) contributions paid into the Fund in accordance with the provisions of this Agreement;
- (b) money transferred into the Fund from another Fund in respect of a member; and
- (c) any other sums to which the Fund may become entitled;

increased or decreased by the rate of return declared in accordance with clause 10.

5. ESTABLISHMENT AND FUNCTIONS OF MANAGEMENT COMMITTEE

- (1) The administration of the Fund shall be vested in the Management Committee, consisting of 3 (three) employers'

representatives and 3 (three) employees' representatives appointed by the National Bargaining Council for the Clothing Manufacturing Industry for its KwaZulu-Natal Chamber at a duly constituted meeting of the Council, together with the Chairperson and Vice-Chairperson of the KwaZulu- Natal Chamber, who shall be ex officio members of the Management Committee.

- (2) For each representative an alternate shall be appointed.
- (3) 2 (two) employers' representatives and 2 (two) employees' representatives shall constitute a quorum. The Chairman shall have a deliberative vote only. Alternates of members who are absent may be counted as full representatives for the purpose of a quorum and if no quorum is present within thirty minutes of the time fixed the meeting will stand adjourned to a date no later than 7 (seven) days thereafter to be fixed by the Chairman. At the meeting held by virtue of such adjournment of which members shall be given a written notice, those present shall form a quorum. For the purpose of a quorum, the Chairman and Vice-Chairman of the Council shall, if present be regarded as representatives. If any representative is absent from any meeting and is not represented by an alternate, the voting power of the side he represents shall be reduced, a similar reduction shall be made on the other side to preserve equality of voting power. No motion shall be considered unless seconded and all matters forming the subject of motions shall be decided by majority vote of those present.
- (4) All expenses of administration shall be a charge against the Fund.
- (5) The Management Committee shall have power to-
 - (a) sanction all payments and expenditure on behalf of the Fund;
 - (b) engage and dismiss employees of the Fund, fix their remuneration, and define their duties;
 - (c) supervise the working of any subcommittee appointed;
 - (d) appoint sub-committees to help in the administration of the Fund;
 - (e) draft rules for the payment of benefits and fix the time and place for such payments;
 - (f) contract with an underwriter to underwrite such death, disability, medical or funeral benefits as the committee may deem necessary and desirable, and shall authorise the payment of all such premiums as shall become due and payable under such policy for insurance as may be required by the underwriter;
 - (g) perform all such other duties as the Committee may deem necessary or desirable for the proper administration of the Fund.

Two copies of the rules of the Fund and any amendments thereof which shall not be inconsistent with the Act or this Agreement shall be lodged with the Secretary of the Council who shall transmit one copy to the Director-General: Department of Labour.

6. CONTRIBUTIONS

(1) **Employees' contributions**

For the purpose of the Fund and for all employees falling within the scope of clause 1 (1) (b) of this Agreement, each employer shall

(2) **Employers' contributions**

- (a) In addition to the amount deducted in terms of subclause (1), and for all employees falling within the scope of clause 1 (1) (b) of this Agreement, the employer shall deduct the following from the earnings of each employee:
 - (i) 4,75% of an employee's basic weekly wage, as defined in this Agreement, provided that the employee worked during the month;
 - (ii) 2,25% of an employee's basic weekly wage, as defined in this Agreement, irrespective of whether or not the employee worked during the month.
- (b) For the purpose of the Fund, and for all employees falling within the scope of clause 1 (1) (c) of this Agreement, an employer shall

- (3) The employer shall pay all such contributions, monthly by the tenth (10th) day of each month, to the Secretary of the Council.
- (4) Such total sum must be accompanied by a list showing the name and address of the employer, the record of service card number of each contributor, and the amount of contribution.
- (5) In the case of the first such payment by any employer the payment must be accompanied by the following additional information:
 - (a) The full names and address of each contributor;
 - (b) the record of service card number of each contributor;
 - (c) a duly completed Beneficiary Nomination Form, in terms of clause 8 (2) of this Agreement stating the names and addresses of the contributors.
- (6) The employer shall each month notify the Fund of all contributors who have been absent without pay for four (4) or more consecutive days.
- (7) An employer shall not deduct the whole or any part of his contribution from the earnings of a contributor or receive any consideration in respect of such contribution.
- (8) When a contributor is on leave on full pay or less than full pay and/or when a contributor is on short-time, both his and the employer's contribution shall be paid by the employer.

