

METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL

COLLECTIVE

SICK PAY FUND AGREEMENT

Prepared and edited by the Metal and Engineering Industries Bargaining Council, Head Office (011) 639-8000

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- Re-enacted by Government Notice R.1205 in Government Gazette No. 31584 dated 14 November 2008.
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DEPARTMENT OF LABOUR**No. R. 533****6 July 2007****LABOUR RELATIONS ACT, 1995****LABOUR RELATIONS ACT, 1995: METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL: EXTENSION TO NON-PARTIES OF THE SICK PAY FUND
COLLECTIVE AMENDING AGREEMENT**

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 Metal and Engineering Industries Bargaining Council 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 16 July 2007 and for the period ending 20 November 2011.

SICK PAY FUND AGREEMENT

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SCHEDULE**METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL
RE-ENACTING AND AMENDING SICK PAY FUND COLLECTIVE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, No.66 of 1995, made and entered into by and between the –

Association of Electric Cable Manufacturers of S.A.
Association of Metal Service Centres of South Africa
Bright Bar Association
Cape Engineers' and Founders' Association
Consolidated Association of Employers of South Africa (CAESAR)
Constructional Engineering Association (South Africa)
Covered Conductor Manufacturers' Association
Electrical Engineering and Allied Industries' Association
Electrical Manufacturers' Association of South Africa (EMASA)
Electronics and Telecommunications Industries' Association
Federated Employers' Organisation of South Africa (FEOSA)
Ferro Alloy Producers Association
Gate and Fence Association
Hand Tool Manufacturers' Association (HATMA)
Iron and Steel Producers' Association of South Africa (ISPA)
Kwa-Zulu Natal Engineering Industries' Association
Lift Engineering Association of South Africa
Light Engineering Industries' Association of South Africa
National Employers' Association of South Africa (NEASA)
Non-Ferrous Metal Industries' Association of South Africa
Plastic Convertors' Association of South Africa
Plumbers and Engineers Brassware Manufacturers' Association
Port Elizabeth Engineers' Association
Pressure Vessel Manufacturers' Association of South Africa
Radio, Appliance and Television Association of South Africa (RATA)

Refrigeration and Air Conditioning Manufacturers' and Suppliers' Association
Sheetmetal Industries' Association of South Africa
S.A. Electro-Plating Industries' Association
S.A. Engineers and Founders' Association
S.A. Fasteners Manufacturers' Association (SAFMA)
S.A. Refrigeration and Air Conditioning Contractors' Association (SARACCA)
S.A. Post Tensioning Association (SAPTA)
S.A. Reinforced Concrete Engineers' Association (SARCEA)
S.A. Valve and Actuator Manufacturers' Association (SAVAMA)

(hereinafter referred to as the “employers” or the “employers’ rganizations”), of the one part, and the –

Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (CEPPWAWU)
Metal and Electrical Workers' Union of South Africa
Solidariteit / MWU – Solidarity / MWU
United Association of S.A. (UASA)
National Union of Metalworkers of South Africa (NUMSA)
S.A. Equity Workers' Association

(hereinafter referred to as the “employees” or the “trade unions”), of the other part, being the parties to the Metal and Engineering Industries Bargaining Council.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed –
- (a) throughout the Republic of South Africa; and
 - (b) by all employers in the Iron, Steel, Engineering and Metallurgical Industries who are members of the employers' organisations and by all employees who are members of the trade unions, **respectively**
- (2) Clauses 1(1)(b), 2 and 15 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

PLEASE NOTE:

**LABOUR RELATIONS ACT, 1995: METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL: EXTENSION TO NON-PARTIES OF THE SICK PAY FUND
COLLECTIVE AMENDING AGREEMENT**

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 Metal and Engineering Industries Bargaining Council 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 16 July 2007 and for the period ending 20 November 2011.

M M S MDLADLANA
MINISTER OF LABOUR

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of Section 32 of the Labour Relations Act 1995, as shall remain in force until 20 November **2011**.

(renewed in terms of Government Notice R.1286 dated 15 December 2006).

SPECIAL PROVISIONS

The provisions contained in clause 15 of the Agreement published under Government Notice R.1205 of 14 November 2008 (hereinafter referred to as “the former Agreement”) shall apply to employers and employees.

GENERAL PROVISIONS

The provisions contained in clauses 3 to 14 and 16 to 21 of the former Agreement, shall apply to employers and employees.

