NATIONAL BARGAINING COUNCIL
FOR THE
CLOTHING MANUFACTURING INDUSTRY

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22 Grahamstown Road	Umbilo	148 Kerk Street	350 Victoria Road
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CONSOLIDATED COLLECTIVE FUND AGREEMENT FOR THE NORTHERN REGION

Herewith follows the complete Agreement published under Government Notice R.828 in Government Gazette No 20253 of 23 July 1999, duly updated as per the under-mentioned Amending agreements subsequently published:

Amended/Extended/ Renewal	Government Notice	Governmen t Gazette	Date of Publication
Extended to 30 June 2001	R.378	21070	14 April 2000
Amended	R.543	21224	2 June 2000
Renewed to 30 June 2003	R.397	23277	5 April 2002
Cancellation Notice	R.245	24481	21 February 2003
Re-Enacted & Amended	R.247	24481	21 February 2003
Correction Notice	R.387	25040	20 March 2003
Extended to 30 June 2004	R.785	25082	20 June 2003
Amended	R.786	25082	20 June 2003
Cancellation Notice	R.1290	25456	19 September 2003
Re-Enacted & Amended	R.1291	25456	19 September 2003
Correction Notice	R.1574	25625	31 October 2003
Extended to 30 June 2005	R.519	26279	30 April 2004
Amended	R.520	26279	30 April 2004
Correction Notice	R.707	26423	11 June 2004
Cancellation Notice	R.1174	26878	15 October 2004
Re-Enacted & Amended	R.1175	26878	15 October 2004
Correction Notice	R.24	27168	21 January 2005
Renewed from 07/10/05 to 31/08/06	R.971	28084	7 October 2005
Renewed from 08/09/06 to 31/08/07	R.886	29174	8 September 2006
Re-Enacted, Amended & Extended further to 31/08/08	R.1077	29332	3 November 2006
Correction Notice	R.1230	29434	8 December 2006
Cancellation Notice	R.972	30374	19 October 2007
Amended and Extended to 31/08/12	R.973	30374	19 October 2007

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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. 828 **23 July 1999**

LABOUR RELATIONS ACT 66 OF 1995

CLOTHING INDUSTRY (NORTHERN AREAS): EXTENSION OF COLLECTIVE FUND 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 (Northern Areas) 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 22 October 2007 and for the period ending 31 August 2012.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY COLLECTIVE FUND AGREEMENT FOR THE NORTHERN REGION

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

Transvaal 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 Clothing Industry Bargaining Council (Northern Areas).

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Clothing Industry (Northern Areas)-

(a) by all employers who are members of the employers' organisation and are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;

(b) in the Province of the Transvaal, as it existed prior to the coming into operation of the constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

(2) Notwithstanding the provisions of subclause (1)-

(a) the terms of this Agreement shall apply only in respect of employees for whom wages are prescribed in the Council's Main Collective Agreement; and

(b) the provisions of clauses 5, 6, 7 and 9 of this Collective Agreement shall apply in respect of any employee in the Industry for whom no wages are prescribed in the Main Collective Agreement if such employee and his employer have mutually, and with the Bargaining Council, agreed thereto in writing.

(3) For the purposes of subclause (2)(b), any reference to employees for whom wages are prescribed in the Main Collective Agreement shall be deemed to include employees referred to in that Agreement and any reference to the wage prescribed for an employee shall be deemed to be a reference to such employee's actual wage.

(4) Clauses 1 (1)(a), 2(1), 8, 13(5) and 14B of this Agreement shall not apply to employers and employees who are non-members of the employers' organisation.

2. PERIOD OF OPERATION

(1) 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, and shall remain in force until 31 August 2012. This Agreement shall be binding on the parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the parties agree otherwise.

(2) Upon the expiry of this Agreement or any extension thereof and in the event of a subsequent agreement not being negotiated within a period of two years from the expiry of this Agreement or any extension thereof, the Provident Fund established and continued in terms of clause 9 shall be liquidated as though the employees had left the Industry.

SPECIAL PROVISIONS

The provisions contained in clauses 8, 13(5) and 14B of the Agreement published under Government Notice No. R. 828 of 7 July 1999, as amended, extended, renewed and re-enacted by Government Notices Nos. R. 378 of 14 April 2000, R. 543 of 2 June 2000, R. 397 of 5 April 2002, R. 247 of 21 February 2003, R. 785 and R. 786 of 20 June 2003, R1291 of 19 September 2003 and R.519 and R.520 of 30 April 2004 (hereinafter referred to as the "Former Agreement"), as further amended, extended, renewed and re- enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

GENERAL PROVISIONS

The provisions contained in clauses 3 to 7, 9 to 13(4), 13(6) to 14A and 15 to 17 of the Former Agreement (as further as amended, extended, renewed 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, shall have the same meaning as in that Act and, unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context-

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

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties) and underwear;

A. and includes-

(a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;

(b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet 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 by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(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 or on the responsibility of such dealers;

(i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of 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 employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;

(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 employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

(n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and

(o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes-

(a) belts, braces, garters, suspenders and armlets 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 individual persons;

(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", for the purposes of clause 9 of this Agreement, means any employee from whom minimum wages are prescribed in the Main Collective Agreement, and includes any person admitted to the Fund in terms of clause 9(4)(b) of this Agreement, but shall not include any employee in the Industry who, owing to his conditions of employment, is a contributor to a pension fund or provident fund which has been registered by the Registrar of Pension Funds in terms of section 4 of Act No. 24 of 1956, and has been approved by the Director-General of Finance in terms of the provisions of the Income Tax Act, Act No. 58 of 1962, and the

Clothing Industry Bargaining Council (Northern Areas);

"Council" means the Northern Chamber (Clothing) of the National Bargaining Council for the Clothing Manufacturing Industry;