- (9) If any contribution is made to the Fund in error, the Fund shall not be liable to repay that contribution after the lapse of six (6) months.
- (10) Whenever any benefit has been mistakenly paid to a member as a result of such member having made to the Fund payments which were not due, the Fund shall be liable to repay that contribution to the member:
- (a) against any sum claimed from the Fund as a repayment of such contributions which were not due; and
 - (b) against any future benefits that may become due by the Fund to the said member.
- (11) The contributions made in respect of each member in terms of subclauses (1), (2) (a) (i) and (2) (b) shall be applied equally, after the deduction of the contributions made by the member.
- (12) The contributions made by and in respect of each member in terms of subclauses (1) and (2) (a) (i) and (b) shall be applied in the ratio of their contributions to the member's account and the employer's account.

7. FINANCE

(1) (A) **Bank Account**

All monies received by the Fund shall be deposited in a banking account opened in the name of the Fund. Withdrawals from the Fund shall be by signed cheque or electronic transfer by such persons as may, from time to time, be authorised by the Management Committee.

(B) **Reserve Account**

(a) **Risk Reserve Account**

- (i) A Risk Reserve Account shall be maintained under the Fund, to which shall be credited-
 - (aa) the amount required to be credited in terms of clause 6 (2) (a) (ii);
 - (bb) any payment made to the Fund by an underwriter; and
 - (cc) a portion of the amount (if applicable) required to be credited in terms of clause 10 (5).
- (ii) The amount standing to the credit of the Risk Reserve Account shall be increased or decreased by such proportionate share of the returns earned by the Fund as the amount in the Risk Reserve Account bears to the sum of all amounts standing to the credit of the Fund;
- (iii) The amount standing to the credit of the Risk Reserve Account shall be used-
 - (aa) to meet the cost of the premiums in respect of the Group Life Assurance Policy, the Group Disability Policy and the Group Funeral Policy; and
 - (bb) to pay benefits to members or, if applicable; their beneficiaries in the event of their death or disablement in terms of this Agreement;

(b) **Investment Reserve Account**

- (i) An Investment Reserve Account shall be maintained under the Fund, to which shall be credited-
 - (aa) a portion of the amount (if applicable) required to be credited in terms of clause 10 (5); and
 - (bb) that part (if any) of the employer's account in respect of a member to which a member is not entitled on leaving service; and
 - (cc) a portion of the amount standing to the credit of the Fund excluding the withdrawal benefits of members and unclaimed withdrawal benefits of inactive members of the Fund, which amount shall be agreed by the Management Committee.
- (ii) The amount standing to the credit of the Investment Reserve Account shall be increased or decreased by such proportionate share of the return earned by the Fund as the amount in the Investment Reserve Account bears to the sum of all amounts standing to the credit of the Fund.
- (iii) The amount standing to the credit of the Investment Reserve Account shall be used-
 - (aa) at the discretion of the Management Committee, to increase benefits payable by the Fund;
 - (bb) with specific reference to the amount mentioned in subclause (b) (i) (aa) above, to stabilise the returns of the Fund;
 - (cc) to meet all or part of the expenses of the Fund for the month concerned;
 - (dd) to meet all or part of the contributions due by an employer in terms of clause 6 (2) (a) (i), with specific reference to the amount mentioned in subclause (1) (B) (b) (i) (cc) above.

- (2) Monies surplus to the Fund's requirements and those of its expenses shall be invested in-