3. DEFINITIONS

Any reference in this Agreement to the Republic of South Africa and/or the Provinces of the Cape of Good Hope, the Transvaal, Natal and the Orange Free State shall be deemed to be a reference to the Magisterial Districts of those areas and/or provinces as they existed immediately prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993). Any expressions used in this Agreement which are defined in the Labour Relations Act, No.66 of 1995, shall have the same meaning as in that Act and any reference to an Act shall include any amendments to such Act; further, unless inconsistent with the context-

‘Act’ means the Labour Relations Act, No.66 of 1995;

‘Agreement/s’ or ‘collective Agreement/s’ means any wage agreement operative in the industries, including any such agreements and/or any extensions and/or amendments thereof and shall further include any agreement if such agreement has expired but was operative at the date of coming into operation of this Agreement or became operative after the date of coming into operation of this Agreement;

“apprentice” means an employee serving under a written contract of apprenticeship registered or deemed to have been registered under the Manpower Training Act, 1981 and includes a minor employed on probation in terms of the Act or a trainee in terms of the Atrami Agreement as well as a learner in terms of Chapter IV of the Skills Development Act, No.97 of 1998.”

‘Compassionate leave’ means leave granted to an employee at full pay, in the event of the death of the employee’s spouse or life partner, or the employee’s parent, adoptive parent, grand parent, child, adopted child, grand child or sibling.

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

‘Employer’ means an employer as defined in the Labour Relations Act who is required to observe this Agreement (i. e. an employer who is a member of an employers’ organisation which is party to this Agreement);

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

'Management Committee' means the **Management Committee** of the Council appointed in terms of its constitution;

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

'Electrical Engineering Industry' means-

- (a) The manufacture and/or assembly from component parts of electrical equipment, namely, generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signaling equipment, radio or electronic equipment and other equipment utilizing the principles used in the operation of radio and electronic equipment, incandescent lamps and electric cables and domestic electrical appliances, and includes the manufacture of component parts of the aforementioned equipment.
- (b) The installation, maintenance and repair of the equipment referred to in paragraph (a) above in the Provinces of the Transvaal and Natal (excluding any portion of that area falling within the self-governing territory of KwaZulu), but does not include the Electrical Contracting Industry;

'Electrical Contracting Industry' means the Industry in which employers and employees are associated for any or all of the following:

- (a) The design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent portion of buildings or structures, including any wiring, cable jointing and laying, and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;
- (b) The design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the purpose for which a building or structure is

used, including any wiring, cable jointing and laying, and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;

- (c) The design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the construction, alteration, repair and maintenance of buildings or structures, including any wiring, cable jointing and laying, and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere;

'Law' shall include common law;

'Lift and Escalator Industry' means the manufacture and/or assembly and/or installation and/or repair of electrical lifts and escalators;

'Main Agreement' means the Agreement published under Government Notice R.404 in Government Gazette No.18754 of 31 March 1998 or any succeeding agreement, and includes any amendment or extension thereto, and shall include the Main Agreement during any period that it is expired;

'Motor Industry' means the Motor Industry as defined in the Main Agreement for the Metal and Engineering Industries published under Government Notice R.404 in Government Gazette No.18754 of 31 March 1998;

"plastics Industry" means the industry concerned with the conversion of thermoplastic and/or thermosetting polymers, including the compounding or recycling thereof, or the manufacture of articles or parts of articles wholly or mainly made of such polymers into rigid, semi-rigid or flexible form, whether blown, moulded, extruded, cast, injected, formed, calendered, coated, compression moulded or rotation moulded, including inhouse printing on such plastics by the manufacturers, and all operations incidental to these activities.

"plastics" means any one of the group of materials which consist of or contains as an essential ingredient an organic substance of a large molecular mass and which, while solid in the finished state, at some stage in its manufacture has been or can be forced, i.e. cast, calendered, extruded or moulded into various shape by flow, usually through

the application, singly or together, of heat and pressure including the recycling or compounding thereof, but only where such compounding and/or recycling is as a result of the conversion for manufacture by the same employer, but shall exclude all extrusions into mono- and multi-filament fibres and other activities falling under the scope of the National Textile Bargaining Council".