"experience" means the total period or periods of employment of an employee in the Clothing Industry and/or the Bespoke Tailoring Industry and/or private dressmaking and/or the Printing Industry in any capacity or capacities in respect of which wages are prescribed in clause 4 of the Main Collective Agreement, and shall be deemed in each contract of service to have been continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that, for the purpose of computing an employee's experience, employment for 16 weeks in any half-year shall be deemed to have been employment for the whole half-year: Provided further that a learner in his first half-year of employment having less than 16 weeks' but 13 or more weeks' experience on the last day of that half-year shall be deemed to have been in employment for the whole half-year: Provided further that the trial period of an employee in terms of clause 13(1)(e) of the Main Collective Agreement shall be deemed to be experience only if the contract of service is confirmed: Provided further that experience in the Knitting Industry shall be regarded as experience in the Clothing Industry;

"Fund" for the purposes of clause 9, means the Clothing Industry Provident Fund (Northern Areas), established in the Agreement published under the Government Notice No. 1172, dated 2 August 1957, and continued under this Agreement;

"Main Collective Agreement" means any current agreement for the Clothing Industry (Northern Areas), published in terms of section 32 of the Act, in which wages are prescribed, or in the absence of such an agreement, the last collective agreement published for the Industry in terms of the Act;

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

"Secretary" means the Secretary of the Bargaining Council and includes any official appointed to assist the Secretary;

"total weekly wage" means the amount payable in money to a contributor in respect of the ordinary hours of work;

"week" means a period of five working days;

"working day" means any day on which work is performed in the Industry.

4. COUNCIL FUNDS

The Funds of the Council, which shall be vested in and administered by the Council shall be provided in the following manner:

(1) (a) Every employer shall, on the pay day of each week and from the first pay day after this Agreement comes into operation, deduct R1,30 from the wages of each of his employees for whom minimum wages are prescribed in the Main Collective Agreement: Provided that no deduction shall be made from the wages of an employee who has worked for less than 20 hours in the week in which the deduction falls due.

(b) An employer, shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of R1,40 per week.

(2) The employer shall forward the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, and a statement in the form and manner specified by the Council, to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due.

(3) Should any amount due in terms of this clause not be received by the Council by the seventh day after the due date in respect of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amount as remain unpaid, calculated

at the prime overdraft rate of the Council's Bankers plus two per cent per annum divided by 52 or part thereof from such seventh day until the day upon which payment in cash is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general funds of the Council.

5. MEDICAL BENEFIT SOCIETIES

A. Clothing Industry Medical Benefit Society (Northern Areas)

The following provisions shall apply to the above Society only and shall not be construed as to include, or to be confused with, the Society referred to in Part B of this clause:

(1) There is hereby continued a medical benefit society known as the Clothing Industry Medical Benefit Society (Northern Areas), in this clause referred to as the "Society".

(2) (a) Every employer shall on the pay day of each pay week deduct from the wages of each of his employees for whom minimum wages are prescribed in Part A of clause 4 (7) of the Main Agreement (Clothing) of this Council, other than employees referred to in subclause (8) (a) (iii), an amount of R7.70: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deductions fall due.

(b) The employer shall in the manner set out in paragraph (c) below, pay the amounts so deducted, together with an amount of R7,98 in respect of each employee from whose wages deductions were made in terms of paragraph (a) above.

(c) The total sum representing the employer's contribution and the members' contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, except as provided for in subclauses (15) and (16), with seven days from the end of the week in which the deduction fall due.

(3) The Funds of the Society shall, subject to the provisions of this clause, be applied to provide members of the Society with medical treatment and medicines in case of illness and shall be administered by a Benefit Funds' Committee that is appointed by the Council and that consists of seven representatives of the employers' organisation and seven representatives of te trade union in accordance with the constitution of the Society.

(4) The constitution of the Society may be amended at any time by the Benefit Funds' Committee, subject to the approval of the Council. Should a dispute arise at any time as to the provisions of the constitution of the administration of the Society or any other matter in regard to which the members of the Benefit Funds' Committee are equally divided the matter shall be referred to a conciliator or an arbitrator, except that the conciliator and arbitrator must be mutually agreed to. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator must be appointed from the ranks of an accredited agency and the arbitrator must be a senior counsel appointed from the ranks of an accredited agency.

(5) A copy of the constitution, rules and lists of benefits and amendments thereof shall be lodged with the Registrar of Labour Relations, Pretoria.

(6) A copy of the constitution, rules and lists of benefits and any amendments thereof shall be available for inspection by any registered employer or employee in the Industry at the office of the Society during ordinary office hours.

(7) A public accountant or accountants appointed by the Bargaining Council shall audit the accounts of the Society annually for the period ending 31 December of each year. The

audited statement and balance sheet shall thereafter lie for inspection at the office of the Bargaining Council and copies thereof shall be transmitted to the Registrar of Labour Relations, Pretoria, the employers' organisation and the trade union.

(8) (a) The following persons shall be eligible for membership of the Society:

(i) All employees covered by the provisions of the Main Collective Agreement, except employees commencing employment for the first time after the age of 60 years;

(ii) at the discretion of the Benefit Funds' Committee, employees from allied industries or organisations, with the consent of their employers, may be admitted to the Fund; and

(iii) continuation members, which, for the purposes of this clause, shall mean members admitted in terms of the specified conditions prior to the coming into effect of this clause, and unemployed members who have applied for continued membership of the Society, subject to the rules, and/or employment in the Clothing Industry or with the Clothing Industry Bargaining Council (Northern Areas), the trade union and the employers' organisation and who have completed 15 years' membership with this Society, who are 50 years or more of age or who have been booked off as permanently unfit for employment, and who pay a subscription of R20,00 per month in advance: Provided that continuation members shall be entitled to all the benefits specified in this clause and the constitution or rules of the Society: Provided further that such benefits shall be obtained only through the Society's appointed medical officers. Notwithstanding the provisions of paragraph (a), no person who is the dependant of a member of a medical scheme in terms of the provisions of the Medical Schemes Act, 1967 (Act No. 72 of 1967), shall be eligible for membership.

(b) Subject to the provisions of the constitution of the Society, a person shall be deemed to be a member of the Society on payment of one week's contributions as provided for in this Agreement and shall be issued with a doctor's card.

(c) On payment of R500,00 per annum, employers in the Clothing Industry (Northern Areas) may become members of the Society.