- (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - (b) a registered unit trust;
 - (c) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975;
 - (d) first mortgages and housing loans, by way of investment, to individual members, to enable the member-
 - (i) to redeem a loan granted to the member by a person other than the fund, against security of immovable property which belongs to the member or his or her spouse and on which a dwelling has been or will be erected which is occupied or as the case may be will be occupied by the member or a dependant of the member;
 - (ii) to purchase a dwelling or to purchase land and erect a dwelling on it, for occupation by the member or a dependant of the member;
 - (iii) to make additions or alterations to or to maintain or repair a dwelling which belongs to the member or his or her spouse and which is occupied or will be occupied by the member or a dependant of the member [such loans will be subject to the terms and conditions as set out in clause 11 (1) of this agreement];
 - (e) any other manner approved by the Registrar of Labour Relations.
- (3) The Management Committee, may by resolution at a duly constituted meeting of the Committee, authorise the use of all or part of any interest earned and capital appreciation achieved in terms of subclause (2) of this clause for the purpose of clause 10: Provided that the amount of the interest and capital appreciation so authorised would in no period of 6 (six) months ending 30 June or 31 December, respectively, exceed the amount in interest actually received and capital appreciation actually achieved (whether realised or not) by the fund during such periods, less the administration expenses of the Fund for the period in question.
- (4) (a) The Management Committee shall appoint an auditor who shall be registered to practice in the Republic of South Africa as a public accountant and auditor whose remuneration shall be paid out of the Fund.
- (b) The auditor appointed by the Management Committee shall conduct an annual audit of the books and records of account and financial statements of the Fund in accordance with generally accepted auditing standards and shall report in writing to the Management Committee.
- (5) The Management Committee shall cause full and true accounts of the Fund to be kept in accordance with the standards of generally accepted accounting practice, principles and procedures and shall cause monthly Management accounts to be prepared.
- (6) Each year for the period ending on 31 December the Management Committee shall cause to be prepared an account of all revenue and expenditure of the Fund and a statement showing its assets and liabilities. Every such account and statement shall be certified by the auditor of the Fund, and countersigned by the chairman of the Provident Fund Management committee and shall within three months of the close of the period to which it relates be transmitted to the Registrar of Labour Relations, together with the report made thereon by the said auditor. A copy of the annual accounts and balance sheet shall be available for inspection by the members of the Fund and shall be submitted to a meeting of the Council together with the auditor's report.
- (7) All expenses of administration shall be a charge against the Fund.
- (8) The Management Committee shall appoint an Actuary whose remuneration shall be paid out of the Fund.
- (9) (a) The Management Committee shall be empowered to issue guarantees to a third party in respect of a housing loan to any member of the fund and to invest and pledge funds as provided for herein to such third party as provided for herein, where such loan facility has been arranged by the Management Committee for the benefit of the members of the fund.
- (b) The purpose of such guarantees shall be to enable members to obtain finance from a third party, so as to enable the member-
 - (i) to redeem a loan granted to the member by another party, against security of immovable property which belongs to the member or his or her spouse and on which a dwelling has been or will be erected which is occupied, or, as the case may be, will be occupied by the member or a dependant of the member;
 - (ii) to purchase a dwelling or to purchase land and erect a dwelling on it, for occupation by the member or a dependant of the member;
 - (iii) to make additions or alterations to or to maintain or repair a dwelling which belongs to the member or his or her spouse and which is occupied or will be occupied by the member or a dependant of the member.
- (c) The entitlement of members to such loan facilities in terms of sub-clause (a) shall be in terms of sub-clause 11 (1) (b) of this agreement.

8. PAYMENT OF BENEFITS

- (1) Benefits shall be provided for members who-
- (a) retire;
 - (b) leave the Industry before retirement age and withdraw from the fund;

- (c) die in service;
- (d) become disabled, are unable to work and become entitled to a benefit under the Group Disability Policy effected by the Fund;
- (e) satisfy the Management Committee that they have been retrenched. The Management Committee shall enquire into the circumstances.

The provisions of subclauses (c) and (d) above shall not apply in respect of members who were subject to the scope of clause 1 (1) (c) of this Agreement and in respect of whom contribution had been made in terms of clause 6 (2) (b) of this Agreement, until such time as the Management Committee of the Fund has decided to extend those benefits to such members.