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

‘Regional Council’ means any committee appointed as such by the Council in terms of its constitution;

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

REGION B means the following magisterial districts in the Eastern Cape Province: Albert, Aliwal North, Barkly East, Bizana, Butterworth, Cala, Cathcart, Cofimvaba East London, Elliot, Engcobo, Flagstaff, Hoffmeyer, Idutywa, Indwe, Keiskama-hoek, Kentani, King William’s Town, Kwabhaca, Lady Grey, Libode, Lusikisiki, Maclear, Matatiele, Mdantsane, Middelndrift, Mount Ayliff, Mount Fletcher, Mqanduli, Ngqeleni, Nqamakwe, Queenstown, Qumbu, Seymour (Mpofu), Sterkstroom, Stutterheim, Tsolo, Tsomo, Umtata, Umzimkulu, Whittlesea, Willowmore, Willowvale, Wodehouse, Victoria East and Zwelitsha and for the purposes of these particular areas, the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Border Region), PO Box 13162, Vincent, 5217, or First Floor, 12 St Georges Road, Southernwood, 5021;

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

REGION D means the following magisterial districts in the Eastern Cape Province: Aberdeen, Adelaide, Albany, Alexandra, Bathurst, Bedford, Cradock, Fort Beaufort, Graaff-Reinet, Hankey, Hofmeyr, Humansdorp, Jansenville, Joubertina, Kirkwood, Middelburg, Pearston, Port Elizabeth, Somerset East, Steytlerville, Steynsburg, Uitenhage, Venterstad and Willowmore and the following magisterial districts in the Western Cape Province: Calitzdorp, Murraysburg, Oudtshoorn, Uniondale, and the following magisterial districts in the Northern Cape Province: Colesburg, Hanover, Noupoot and Richmond and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Midland Region), PO Box 12848, Centrahill, 6006, or First Floor, 30 Pearson Street, Central, Port Elizabeth, 6001;

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

REGION F means all the magisterial districts in the Free State and includes the following magisterial districts in the North West Province: Bloemhof, Christiana, Coligny, Delareyville, Klerksdorp, Lichtenburg, Potchefstroom, Schweizer-Reneke, Ventersdorp,

Vryburg and Wolmaransstad, and includes the following magisterial districts in the Northern Cape Province: Barkly West, De Aar, Gordonia, Hartswater, Herbert, Hopetown, Kimberley, Kuruman, Postmasburg, and Warrenton, and for the purposes of these particular areas the address of the Regional Council shall be: Metal and Engineering Industries Bargaining Council (Free State and Northern Cape Region), PO Box 95, Welkom, 9460, or Wessels & Smith Building, 2nd Floor, 26 – 28 Heeren Street, Welkom, 9459.

'Weekly wage' shall mean-

- (a) The normal weekly wage of an employee assuming a full week is worked, but excluding allowances and payment for overtime; or
- (b) For monthly paid employees, the monthly remuneration, excluding allowances and payment of overtime, divided by four and one-third.

4. CONTINUATION OF SICK PAY FUND

- (1) The Metal and Engineering Industries Bargaining Council Sick Pay fund (hereinafter referred to as the 'Sick Pay Fund' or the 'Fund'), originally published under Government Notice R.1798 of 9 September 1955, is hereby continued.
- (2) The Fund shall consist of-
 - (a) All monies and assets standing to the credit of the Fund as at the date of coming into operation of this Agreement;
 - (b) All contributions paid by employers and members in accordance with section 7 of this Agreement;
 - (c) All interest derived from the investment of any monies of the Fund; and
 - (d) Any other monies to which the Fund may become entitled.

5. OBJECTS

The objects of the Fund shall be to provide benefits as prescribed in section 8 of this Agreement.

6. MEMBERSHIP

- (1) Membership of the Fund shall be compulsory for all employees employed on any of the classes of work scheduled in any Agreement in the Industries, including apprentices and employees employed in operative processes.
(Substituted by Government Notice R.1205 of 14 November 2008)
- (2) An employer may, in respect of his employees whose wages are not specified in any Agreement operative in the Industries, whether paid weekly or monthly, by mutual agreement make application to the Fund to accept contributions from himself and those employees (or any of them) in accordance with the provisions of

clause 7. The provisions of the Agreement shall thereupon *mutatis mutandis* apply to the employer and the employees concerned and be observed by them as though applied by section 1.