(d) Membership of the Society shall cease-

(i) when a member leaves the Industry (a member who becomes unemployed and who does not register for employment shall be deemed to have left the Industry and "registering for employment" shall mean registering for employment with the trade union, the Clothing Industry Bargaining Council (Northern Areas) or the Department of Labour);

(ii) after a period of 4 weeks' continued unemployment;

(iii) after a period of four weeks' continuous illness, certified by a medical practitioner;

(iv) in the case of a continuation member, if such continuation member has failed to pay the contributions in respect of any month as specified in subclause (8)(a)(iii) and/or takes up employment in any other industry, trade or occupation;

(v) when a member becomes the dependant of a member of a medical scheme in terms of the provisions of the Medical Schemes Act, 1967.

(e) A member whose membership has ceased under paragraph (d) and who has returned to the Industry shall, after payment of 13 consecutive weekly contributions, be deemed to have been a member of the Society for the period of his employment in the Industry.

(f) Only members in good standing with the Fund shall be entitled to the benefits; and any member whose payment of contributions to the Fund is more than 6 weeks in arrears shall not be in good standing and shall not be entitled to any benefits:

Provided that the Benefit Funds' Committee shall be entitled in its absolute discretion to waive the suspension of benefits.

(9) All members from whose wages less than 13 consecutive weekly deductions have been made shall be entitled to only-

(a) the services of a general practitioner appointed by the Benefit Funds' Committee;

(b) medicines prescribed by such general practitioner, subject to the Fund's limitations, at such nominal charge as may be decided upon by the Benefit Funds' Committee and recorded in the rules.

(10) All members from whose wages 13 or more consecutive weekly deductions have been made in terms of subclause (2) shall be entitled to the following benefits:

(a) The services of a general practitioner and dentist (hereinafter referred to as "medical officers") appointed by the Benefit Funds' Committee;

(b) consultations with such specialists as are appointed by the Benefit Funds' Committee;

(c) medicines prescribed by the medical officers or specialists of the Society, subject to the Fund's limitations;

(d) payment of fees for ambulances ordered by the medical officers or specialists of the Society, at such nominal charge as may be decided by the Benefit Funds' Committee and recorded in the rules.

(11) Members of the Society from whose wages deductions have been made regularly for a period of three years (138 deductions) shall, in addition to the benefits referred to in subclause (9) and (10), be entitled to the following, subject to the Fund's limitations:

(a) Operations and treatment by specialists appointed by the Benefit Funds' Committee;

(b) hospitalisation for such operations and treatment at hospitals approved by the Benefit Funds' Committee.

(12) In the event of the expiry of this Agreement by effluxion of the time or cessation for any other cause, the Society shall continue to be administered by the Benefit Funds' Committee until it is either liquidated or transferred by the Council to any other fund or funds whose objectives shall be solely to benefit the employees of the Clothing Industry (Northern Areas): Provided that if no new agreement providing for the continuation of the Society is entered into within one year after the expiry of this Agreement or the Society is not transferred as aforesaid within such period, the Society shall be liquidated in the manner set out in subclause (14).

(13) 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 Benefit Funds' Committee shall continue to administer the Society and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Committee. If such Committee is unable or unwilling to discharge its duties or it reaches a deadlock which renders the administration of the Society impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees who shall carry out the duties of the Committee and who shall possess all the powers of the Committee for such purpose. If no Council exists, the Society shall, upon the expiry of this Agreement, be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause (14): Provided that if upon expiry the affairs of the Council have already been wound up and its assets distributed, the balance of the funds of the Society shall be distributed as provided for in section 59(5) of the Act as if it formed part of the general funds of the Council.

(14) Upon the liquidation of the Society in terms of subclauses (12) and (13), the moneys remaining to the credit of the Society after the payment of all claims against the Society, including administration and liquidation expenses, shall be paid into the funds of the Council.

(15) All administrative and liquidation charges shall be a charge against the funds of the Society.

(16) The provisions of subclause (3) of clause 4 shall mutatis mutandis apply to this clause.

(17) The Benefit Funds' Committee shall have the power to determine the amount of benefits to be granted to members and the conditions attached thereto and to vary such amounts and conditions: Provided that the benefits shall not be less favourable than those provided for in this clause.

(18) All funds surplus to the requirements of the Society shall be invested in terms of section 53(5) of the Act.

(19) The funds of the Society shall consist of-

(a) contributions paid into the Society in accordance with the provisions of this Agreement;

(b) interest derived from the investment of any moneys of the Society;

(c) any other moneys to which the Society may become entitled.

B. Millinery Industry Medical Benefit Society (Northern Areas)

The following provisions shall apply to the above Society only and shall not be construed so as to include, or to be confused with, the Society referred to in Part A of this clause:

(1) The Society known as the Millinery Industry Medical Benefit Society (Northern Areas) is hereby continued.

(2) (a) Every employer shall, on the pay day of each pay week deduct from the wages of each of his employees for whom minimum wages are prescribed in Part B of clause 4 (7) of the Main Agreement (Clothing) of the Council, an amount of R7,70: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deductions fall due.

(b) The employer shall in the manner set out in paragraph (c) below, pay the amounts so deducted, together with an amount of R7,98 in respect of each employee from whose wages deductions were made in terms of paragraph (a) above.

(c) The total sum representing the employer's contribution and the members' contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to Secretary of the Council, PO Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, within seven days from the end of the week in which the deductions fall due.

(3) A copy of the constitution, rules and list of benefits and amendments thereof shall be available for inspection by any registered employer or employee in the Industry at the offices of the Council.

6. INDUSTRY PROTECTION FUND

(1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.

(2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Regional Chamber, which programmes are aimed at protecting the Industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.

(3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.

(4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this Agreement, an amount of 10 cents: Provided that no deductions shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.

(5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an equal amount per week.

(6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deduction fall due.

(7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chambers.

(8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2)-

(a) `Buy Local' campaigns;

(b) combating customs fraud and illegal imports;

or for such other strategies as meet the objectives of the Fund.

(9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Transvaal Clothing Manufacturers' Association (TCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and be subject to approval by the Registrar: Labour.