- (2) Every member shall be required to nominate, in the specified form and manner as determined by the Fund, dependants or nominees to whom in the event of the death of the member any benefits due shall be paid. The Management Committee of the Fund shall have absolute discretion as to the apportionment and amounts of benefits payable between dependants and nominees. In the event of the Fund not being in possession of such a nomination such benefits shall be paid to the dependants of such member; Provided that if the deceased member left no dependants or if the dependants cannot be established the benefits shall be paid into the estate of such deceased member. The Management Committee shall in its absolute discretion decide whether the deceased member left a dependant and if he left more than one dependant, how the benefit shall be allocated amongst them.
- (3) The forms on which applications are submitted shall be according to the type of application involved, as specified by the Fund.
- (4) In the case of normal, early or late retirement, fund benefits shall be payable within 30 (thirty) days (but no sooner than the necessary tax clearance has been obtained).
- (5) In the case of retrenchment, payment of the benefits shall not be payable until a period of 3 (three) months has elapsed from the time the member was last employed in the Industry.
- (6) In the case of any insured benefits, in respect of members who were subject to clause 1 (1) (b) of this Agreement and in respect of whom contributions were made in terms of clauses 6 (1) and 6 (2) (a) of this Agreement, a claim shall be payable within 30 (thirty) days of the date of receipt by the Fund of the settlement from the underwriter (but no sooner than the necessary tax clearance has been obtained).
- (7) In the case of withdrawal from the Fund, payment of the benefits shall not be payable until a period of 6 (six) months has elapsed from the time the member was last employed in the Industry.
- (8) In the event of a member returning to the Industry before such claim has been met, the claim shall automatically lapse and contributions shall be resumed forthwith.
- (9) In the event of a member returning to the Industry after such claim has been met, he shall be regarded as a new member.
- (10) In the event of an appointed beneficiary not claiming any benefits due in terms of this clause within 3 (three) months of the death of a member, the Management Committee shall insert an advertisement in three successive issues of 2 (two) newspapers circulating in the district in which the deceased member was normally resident stating the name and last known place of work of the deceased member and the fact that benefits are available for collection by the beneficiary at a place to be appointed by the Management Committee. If within 3 (three) months of the date of the last insertion of such advertisement the beneficiary fails to claim the benefit due to him such, benefit shall be paid into the estate of the deceased member. The cost of the advertisement shall be deducted from any monies payable in terms of this subclause.
- (11) The Management Committee shall cause a list to be prepared as soon as possible after 31 December of each year and within 3 (three) months thereafter, showing the name of every contributor who has not been employed in the Industry during the past 6 (six) months and who has not claimed benefits.
- (12) The Secretary shall send to the aforesaid trade union the list herein referred to, which list shall state the name and last known place of work of the member and the benefit due.
- (13) The Management Committee shall no later than 31 March of the year following such 6 (six) month period, cause to be published a notice stating that a list of all contributors who have not claimed benefits during the 6 (six) months as stated above is available for inspection at the office of the Fund and that a duplicate list is available at the office of the trade union.
- (14) The notice shall call upon all members concerned or interested persons on their behalf, to submit claims for benefits within 3 (three) months and to provide full details of the grounds on which such claims are made.
- (15) The notice shall be published in three consecutive issues of at least 2 (two) newspapers circulating in the area of jurisdiction of the KwaZulu-Natal Chamber of the National Council.
- (16) The Management Committee shall, at the next meeting following the last date upon which claims may be submitted, consider such claims and shall pay to any member or person empowered to receive such benefits on his behalf who has submitted a competent claim in the manner specified herein, such monies not exceeding the full benefit due to the member, less the cost of advertising, as it may deem fit. In the event of no claim being made by or on behalf of the person whose name appears on the list, any benefits due to him shall be forfeited to the Fund.
- (17) Any benefit not claimed in terms hereof, shall, after a period of 5 (five) years from the date the contributor leaves the Industry be forfeited.
- (18) The Management Committee may exercise discretion in the payment of forfeited benefits.

9. AMOUNT OF BENEFIT

(1) **Withdrawal benefits-**

Upon a member becoming entitled to a withdrawal benefit, he shall be entitled to-

- (a) a refund of his member's account; and
- (b) a refund, for each completed year of service [subject to a maximum of 10 (ten) years of service], of 10% (10 per cent) of his employer's account; and
- (c) 50% (fifty per cent) of the annual rate of return and the interim rate, as applicable, declared in clause 10:

Provided that a member who withdraws in terms of this subclause (1), may elect in writing to the Management Committee prior to the date of his withdrawal that, instead of receiving the above benefit as a lump sum, he receive the following benefit to be transferred in respect of him to another provident fund or a pension fund operated by his employer:

- (i) A refund of his member's account; and
- (ii) a refund of his employer's account; and
- (iii) the full annual rate of return and the interim rate, as applicable, declared in terms of clause 10.

(2) **Retrenchment benefits-**

Upon retrenchment a member shall be entitled to-

- (a) a refund of the member's account;
PLUS
- (b) a refund of his employer's account; and
- (c) the full annual rate of return and the interim rate, as applicable, declared in terms of clause 10.

(3) **Retirement benefits-**

(a) Upon retirement from the Fund a member shall be entitled to-

- (i) a refund of the member's account;
PLUS
- (ii) a refund of his employer's account;
PLUS
- (iii) the full annual rate of return and the interim rate, as applicable, declared in terms of clause 10.

(b) if the member remains in employment and does not claim his retirement benefit within 3 (three) months of the date he reaches retirement age, the provisions of subclause (5) shall apply to him.

(4) (i) **Optional early retirement:** Where a contributor is within 5 (five) years of the normal retirement age and his employer agrees in writing, the contributor may elect to retire early, in which event his benefit shall be determined in the same manner as in subclause (3) of this clause.