7. CONTRIBUTIONS

- (1) Contributions shall be made by employers and employees falling within the provisions of this Agreement as specified hereunder.
- (2) Contributions to the Fund shall each week be deducted by the employer from the wages of an employee, including weeks (or any part thereof) in which an employee is on paid leave or on paid sick leave under clause 34 of the Main Agreement or under the sick leave provisions of any other agreement- at the rate of **0,09%** of the weekly wage of an employee, in respect of each employee who has been admitted as a member of the Fund under the provisions of clause 6.
- (3) To the amounts deducted in terms of subsection (2), the employer shall add an equal amount and forward the total sum for each month to the Council, together with a statement in such form as may from time to time be prescribed.

Notwithstanding the provisions of this section, failure on the part of the employer to make the deductions of employees' contributions which he is required to make shall not absolve the employer from having to submit the total amount of the employees' contributions and his own contribution to the Council.

The amount paid by the employer shall be appropriated as follows:

- (i) An amount shall, in the sole discretion of the Management Committee, be allocated by it from time to time towards the expenses incurred in connection with the administration of the Fund; and
 - (ii) The balance shall be used for the provision of the benefits provided by the Fund.
- (4) Every employer in regions A,B,C,D,E and F shall forward the total amount payable each month in terms of this Agreement to reach the Council at its Central Funds Collection Office Second Floor, Metal Industries House, 42 Anderson Street, Johannesburg, 2001 by no later than close of business on the 7th day of the subsequent month.

The employer uses the postal service, a courier service or any other means of delivery or transfer at his own risk. The relevant postal address is P O Box 61474, Marshalltown, 2107. A facility for direct bank-to-bank transfer of funds is also available. Enquiries may be directed to the Financial Manager, at the above address or telephone (011) 870-2000".

- (5)(a) If any amount that falls due in terms of this clause is not received in full by the Council by the 7th day of the month following the month for which the amount is payable, then the employer shall be liable to pay interest in accordance with the following provisions:

- (i) The interest payable shall accrue on the balance of the amount outstanding from time to time from the 7th day until the full amount is received by the Council.
 - (ii) The interest shall accrue at the same effective rate as the applicable maximum annual finance charge rate as if the amount outstanding were a 'credit transaction' for the purposes of the Act. For purposes of calculating the interest, the provisions of section 2(2) of the Act shall *mutatis mutandis* apply.
 - (iii) The Council shall, in its absolute discretion, be entitled to waive payment by the employer of any interest that accrues in terms of this subclause.
 - (iv) In addition to the provisions of section 2(2) of the Act, all the other provisions of the Act that are relevant for the purpose of calculating any interest payable by the employer in terms of this subclause shall *mutatis mutandis* apply for these purposes."
- (b) For the purposes of this subsection "the Act" means the Usury Act.
- (6) In the event of the Council incurring any costs or becoming obliged to pay any collective commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to forthwith pay all such costs of whatever nature as between attorney and client and all such collection commission.

(subclause (7) deleted by Government Notice R.958 dated 9 October 2009)

8. BENEFITS

- (1) *Sick-pay benefits*
- (a) Subject to the terms, conditions, provisions and requirements of this Agreement, a member shall be entitled to sick-pay benefits for each completed day of absence from work through illness or injury, other than injury on duty, that exceeds the member's qualification for paid sick-leave from his employer under clause 34 of the Main Agreement or under the sick-leave provisions of any other Agreement.
 - (b) Sick-pay benefits shall be payable at the rate of 50 per cent of the weekly wage of the member for each completed week of absence in accordance with paragraph (a): Provided that, where the absence does not comprise a complete week, sick-pay benefits shall be calculated *pro rata* for each completed day of absence, depending on whether a five-day week or a six-day week is worked.

(Clause 1(c) deleted by Government Notice R.958 dated 9 October 2009)

(2) Compassionate leave

subject to the provisions of subclause 6(a), an employee shall be entitled to a maximum of three working days leave for compassionate reasons per year for which he or she shall receive full payment at his or her normal wage rate for a normal working day: Provided that where an employee has worked for part of his ordinary shift on the date on which compassionate leave is taken, the benefit payable for that day shall be reduced pro-rata.

(3) Special benefits-injury on duty

Subject to the provisions of subclause (6)(a), where an employee is absent from work owing to disablement falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), a special sick-pay benefit up to a maximum of three working days for each period of such absence (calculated on the ordinary hours of the shift of the establishment concerned, excluding overtime) shall be payable to the employee at the actual hourly rate of pay which the employee was receiving at the time of the disablement: Provided that where an employee worked for part of his or her ordinary shift on the date on which the disablement commenced, the special sick pay benefit payable for the day shall be reduced *pro rata*.