(10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.

(11) If SACTWU or the TCMA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the

TCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.

(12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this Agreement, and SACTWU, the TCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.

(13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.

(14) SACTWU and the TCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.

(15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure-

(a) is in terms of the approved plan;

(b) is clearly classified by strategy, activity and the nature of the expense; and

(c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the TCMA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

(16) Any expenses that have been incurred by SACTWU or the TCMA for unauthorised purposes or activities and which have been paid or disbursed to SACTWU or the TCMA, may be recovered by the Regional Chamber from SACTWU or the TCMA, as the case may be.

(17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.

(18) SACTWU and the TCMA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.

(19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

(20) Each party to this agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

7. SICK PAY FUNDS

A. Clothing Industry Sick Pay Fund (Northern Areas)

The following provisions shall apply to the above Fund only and shall not be construed so as to include, or to be confused with, the Fund referred to in Part B of this clause:

(1) There is hereby continued a sick pay fund known as the Clothing Industry Sick Pay Fund (Northern Areas), in this clause referred to as the "Fund".

(2) (a) Every employer shall on the pay day of each pay week deduct from the wages of each of his employees for whom minimum wages are prescribed in Part A of clause 4 (1) of the Main Agreement (Clothing) of this Council an amount of R2.50: Provided that no deduction shall be made from the wages of an employee who has worked less than 20 hours in the week in which the deductions fall due.

(b) The employer shall, in the manner set out in paragraph (c) below, pay the amounts so deducted, together with an amount of R2,63 in respect of each employee from whose wages deductions were made in terms of paragraph (a) above.

(c) The total sum representing the employer's contribution and the members' contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, within seven days from the end of the week in which the deductions fall due.

(3) The money of the Fund shall, subject to the provisions of this clause, be applied to provide members of the Fund with sick pay in case of illness and shall be administered by the Benefit Funds' Committee, as appointed by the Council in terms of clause 5(3) of this Agreement.

(4) The constitution of the Fund may be amended at any time by the Benefit Funds' Committee, subject to the approval of the Council. Should a dispute arise at any time as to the provisions of the constitution of the administration of the Fund or any other matter in regard to which the members of the Benefit Funds' Committee are equally divided, the matter shall be referred to the Bargaining Council, and in the event of no agreement being reached by the Council such dispute shall be referred to an arbitrator agreed upon by them, or falling such agreement, nominated by the Registrar of Labour Relations. The arbitrator's decision shall be final.

(5) A copy of the constitution, rules and lists of benefits and amendments thereof shall be lodged with the Registrar of Labour Relations, Pretoria.

(6) A copy of the constitution, rules and lists of benefits and amendments thereof shall be available for inspection by any registered employer or employee in the Industry at the office of the Fund during ordinary office hours.

(7) All employees shall be entitled to sick pay from the Sick Pay Account on the following conditions:

(a) Sick pay shall be paid for periods of absence of two days or longer from work owing to illness. During the first six months of employment, an employee shall be entitled to one day's paid sick leave for every 26 days worked.

(b) Employees shall be entitled to sick pay for not more than 10 working days in any period of 12 months.

(c) The Fund shall pay an employee for a day's sick leave the wage the employee would ordinarily have received for work on that day: Provided that where the amount so calculated, exceeds 100% of the minimum wage prescribed for a sewing machinist for the last period of the current Main Agreement of the Council, only such

amount shall be paid.

(d) A member who has been in the employ of the same employer for at least 10 months shall be paid by the Fund an amount equal to 20 days' wages upon going on maternity leave: Provided that where the amount so calculated exceeds the qualified wage prescribed for a sewing machinist, only such amount shall be paid.

(8) All moneys surplus to the requirements of the Fund shall be invested in terms of the provisions of section 53(5) of the Act.

(9) (a) For the purpose of calculating sick pay, one complete week shall mean five consecutive working days.

(b) For the purpose of subclause (7), a period of 12 months shall be reckoned from the first day of January to the last day of December.

(c) No sick pay shall be paid in terms of subclause (7) for any period for which holiday pay is payable and/or the period of 15 working days calculated from the last day of work of a workplace closing for annual leave at the end of each year.

(10) The Benefit Funds' Committee shall have the power to determine the amount of sick pay to be granted to members and the conditions attached, and to vary such conditions: Provided that the amount of sick pay paid to an employee shall not be less favourable than that specified in this clause.

(11) The Fund shall consist of-

(a) contributions paid into the Fund in accordance with the provisions of this Agreement;

(b) interest derived from the investment of any moneys of the Fund;

(c) any other moneys to which the Fund may become entitled.

(12) The provisions of clause 4(3) and clauses 5(7), (8)(a)(ii), and (f), (12), (13), (14) and (15) shall *mutatis mutandis* apply to this clause.

B. Millinery Industry Sick Pay Fund (Northern Areas)

The following provisions shall apply to the above Fund only and shall not be construed so as to include, or to be confused with, the Fund referred to in Part A of this clause:

(1) The fund known as the Millinery Industry Sick Pay Fund (Northern Areas), in this Part referred to as the "Fund", is hereby continued.

(2) (a) Every employer shall on the pay day of each pay week deduct from the wages of each of his employees for whom minimum wages are prescribed in Part B of clause 4 (7) of the Main Agreement (Clothing) of the Council, and who has completed the trial period, an amount of R2,50: Provided that no deduction shall be made from the wages of an employee who has worked less than 20 hours in the week in which the deductions fall due.

(b) The employer shall, in the manner set out in paragraph (c) below, pay the amounts so deducted, together with an amount of R2,63 in respect of each employee from whose wages deductions were made in terms of paragraph (a) above.

(c) The total sum representing the employer's contribution and the members' contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Secretary of the Council, PO Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, within seven days from the end of the week in which the deductions fall due.

(3) A copy of the constitution, rules and list of benefits shall be available for inspection by

any registered employer or employee in the Industry at the office of the Fund during ordinary office hours.

(4) The provisions of clause 4 (3) of this Agreement shall mutatis mutandis apply to this clause.