(ii) Notwithstanding the provisions of subclause (4) (1) above, a member who is subject to ill-health may, at any time before the normal retirement age, apply to the Management Committee to be placed on early retirement, without having to obtain the consent of his employer. Such application shall be considered by the Management Committee, which shall call for and obtain such medical evidence as it may require in order to determine the state of the member's health. For the purposes of this clause, the Management Committee shall be the sole arbiter as to whether a member is subject to ill-health. If the Management Committee so decides, the member shall be entitled to an ill-health early retirement benefit, which shall be determined in the same manner as in subclause (3) above.

(5) **Optional late retirement:** Where a contributor reaches his normal retiring age but remains in employment, the contributor may elect to retire at some later date, when he will be entitled to the benefits determined in the same manner as in the subclause (3) (a) on such later date.

(6) **Disability benefit:** Upon a claim being admitted by the underwriter of the Group Disability Policy effected by the Fund, a contributor shall be retired from the Fund and, in addition to the benefit he receives in terms of subclause (3) (a) upon such retirement, the member shall also receive the full amount of the proceeds of any claim so admitted under the Group Disability Policy. This benefit shall not apply in respect of members who were subject to the scope of clause 1 (1) (c) of this Agreement and in respect of whom contributions had been made in terms of clause 6 (2) (b) of this Agreement.

(7) **Death benefit:** In the event of the death of a member the benefits shall be determined in the following manner:

- (a) A contributor-
 - (i) the full amount of the proceeds of any claim admitted by the underwriter under a Group Life Assurance Policy effected by the Fund, provided the member was subject to the scope of clause 1 (1) (b) of this Agreement and in

respect of whom contributions were made in terms of clauses 6 (1) and 6 (2) of this Agreement;

PLUS;

(ii) an amount determined in terms of subclause (3) (a), as if he had retired the day before his death.

(b) A paid up member, exempt member or member who has opted for late retirement an amount determined in terms of subclause (3) (a) as if he had retired the day before his death.

(8) Funeral Benefit:

In the event of the death of a member in service prior to his normal retirement age, the full amount of the proceeds of any claim :

This provision shall not apply in respect of members who were subject to the scope of clause 1 (1) (c) of this Agreement and in respect of whom contributions had been made in terms of clause 6 (2) (b) of this Agreement, until such time as the Management Committee of the Fund has decided to extend those benefits to such members.

- (9) (a) For a period of up to three (3) months, contributions from a contributor shall, for the purposes of determining a member's benefits, be deemed to have been received by the Fund, provided that such contributions were deducted from his earnings, notwithstanding the fact that such contributor's employer may not have actually paid such amount of money to the Fund.
- (b) No contributor shall be prejudiced in respect of any period of employment of up to three months during which he should have contributed to the Fund, but in respect of which his employer failed to submit contributions.
- (c) If an employer fails to contribute amounts due by him in terms of clause 6 (2) (b), for a period longer than 3 (three) months, the contributors then in the employment of that employer shall, in accordance with the policy of insurance issued by the underwriter, no longer be covered for the death and disability benefits referred to in subclauses (6), (7) and (8).
- (d) The trade union shall be advised after one month's non-payment of contributions by an employer as contemplated in subclause (9) (c) above.
- (e) Benefits shall be calculated on the basis of contributions actually paid and deemed to have been paid during a member's service.
- (10) For the purpose of calculating any benefit, the actual period to be taken into account, shall be actual service to midnight on the last day of employment prior to the member becoming entitled to claim such benefit.

10. DECLARATION OF THE ANNUAL RATE OF RETURN AND INTERIM RATE

- (1) The Management Committee may each year after 31 December, following the tabling of the annual audited statements of account, increase or decrease the benefits stated herein by declaration of an annual rate of return.
- (2) Each declaration of the annual rate of return shall be in respect of the period ended 31 December of the year to which it applies and, once made, will be applied to determine the member's benefits in terms of clause 9, for that year.
- (3) At the same time as the declaration of the annual rate of return, the Management Committee shall declare an interim rate which shall be used to determine benefits payable in terms of clause 9 in respect of the period commencing on 1 January of the year following the last declared annual rate of return to the date upon which the member became entitled to the benefit.
- (4) Should it be necessary, the Management Committee shall declare a new interim rate at any time during the year.
- (5) If, after the declaration of the annual rate of return as contemplated in subclause (2) above, such rate of return exceeds the interim rate declared by the Management Committee in terms of subclauses (3) or (4) above for the preceding year, the difference may be allocated in such proportions as the Management Committee may determine, to the Risk Reserve Account and the Investment Reserve Account in terms of clause clause 7 (1) (B).