(4) Funeral benefit

Subject to the provisions of subclause (6)(a), on the death of a member, a funeral benefit of R5000 shall be payable to the surviving spouse or to such person as the Management Committee may consider entitled to receive the benefit, on production of such proof of death of the employee as the Management Committee may from time to time prescribe or require.

(5) Benefits – pregnancy / confinement / stillborn confinement / adoption of children under two years of age

Notwithstanding the provisions of subclause 6(a) and subject to subclause 6(b), benefits shall be payable to members in respect of absences from work owing to pregnancy, or confinement or adoption of children under two years of age as follows:

A. In respect of members with one year or more continuous service with the same employer**(a) Pregnancy benefits**

Benefits shall be payable for each completed week of absence up to a maximum of 26 weeks for any one pregnancy at the actual wage rate of the member immediately prior to such absence.

(b) Stillborn benefits

Benefits shall be payable for each completed week of absence up to a maximum of 12 weeks for any one stillborn confinement at the actual wage rate of the member immediately prior to such absence.

(c) Benefits: Adoption of children under two years of age

Benefits shall be payable for each completed week of absence up to a maximum of 26 weeks for any one legal adoption of a child under the age of two years at the actual wage rate of the member immediately prior to absence from work owing to adoption.

B. In respect of members with less than one year's continuous service with the same employer**(a) Pregnancy benefits**

Benefits shall be payable for each completed week of absence up to a maximum of 18 weeks for any one pregnancy at the actual wage rate of the member immediately prior to such absence.

(b) Stillborn benefits

Benefits shall be payable for each completed week of absence up to a maximum of 8 weeks for any one stillborn confinement at the actual wage rate of the member immediately prior to such absence.

(c) Benefits: Adoption of children under two years of age

Benefits shall be payable for each completed week of absence up to a maximum of 18 weeks for any one legal adoption of a child under the age of two years at the actual wage rate of the member immediately prior to absence from work owing to adoption.

Payment of the benefits set out above are subject to the following conditions:

- (i) The Fund shall also pay an additional amount when the member proceeds on maternity or adoption leave, which is the equivalent of the pro-rata leave pay and leave enhancement pay which the employee would have received had she not been absent on maternity or adoption leave.
- (ii) Where absence from work owing to pregnancy or adoption is less than 26 weeks or 18 weeks, as the case may be, or in the case of a stillborn confinement less than 12 weeks or 8 weeks as the case may be, or where a member whose employment has been suspended owing to pregnancy or adoption recommences employment within 26 weeks or 18 weeks or where a member whose employment has been suspended due to a stillborn confinement recommences employment within 12 weeks or 8 weeks, benefits shall be payable for such lesser period that the member has not worked during such pregnancy.

- (iii) Benefits for days of absence not comprising a complete week shall be calculated pro rata for each completed day of absence, depending on whether a five-day week or a six-day week was being worked immediately prior to the absence.
- (iv) Benefits under this subclause shall be payable for a maximum of three pregnancies (which shall include any stillbirths or adoptions) per member: provided that the member shall have not less than one year's continuous membership of the Fund between pregnancies or adoptions for which benefits are payable under this subclause.
- (v) Applications for benefits shall be supported by such documentary evidence as may be required by the Management Committee from time to time.
- (vi) Members qualifying for benefits under this subclause shall be entitled to an advance payment as set out hereunder after completion of the first week of absence. Benefits shall accrue on a weekly basis for absence owing to pregnancy / confinement or adoption after expiry of such period:
 - (a) Four weeks in respect of pregnancy or adoption in respect of members with more than one year's service with the same employer.
 - (b) Two weeks in respect of pregnancy or adoption in respect of members with less than one year's service with the same employer".