8. HOLIDAY PAY FUND

(1) (a) There is hereby continued a holiday pay fund known as the Clothing Industry Holiday Pay Fund (Northern Areas), hereinafter referred to as the "Fund". The Fund is non-compulsory:

(b) The fund shall consist of-

(i) contributions paid in terms of subclause (2) of this clause;

(ii) interest earned on moneys invested; and

(iii) any other moneys falling to the credit of the Fund.

(c) The Council shall appoint a public accountant or accountants whose remuneration shall be paid by the Council out of the administration fee. The accounts shall be audited annually for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the office of the Council and copies thereof shall be transmitted to the Registrar of Labour Relations, Pretoria, the trade union and the employers' organisation.

(d) All moneys received by the Secretary of the Council shall within seven days after receipt be deposited in a savings bank account designated by the Executive Committee of the Council. Any application for withdrawal from the savings bank account shall be signed by such persons as may from time to time be authorised by the Executive Committee of the Council. All moneys required to meet the liabilities of the Fund shall be withdrawn from the savings bank account and shall be deposited in a separate bank account of the Council and any liabilities of the Fund shall thereafter be paid by cheque drawn on the latter account.

(2) An employer who elects to participate in the Fund on a voluntary basis shall, within seven days from the date on which wages were paid to his employees, submit to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, an amount equal to eight per cent of the total amount of wages so paid to his employees, less any amount paid in terms of the provisions of clause 12(2) of the Main Agreement during the preceding week, together with a statement in the form and manner specified by the Council.

(3) All amounts paid in terms of subclause (2) shall be deposited in a banking account and a record shall be kept of the total amount received from each employer in the industry.

(4) An employer who contributes to the Fund shall, in terms of clause 11 of the Main Agreement, in the month of December and not later than five days prior to the closing of his factory for annual leave submit to the Council a list of all his employees, together with the amount of holiday pay and payment for paid public holidays due to each employee.

(5) Should the total amount submitted by an employer in terms of subclause (2) be less than the total amount of holiday pay due to all his employees, the list of employees referred to in subclause (4) shall be accompanied by such additional amount.

(6) Should the total amount submitted by an employer in terms of subclause (2) be in excess of the total amount of holiday pay due to all his employees, such excess amount shall be refunded to the employer concerned on the date on which the holiday pay is paid to his employees.

(7) The provisions of the clause shall mutatis mutandis apply in the case of a factory closing down during the course of any year.

(8) Any moneys held in this Fund shall in the case of the insolvency of an employer who has contributed to this Fund be off-set against the claims any guarantor and/or insolvent estate, as the case may be.

(9) The Executive Committee shall be responsible for the management of this Fund.

(10) The interest earned on moneys deposited in terms of subclause (3) shall be distributed as follows:

(a) 25 per cent shall be paid to the Council to cover administration costs;

(b) the balance shall be refunded to the employers pro rata to the total amounts received from each employer during the year ending 31 December of each year.

(11) An employer contributing all moneys as required in terms of subclauses (2) and (5) shall not be responsible for payment of the annual holiday leave pay and payment for paid public holidays falling within such leave period as specified in clause 13(1), (2) and (4) of the Main Agreement.

9. PROVIDENT FUNDS

A. Clothing Industry Provident Fund (Northern Areas)

The following provisions shall apply to the above Fund only and shall not be construed as to include, or to be confused with, the Fund referred to in Part B of this clause:

(1) There is hereby continued a provident fund known as the Clothing Industry Provident Fund (Northern Areas) the purpose of which shall be the provision of benefits to contributors as provided in this Agreement.

(2) The Fund shall consist of-

(a) contributions paid into the Fund in accordance with the provisions of this Agreement;

(b) interest derived from the investment of any moneys of the Fund;

(c) any moneys credited to individual contributors in terms of clause 10 of this Agreement;

(d) any other sums to which the Fund may become entitled or which may be donated to the Fund.

(3) (a) (i) The administration of the Fund shall be vested in the Northern Chamber of the Council, and shall consist of seven employers' representatives and seven employees' representatives appointed by the Northern Chamber of the Council. For each representative an alternate shall be appointed.

(ii) The rules of the Fund adopted by the Council may be amended at any time by the Northern Chamber of the Council, subject to the approval of the National Council and to the provisions of sub-clause (9

(b) Three employers' representatives and three employees' representatives shall constitute a quorum and all matters shall be determined by a majority vote.

(c) All expenses of administration shall be a charge against the Fund.

(d) A copy of the rules and any amendments thereto shall be available for inspection by any employer or contributor at the office of the Secretary during office hours. A copy of such rules and any amendments thereto shall be furnished to the Registrar of Labour Relations.

(e) The Council shall appoint a public accountant or accountants whose remuneration shall be paid out of the Fund. The accountants shall be audited annually for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the office of the Council and copies thereof shall be

transmitted to the Registrar of Labour Relations, the trade union and the employers' organisation.

(f) All moneys received by the Fund shall be deposited in a banking account of the Council. Moneys required shall be paid out by cheque signed by signatories who sign the cheques of the Council. Separate accounts of the Fund shall be kept in the Council's books.

(g) Any moneys not required to meet current payments shall be invested by the Council in accordance with the provisions of the rules relating to investment of funds as approved by the Council and Registrar of Labour Relations.

(4) The membership of the Fund shall consist of-

(a) all employees for whom minimum wages are prescribed in Parts D and I of the National Main Collective Agreement of the National Council;

(b) at the discretion of the Council, employees from allied industries or organisations who, with the consent of their employers, may be admitted to the Fund.

(5) (a) For the purpose of the Fund, and for all employees falling within the scope of clause 1 (1) (b) of this Agreement, every employer shall, on the pay day of each pay week, deduct from the wages of each contributor in his employ 5,75% of the prescribed wage payable to such contributor in terms of paragraph A of clause 4 (1) of Part D of the National Main Collective Agreement of the Council, calculated to the nearest cent:

Provided that no deduction shall be made from the wages of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.

(b) To the aggregate amount deducted under subparagraph (a) and for all employees falling within the scope of clause 1(1)(b) of this Agreement, every employer shall contribute an amount equal to 6,5% in respect of each employee.