11. HOUSING AND MORTGAGE LOANS

- (1) The Management Committee may, in terms of clause 7 (2) (d), from not more than 10% (ten per cent) of the surplus monies of the Fund, grant housing or mortgage loans to contributors to the Fund or their legal spouses in an amount of not less than R1 000 or greater than R12 000: Provided that-
- (a) a loan contemplated in this clause shall not be granted-
- (i) unless secured by-
- (aa) a first mortgage on the immovable property in respect of which it is granted; or
- (ab) a pledge of the benefits to which the member is entitled in terms of the rules of the fund; or
- (ac) both such mortgage and such pledge;
- (ii) in aspect of immovable property if the member concerned is liable to the Fund in respect of a loan granted to him in respect of other immovable property;
- (iii) at a lower rate than that which may from time to time be specified by regulation;
- (iv) unless the capital sum is redeemable over a period not exceeding 30 (thirty) years in equal weekly or monthly

instalments, which shall include the interest on the capital sum outstanding;

- (b) a loan contemplated in this clause shall not exceed, where it is secured in accordance with-
 - (i) subclause (1) (i) (aa), 90% (ninety per cent) of the market value of the hypothecated property concerned;
 - (ii) subclause (1) (i) (ab), 90% (ninety per cent) of the amount of the benefit which the member would receive if he were to terminate his membership of the fund voluntarily or the market value of the immovable property concerned, after deduction of any tax which may be due; or
 - (iii) subclause (1) (i) (ac), the amount equal to the aggregate of 90% (ninety per cent) of the market value of the hypothecated property concerned and the amount of the benefit which the member would receive if he were to terminate his membership of the fund in terms of clause 9 (1) or the market value of the property, whichever is the lesser amount; or
 - (iv) items (aa) and (ac) of subclause (1) (i) (a), 100% (hundred per cent) of the market value of the hypothecated property, subject to the furnishing to the fund by the employer of the member of an irrevocable guarantee in respect of so much of the loan as may exceed 90% (ninety per cent);
- (c) a loan contemplated in this subclause shall be available only to members-
 - (i) who do not qualify for a mortgage loan from an institution other than the fund itself;
 - (ii) have at least 2 (two) years of membership of the fund;
 - (iii) whose employers have irrevocably agreed in writing (in the form determined by the Fund) to deduct the repayments from the member's wages: Provided further, that loans granted in terms of this subclause shall be subject to such rules as may be laid down by the Management Committee.

- (2) The Management Committee may invest and pledge movables of the Fund in accordance with the provisions of clause 7 in such a manner as to facilitate the provision of housing finance for its members as envisaged in clause 7 (2) (d).

Such guarantees shall be provided only-

- (a) in respect of loan finance which is secured by-
 - (i) a pledge in writing by the member of the benefits to which he is entitled in terms of clause 9 (1); and/or
 - (ii) a first mortgage bond in favour of the party to whom the guarantee is provided on the immovable property in respect of which the guarantee is made; and/or
 - (iii) a pledge of acceptable collateral security in favour of the party to whom the guarantee is made to the full value of the amount to which the fund is at risk in respect of such guarantee less the members' benefits pledged in terms of subclause 2 (a) (i); or
 - (iv) a combination of a pledge of benefits, first mortgage bond and pledge of collateral security as envisaged in subparagraphs 2 (a) (i), (ii) and (iii) to the full extent of the fund's risk in terms of its guarantee;
- (b) in respect of a housing finance facility which has been negotiated and approved by the Management Committee in its sole discretion;
- (c) if the lending institution's rules with regard to granting of loans, the amount that may be borrowed and repayments have been approved by the Management Committee;
- (d) the member has made application in the approved manner and such application has been approved by the Management Committee. Such approval shall not be granted unless-
 - (i) the member has at least 2 (two) years of current contributory membership of the Fund;
 - (ii) the member's employer has irrevocably agreed in writing to deduct from the member's wage the weekly or monthly instalments required in repayment of the amount loaned by the party to whom the guarantee has been made:

Provided that such loans shall be subject to such rules as may be laid down by the Management Committee.

- (3) A member shall not be entitled to more than one loan obtained under either subparagraph 11 (1) or 11 (2) at any one time.
- (4) The forms on which applications and a cession for authority to deduct and an employer's undertaking are submitted shall be, as applicable, on the forms specified by the Fund.
- (5) Upon termination of membership of the Fund, a member, who has a loan obtained under clause 11 (1) or 11 (2), shall be entitled only to such benefits as exceed the amount due in full settlement of the loan.