(c) 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, each week, in the case of weekly paid employees, or each month, in the case of monthly paid employees, contribute to the Fund an amount equal to 4,0% of the wage of each of his employees in respect of whom wages are prescribed in Part I of the National Main Collective Agreement of the National Council and who has worked nine (9) ordinary hours or more during any pay week.

(d) The employer shall forward the total amounts deducted under subparagraph (a), together with his own contributions in terms of subparagraph (b), to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, within seven days from the date on which the deductions were made.

(e) Should an employer fail to make the required deductions from the remuneration of his employee, he shall not be entitled to recover from his employee the amount claimed from him.

(f) The provision of subclause (3) of clause 4 shall *mutatis mutandis* apply to this clause.

(6) (a) Benefits shall be provided to contributors as may be specified in the rules of the Fund.

(b) Contributors who have left the Industry may apply for a withdrawal of all accumulated benefits. Payments shall not be made to a contributor until such contributor has been out of the Industry for six months (except at the discretion of the Council). All applications for benefits shall be made in writing, in the form specified by the Council.

(c) Every contributor shall be required to nominate a beneficiary to whom, in the event of the death of the contributor, any benefits due to such contributor shall be paid. In the event of the Fund not being advised of such beneficiary, any benefits due at the time of a contributor's death shall be paid into the estate of such deceased contributor. The nomination of a beneficiary shall be in the form and manner specified by the Council.

(d) If a contributor returns to the Industry before payment has been made on an application of withdrawal, the application shall automatically lapse and contributions forthwith be resumed.

(e) Any amount held to the credit of a contributor who has not been employed in the Industry for a continuous period of three years shall be disposed of as provided in the rules.

(7) (a) If a member, who has been a contributor by virtue of clause 1(1) (b) of this Agreement, leaves the Industry, the minimum benefits that shall be paid to such contributor on withdrawal, shall be the total amount contributed plus:

(i) if the total number of weekly contributions is 46 or more, but less than 92, an additional 10% of the amount contributed on his behalf by his employer;

(ii) if the total number of weekly contributions is 92 or more, but less than 138, 25 per cent of the amount contributed on his behalf by his employer;

(iii) if the total number of weekly contributions is 138 or more, but less than 184, 50 per cent of the amount contributed on his behalf by his employer;

(iv) if the total number of weekly contributions is 184 or more, but less than 230, 75 per cent of the amount contributed on his behalf by his employer;

(v) if the total number of weekly contributions is 230 or more, 100 per cent of the amount contributed on his behalf by his employer; or,

in the case of the death or retrenchment of the contributor, the benefits which shall be paid into his beneficiary shall be the total amount contributed on his behalf by his employer.

(b) If a member, who has been a contributor by virtue of clause 1(1)(c) of this Agreement, leaves the Industry, he shall be entitled to the total amount contributed on his behalf by the employer in terms of subclause (5)(b)(ii) plus interest as provided for in subclause (8), but less administration fee (if any).

(c) For purposes of calculating the percentage of the employer's contributions due to contributors referred to in subclause (10), "period of contribution" shall mean the total number of weeks with which such member is credited in that subclause and such number of weeks shall be regarded as additional weekly contributions, but the percentage of the employer's contributions shall be calculated only on the weekly contributions actually paid after 31 December 1956.

(d) A member who re-enters the Industry after withdrawing contributions shall be deemed to be a new contributor.

(e) A member who has withdrawn his contributions under the provisions of any previous agreement shall as from the coming into operation of this Agreement be regarded as a newcomer in the Industry.

(8) In addition to the refund of a contributor's own contributions and the payment of such benefits as may have accrued to him, a contributor shall be entitled to interest, the rate of which shall be determined by the Council but which shall be not less than the rate paid by the Post Office Open Savings Accounts: Provided that-

(i) interest shall be credited to contributors' balances irrespective of services; and

(ii) interest shall be credited to the contributors' accounts on contributors' accumulated interest and bonuses and be paid to them together with the refund of contributions and any other benefits which may be due on termination of service or retirement.

(9) (a) The Council may from time to time increase the benefits stated in this Agreement by declaration of a bonus in the light of improvement in the finances of the Fund through

(i) accrual of interest;

(ii) contributors leaving the Industry before qualifying for the 100 per cent of the employers' contributions:

Provided that any such bonus shall be determined only after an investigation by a public accountant into the assets and liabilities of the Fund: Provided further that such bonus shall not be in excess of any amount recommended by such accountant. Such bonus shall be credited to the contributor's account, and shall be payable to such contributor at the same time and in addition to the benefits specified in subclauses (6) and (7).

(b) The Council may also use moneys arising out of paragraph (a)(i) and (ii) to augment benefits for contributors who are subject to the scope of clause 1(1)(b) of this Agreement -

(i) to contributors who leave the Industry from the age of 50 years; or

(ii) to deceased contributors by the payment of a death benefit to the estate, the beneficiary or beneficiaries, or any person defraying the funeral expenses of such deceased contributor.

(10) In addition to any other benefits provided for in this Agreement, members who were contributors to the Clothing Industry Provident Fund (Northern Areas) prior to 31 December 1956, shall be entitled to the amounts credited to their individual accounts in terms of clause 12 of the Agreement published under Government Notice No. R. 1329 of 30 July 1971.

(11) Benefits shall not 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 and the Fund shall be under no obligation to recognise, acknowledge, or act on any such purported cession, assignment, transfer or making over;

(b) attached by order or process of any court;

(c) set off against any debt by the person entitled to such benefits, except in the case of a loan granted to a contributor from his loan account and any interest due on such loan.

(12) Notwithstanding anything to the contrary herein contained, the Council may formally dissolve the Fund as constituted and transfer all funds, assets and liabilities to a fund duly constituted for substantially the same purposes for which this Fund was created. In the event of such decision, all amounts standing to the personal credit of members of the Fund shall be transferred to their credit under the new fund and the benefits due to members, as at the date of such transfer, shall in no way be diminished by virtue of such transfer.

(13) In the event of the Council being dissolved during the currency of this Agreement or any extension thereof or before the expiry of the period of two years referred to in clause 2(2), then, notwithstanding anything to the contrary contained in this Agreement, contributions to the Fund shall cease as from the day following the date of publication in the Gazette of the notice of dissolution of the Council in terms of the Act and the Fund shall *mutatis mutandis* be liquidated in the manner laid down in clause 2(2) of this Agreement: Provided that the duties in connection with such liquidation shall be performed by such other body or persons as the Registrar or Labour Relations may appoint.

(14) On liquidation of the Fund in terms of subclause (13) and payment of money due to members in terms of that subclause, the moneys remaining to the credit of the Fund after

payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59(5) of the Act, as if it formed part of the general funds of the Council.

(15) The members of the Council shall not be held responsible for any act which may result in loss to the Fund where such act was done in good faith.

B. Millinery Industry Provident Fund (Northern Areas)

The following provisions shall apply to the above Fund only and shall not be construed so as to include, or to be confused with, the Fund referred to in Part A of this clause:

(1) The Fund known as the Millinery Industry Provident Fund (Northern Areas), in this part referred to as (the "Fund"), is hereby continued.

(2) (a) (i) Every employer shall, on the pay day of each pay week, deduct from the wages of each contributor in his employ who has completed the trial period 5,75% of the prescribed wage payable to such contributor in terms of Part B of clause 4 (8) of the Main Agreement (Clothing) of the Council, calculated to the nearest cent: Provided that no deduction shall be made from the wages of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.

(ii) To the aggregate amount deducted under subparagraph (i), every employer shall contribute an amount equal to 6,5% in respect of each employee.

(iii) The employer shall forward the total amounts deducted under subparagraph (i), together with his own contributions in terms of subparagraph (ii), to the Secretary of the Council, PO Box 5101, Johannesburg, 2000, together with a statement in the form and manner specified by the Council, within seven days from the date on which the deductions were made.

(b) The provision of subclause 4 (3) of this Agreement shall mutatis mutandis apply to this clause.

(3) A copy of the constitution, rules and list of benefits shall be available for inspection by any registered employer or employee in the Industry at the office of the Fund during ordinary office hours.

10. LIABILITY FOR PAYMENT OF CONTRIBUTIONS

(1) Notwithstanding the provisions of clauses 4, 5, 6, 7 and 9 of this Agreement, the total amount of contributions due and payable by the employer to each of the Funds referred to in these clauses shall be calculated by multiplying the normal weekly amount that must be deducted from the employee's wage for each of the Funds, plus the amount to be added as the employer's contribution to each Fund, by the number of pay weeks in each calendar month, (except the month of December, which shall be regarded as having only three Fridays) in respect of each employee in his employment as at the first day of each calendar month, excluding the month of January, in respect of which no contributions shall be payable to any of the Funds.

This provision shall not apply in respect of members who are subject to the scope of clause 1(1)(c) of this Agreement and in respect of whom contributions have to be made for a full year in terms of clause 9(5)(b)(ii) of this Agreement.

(2) Deductions shall be made during the month of January of each year, and shall be made from each new employee's actual weekly wage from the date of starting, but notwithstanding the provisions contained in clauses 4, 5, 6, 7 and 9 of this Agreement deductions made in January and in the starting month of an employee, together with the specified employer's contribution, shall not be submitted to the Council, and the employee's actual weekly wage paid by the employer to the employee shall be reduced by the amount deducted for the month of January or during the starting month of an employee, and ownership of the amounts so deducted shall be vested in the employer.

This provision shall not apply in respect of members who are subject to the scope of clause 1(1)(c) of this Agreement.

(3) The Council shall submit a monthly statement, in duplicate in the form and manner specified by the Council, calculated as set out in subclause (1), and the employer shall deduct from the amount stated all contributions paid in terms of the provisions of clauses 4, 5, 6, 7 and 9 of this Agreement. Should there be a balance, such unpaid balance shall be paid to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, by not later than the 10th day of the month following the month to which it relates.

(4) Every employer shall return one copy of the statement referred to above to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, by not later than the 10th day of the calendar month following the calendar month to which it relates, together with the following information:

(a) The termination date of any employee whose services were terminated during the calendar month shall be entered in the relevant column of the statement, and his doctor's card shall be attached to this form. Failure to enter the termination date on return the doctor's card shall render the employer liable for the contributions as if such employee were still in his employ.

(b) The surnames of all new employees and their initials, clock card numbers (if any), actual wages paid, dates of engagement and occupations shall be entered on a blank form as specified by the Council, which shall accompany, and be returned together with, the monthly statement.

(c) Any change in the details relating to the clock card number (if any), the actual wage paid and the occupation shall be recorded on a blank form as specified by the Council, which shall accompany, and be returned together with, the monthly statement.

(d) Should any employee's surname be changed owing to marriage or for any other reason, the surname shall not be changed on a blank form as specified by the Council, but the employee shall personally apply to the Council for the change to be made.

(5) Whenever an employee pays any sum of money which is due to the Council in terms of this Agreement in any manner other than in cash, and such payment is unpaid for any reason whatever, then in such event a penalty shall be payable by the employer to the Council in its sole discretion, which penalty shall be equal to 1,5 per cent of the amount of the purported payment. Any penalty due to the Council in terms of this subclause shall be payable on demand.

11. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS

(1) A designated agent appointed by the Minister in terms of section 33(1) of the Act to attempt to resolve a dispute or to investigate any alleged contravention and for purposes of routine inspection to enforce compliance with this Agreement in terms of clause 13 of this Agreement or the Disputes Procedure in terms of clause 14 of this Agreement, may-

(a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the

dispute;

(b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the designated agent to be questioned or to produce that book, document or object;

(c) administer an oath or accept affirmation from any person called to give evidence or be questioned;

(d) at any reasonable time, but only after obtaining the necessary written authorisation-

(i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being there;

(ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and

(iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;

(e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.