12. BENEFITS NOT TO BE CEDED OR ASSIGNED

- (1) Benefits shall not, subject to the provisions of subclause (2), be-
 - (a) capable of being ceded, assigned, transferred, or made over in any way, either generally, or as security for any debt or obligation due by the contributor. The Fund shall be under no obligation to recognise, acknowledge or act on any such purported cession, assignment, transfer or making over;
 - (b) set off against any debt due by the person entitled to such benefits.

- (2) Benefits may be ceded as security in respect of any housing and home ownership loan or guarantee granted by the Fund either directly or indirectly.

13. DISSOLUTION OF THE FUND

- (1) (a) In the event of the expiry of this Agreement or any extension thereof and a subsequent Agreement for the continuation of the Fund not being negotiated within a period of 2 (two) years of the date of such expiry, or the Fund not being transferred by the Council within such period to any other fund constituted for the same purpose as that for which the original Fund was created, the Management Committee shall appoint an independent liquidator who shall liquidate the Fund as though the contributors had left the industry.
- (b) The Fund shall during the said period of 2 (two) years or until such time as it is transferred to any other Fund referred to above, be administered by the Management Committee.
- (c) In the event of the Fund being liquidated as provided above, a list of the names of those members whose whereabouts cannot be traced shall be published by the liquidator in three newspapers circulating in the area of the jurisdiction of the KwaZulu-Natal Chamber of the National Bargaining Council for the Clothing Manufacturing Industry.
- (d) In the event of no claim being made by a person or persons whose names appear in the list published within 6 (six) months of such publication, the monies due to them shall be forfeited to the Fund.
- (2) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this Agreement is binding in terms of section 32 (2) of the Act, the Fund shall continue to be administered by the Management committee in office at the time. Any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees, as the case may be, so as to ensure an equality of employer and employee representatives on the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar of Labour Relations, he may appoint a trustee or trustees to carry out the duties of the Committee and such trustees shall possess all powers of the Committee for such purpose.
- In the event of there being no Council in existence, the Committee functioning in terms of this subclause, or the trustee or trustees, as the case may be, shall upon the expiry of this Agreement appoint a liquidator who shall liquidate the Fund in accordance with the manner set forth in subclause (3) below, and, if upon the expiry of this Agreement, the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund shall be distributed by the liquidator to the parties in equal shares.
- (3) Upon liquidation of the Fund in terms of subclause (1) of this clause the monies remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council.

14. AGENTS

- (a) The Council may request the Minister of Labour to appoint one or more persons as designated agents to assist in giving effect to the terms of this Agreement.
- (b) A designated agent shall have the powers set out in section 33 (3) read with section 142 of the Act.
- (c) It shall be the duty of every employer to permit such designated agents to enter his establishment and to institute such enquiries and to examine such documents, books, wage sheets and pay envelopes and to interrogate such individuals as may be necessary for the purpose of ascertaining whether the provisions of this Agreement are being observed.

15. EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this Agreement may apply to the Council for exemption from any or all of the provisions of this Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
- (a) The period for which the exemption is sought;
- (b) the number of employees affected and how many of such employees are members of a registered trade union;
- (c) the clauses and subclauses of this Agreement from which the exemption is sought;

- (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
- (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been refused.
- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
- (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
- (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
- (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
- (i) The conditions, if any, of its approval of the application;
 - (ii) the period for which the exemption(s) will be valid;
 - (iii) the clauses or subclauses of this Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
- (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemption Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;

(ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.

(c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.

(6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.

(b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.

(c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.

(d) The decision of the Exemptions Board shall be final and binding.

(7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:

(a) There is a demonstrable commercial need for the exemption.

(b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.

(c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding monies. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.

(d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted result in a conflict with the primary objectives of the Act.

(e) The exemption will not undermine collective bargaining and labour peace in the Industry.

(f) There has been compliance with subclause (3) above.

(g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.

(8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:

(a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.

(b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.

(c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.

(d) The terms of the exemption sought, including the period thereof.

(e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.

(f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.

- (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this Agreement.

B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative

- (1) Exemption from the provisions of this Agreement shall be granted in the following circumstances:
- (a) Where an employer that is a party or a member of a party to the Council and its employees, represented by a trade union representative, as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
 - (i) the collective agreement does not contravene the minimum employment standards set out in this Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
 - (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer that is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this Agreement. At the same time a copy of the notice shall be sent to the trade union.
 - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
 - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio.