(2) A subpoena issued for any purpose in terms of subclause (1) must be signed by the Secretary of the Bargaining Council and must-

(a) specifically require the person named in it to appear before the designated agent;

(b) sufficiently identify the book, document or object to be produced; and

(c) state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in subclause (1)(d)-

(a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution, and then only on the application of the designated agent setting out under oath or affirmation the following information-

(i) the nature of the dispute;

(ii) the relevance of any book, document or object to the resolution of the dispute;

(iii) the presence of any book, document or object on the premises; and

(iv) the need to enter, inspect or seize the book, document or object;

(b) in all other cases, may be given by the Secretary of the Council.

(4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, must provide facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.

(5) The appointed person must issue a receipt for any book, document or object seized in terms of subclause (1).

(6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.

(7) The appointed person must pay the specified witness fee to each person who appears before him in response to a subpoena issued.

(8) A person commits contempt of the designated agent-

(a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;

(b) if, after having appeared in response to a subpoena, that person falls to remain in attendance until excused by the designated agent;

(c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;

(d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subsection (6);

(e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;

(f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;

(g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;

(h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;

(i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.

(9) The designated agent may refer any contempt to the Labour Court for an appropriate order.

12. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS AGREEMENT

The Council shall take all reasonable steps to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached then the following procedure shall apply to enforce compliance:

(a) The Council shall request the Minister to appoint a designated agent to investigate the alleged breach and/or refer the matter to the Council.

(b) If, on completion of the investigation, the designated agent has reason to believe that this Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.

(c) At the end of the conciliation process, the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.

(d) On receipt of the report, the Secretary of the Council may-

(i) require the designated agent to make further investigations; or

(ii) refer the matter to arbitration in terms of this Agreement; or

(iii) take such other steps as may be deemed reasonable.

(e) If the Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this Agreement.

(f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.

(g) The Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have legal interest in the outcome of the arbitration. Any party who has legal interest in the outcome of the arbitration shall

have the right to-

(i) give evidence;

(ii) call witnesses;

(iii) question the witnesses of any other party;

(iv) address concluding arguments to the arbitrator;

(v) be represented by-

(aa) legal practitioner; or

(ab) an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.

(h) The arbitrator shall have the following powers:

(i) To determine whether there has been a breach of the Agreement;

(ii) to make any appropriate award that gives effect to the Agreement and ensures compliance therewith;

(iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;

(iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council to recover its costs of providing the arbitration service: Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 14(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's cost of dealing with the dispute;

(v) to make an award in the absence of a party who is alleged to have breached the Agreement if-

(aa) the party falls to appear in person or be represented at the arbitration proceedings;

(ab) proof is presented that such party has been notified of the proceedings (notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party);

(ac) prima facie evidence has been presented to the arbitration that the party in question has failed to comply with this Agreement.

(vi) vary, rescind or amend an arbitration award made by him or any other arbitrator on good cause shown. Without limiting the generality hereof, the arbitrator shall have this power if-

(aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;

(ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;

(ac) the award was granted as a result of a mistake common to the parties to the proceedings;

(j) Any award made by the arbitrator together with any reasons shall be served on all interested parties by the Council.

(k) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158(1) of the Act.

13. 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 resolved as set out below:

(a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.

(b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

(c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

(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 decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.

(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 which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) Panel of concillators, 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 refer the dispute for determination by 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. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:

(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 to the Council shall do likewise.

(ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.

(iii) In the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.

(iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.

(d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.

(e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-

(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 of that member from the panel.

(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 method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.

(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, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.

(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 on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute

on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(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 resolved by the Council in accordance with the following procedure:

(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 outcome 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 all other parties to the dispute.

(iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties 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 in relation to conciliation proceedings at the CCMA.

(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 General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.

(vii) Nothing in this Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(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 through arbitration if-

(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 such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.

(ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

(iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.

(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. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.

(vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to-

(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 and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.

(viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.

(ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 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. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and, without limiting the generality thereof, the arbitrator shall have this power if-

(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 apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(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 employers' organisation that is a party to the Council.

(b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.

(c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause (5) (d) below.

(d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(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 promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.

(b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.

(c) The Council shall take all reasonable steps necessary to ensure compliance with this Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:

(i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.

(ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may

endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-

(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 General Secretary of the Council and a designated official of the Regional Chamber.

(iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.

(v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

(vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.

(vii) If a party to such an arbitration is not a parry to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.

(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 and section 33A (13) of the Act;

(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 subclause (6) shall be final and binding on the parties to the dispute.

(xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

14. 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 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 will be deemed to have been rejected.

(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 rejected.

(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 rejected 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 sub-clause (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 Exemptions 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 who 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.

15. MONTHLY PAYMENTS OF CONTRIBUTIONS

Notwithstanding the provisions contained in clauses 4 (2), 5 (2), 6 (2), 7 (2), 8 (2), 9 (5), 16 (1) and 16 (2) of this Agreement, any employer who deposits an amount equal to 30 per cent of a qualified machinist's wage per employee with the Council, or lodges with the Council a banker's guarantee in favour of the Council for such amount shall, subject to the approval of the Council, be permitted to submit the contributions due in terms of the clauses referred to not later than the 10th day of the month following the month during which the weekly deductions and contributions fall due.

16. SACTWU EDUCATION BURSARY SCHEME AND HIV/AIDS PROJECT

(1) Every employer to whom this Agreement applies shall each week for each employee in his employ contribute an amount of 20 cents to the SACTWU Education Bursary Scheme.

This provision shall not apply in respect of members who are subject to the scope of

clause 1(1)(c) of this Agreement.

(2) Every employer to whom this Agreement applies shall also contribute to the SACTWU HIV/AIDS Project an amount of 10 cents per week in respect of each of his employees for whom wages have been specified in the Main Collective Agreement of the Council.

(3) The total amounts contributed in terms of subclauses (1) and (2) above, shall be submitted to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, within seven days of the end of the week in which the contributions fail due.

(4) The total amounts so collected by the Council shall be forwarded to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, by no later than the 15th day of the following month, together with an analysis of the amounts as received from employers.

17. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

(1) This Agreement shall remain in force until 30 June 2004: 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 General Secretary of the Northern Chamber of the Council, on behalf of the parties to this Agreement, on the 10th day of May 1999.