16. INDEMNITY

The members of the Management Committee and their alternates and the members of the Council's executive Committee and the members of any subcommittee shall not be liable for any loss to the Fund arising by reason of any improper investment made in good faith or by reason of any act in their *bona fide* administration of the Fund or by reason of the negligence or fraud of any agent or employee who may be employed although the employment of such agent or employee was not strictly necessary or by reason of any act or omission made in good faith by such members or alternates or by reason of any other matter or thing save individual wilful or fraudulent wrong doing on the part of such members or alternates who are sought to be made liable.

Any such member or alternate shall be reimbursed by the Fund for any liability incurred by him in defending any proceedings whether civil or criminal arising out of an allegation involving bad faith in which judgement is given in his favour or in which he is acquitted.

17. EXHIBITION OF AGREEMENT

Every employer shall keep a legible copy of this Agreement exhibited in each of his establishments in a place readily accessible to his employees.

18. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be referred to the Council for resolution.
- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide the manner in which the dispute shall be referred to the Council.
 - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the resolution of disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the authority to resolve the dispute.
- (2) **Accreditation-**
- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by resolution seek accreditation from the CCMA in terms of section 51 (3) of the Act.
 - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of section 51 (3) of the Act.
- (3) **Panel of conciliators, arbitrators and senior arbitrators-**
- (a) The Council shall appoint-
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where-
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council appoint a senior arbitrator.
 - (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
 - (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels.
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties shall do the same.
 - (ii) The lists prepared by the parties shall be exchanged, and the union shall rank the nominees of the employer parties.
 - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointment from the union parties' lists and half from the employer parties' lists.
 - (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall be made in the following order: first the union parties' lists, then the employer parties' lists, and finally the Council shall appoint the remaining nominee.

- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the Act.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or to refer the dispute to arbitration, the Council shall refer the dispute to arbitration.

(4) Disputes involving non-parties to the Council

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be referred to the Council for conciliation or arbitration.

(a) Referral and conciliation of disputes-

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the relief sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on the other party to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attend to the dispute.
- (iv) The conciliator may, during conciliation proceedings
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the conciliator shall report to the Council.
- (vii) Nothing in this Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attending to the dispute.

(b) Adjudication of disputes referred to the Council for arbitration

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved by arbitration:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether the dispute is referred to the Council for arbitration.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official shall refer the dispute to arbitration.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitration shall be referred to the Council for arbitration.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (v) is refused may apply to the Council for an order that the party be allowed to intervene in the arbitration.

- (aa) give evidence;
- (bb) call witnesses;
- (cc) question the witnesses of any other party;
- (dd) address arguments to the arbitrator;
- (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of section 138 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute, unless the award is set aside on the grounds that:
 - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall serve the award on the party making the request.

(5) Disputes involving parties to the Council-

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employer.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement, the dispute shall be referred to arbitration.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be referred to arbitration shall be referred to arbitration.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this Agreement, the Council shall refer the dispute to arbitration.

(6) Compliance procedure and enforcement of collective agreements by Council-

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to perform the functions and have the powers set out in the Act, including sections 33 and 33A of the Act.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A of the Act.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this Agreement and with the collective agreements entered into by the Council.
 - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may determine the designated agent's remuneration.
 - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the designated agent shall:
 - (aa) publicising the contents of the agreement;
 - (bb) conducting inspections;
 - (cc) investigating complaints;
 - (dd) endeavouring to secure compliance with the agreement through conciliation; or
 - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
 - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the Council.
 - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council shall refer the dispute to arbitration.
 - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the Council to be the designated agent to investigate the alleged breach and may determine the designated agent's remuneration.

- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date,
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel,
- (viii) The provisions of subclause (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 ;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138 (9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration is bona fide.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

19. TRANSFERS

Notwithstanding any other provisions of this Agreement, and with the consent of the Management Committee, a member or group of members may transfer from the Fund to another provident fund or pension fund for which they are eligible for membership. In such case an amount determined in accordance with the proviso to clause 9 (1) shall be transferred to such other provident fund or pension fund to be applied thereunder in accordance with the rules of such a fund, and the member shall thereafter have no further claim on the Fund.

20. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This Agreement shall remain in force until 30 June 2005: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 July 2003.
- (2) The parties to the Council, and in the event of this Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

Original Collective Agreement signed by the Chairperson, Vice-Chairperson and Acting Secretary of the KwaZulu-Natal Chamber of the Council, on behalf of the parties to this Agreement, on the 3rd day of September 1998.