(6) Qualifications, limitations and exclusions

No benefits shall be payable-

- (a) Until 13 consecutive weeks' contributions have been made to the Fund: Provided that contributions terminated by a period of unemployment of up to two months or a change of employer within the Industry, where the break in contributions does not exceed two months and the employee was actually unemployed during such period, shall be regarded as being consecutive with the contributions made following such unemployment or change of employer: Provided further that employees leaving the Industry and subsequently returning to the Industry shall be eligible for benefits only after 13 consecutive weekly contributions have been made to the Fund;
- (b) In respect of continuous periods of absence exceeding 30 weeks until such time as the employee shall have completed a further 26 weeks of employment, and for purposes of this section, absences separated from each other by less than 26 weeks shall be deemed to be continuous;
- (c) In respect of paid public holidays specified in the Agreement for the Industry, or in respect of any part of the paid holiday period for which an employee

- (d) receives holiday pay, and where an employee works part of the shift on the day he is first absent and is not entitled to paid sick leave from his employer under clause 34 of the Main Agreement or under sick-leave provisions of any other Agreement, such day shall count as a day of absence due to illness, for purposes of benefits payable by the Fund;
- (e) To employees who become unemployed during the period they are entitled to receive unemployment benefits falling within the scope of the Unemployment Insurance Act 1966;
- (f) For any illness, disablement or death falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, No.130 of 1993, except as provided for under subclause (3);
- (g) In respect of absence from work due to pregnancy (including stillbirths), confinement or the legal adoption of a child under the age of two years, except as provided for under subclause (5).
- (h) In respect of absences from work directly or indirectly caused by, or resulting from-
 - (i) alcoholism or the use of narcotics;
 - (ii) engaging in hunting, racing on wheels or motor-cycle rallying, including breakfast runs and motor-cross;
 - (iii) the performance of any unlawful act, service in the armed forces, flight or attempted flight in any aircraft, except as a fare-paying passenger on a regular scheduled airline;
 - (v) death or injury inflicted by any military or usurper power, whether or not there has been a declaration of war, or due to riots or civil commotion.
- (1) Notwithstanding the provisions of subclause (6)(a), a member-
 - (a) Who is unable to continue working owing to pregnancy (including stillbirths) or the legal adoption of a child under the age of two years; and
 - (b) Who has been in the employ of the same employer and a member of the Fund for a period of not less than two years immediately prior to suspension of employment due to pregnancy (including stillbirths) or the legal adoption of a child under the age of two years; and
 - (c) Who has been issued with a written agreement of re-employment by the employer, as provided for in clause 9(2) of the Main Agreement, or relevant provisions of any other Agreement, shall, on recommencing employment with the same employer, have the break in service

condoned for the purpose of determining qualification and/or entitlement to benefits.

For the purpose of the above, the employer, when notifying of the suspension of service on the contribution return forms submitted in terms of clause 7(3), shall record thereon that such suspension was due to pregnancy (including stillbirths) or the legal adoption of a child under two years of age and that the employee has been issued with a written agreement of re-employment in terms of clause 9(2) of the Main Agreement or relevant provisions of any other Agreement.

- (2) Notwithstanding anything contained in this clause the Management Committee shall have discretionary powers to grant additional assistance to employees in cases of hardship arising from illness and may grant special relief to employees by means of pecuniary grants, loans or otherwise on such conditions as it may from time to time determine.

9. PROVISION FOR PAYMENT OF THE BENEFITS BY EMPLOYER

An employer may, with the prior permission of the Management Committee and on such conditions as the Management Committee may determine, make payment direct to an employee in lieu of benefits to which such employee is entitled in terms of this Agreement and/or to make payment in lieu of the funeral benefit in terms of this Fund direct to the surviving spouse or to such other person as may be entitled to receive such benefits as provided for under clause 8 hereof. Where any such payment(s) has/have been made by an employer in terms of this section, the Fund shall reimburse the employer with the amount(s) so paid on production of evidence to the Fund by an employer of such payment and shall set off such amount(s) reimbursed against the amount of the relevant benefit payable in terms of this Agreement: Provided that the amount(s) reimbursed to an employer under this section shall not exceed the entitlement of the employee to benefits for the period of absence concerned and/or the entitlement to funeral benefits, as the case may be, in terms of this Agreement.

10. CLAIMS

- (1) Claims for sick-pay benefits and/or special sick-pay benefits and/or funeral benefits and/or maternity benefits and/or adoption benefits **and/or compassionate leave** from the Fund shall be lodged with the Fund on the forms prescribed by the Management Committee **of the Fund** from time to time, and shall be accompanied by a detailed medical certificate or adoption certificate, as the case may be, in the form prescribed. The cost of the medical certificate or adoption certificate shall be borne by the employee concerned: Provided, however, that the Management Committee may require an independent medical examination, the cost of which shall be a charge upon the Fund.
- (2) **The Management Committee may request reasonable proof in respect of a request for compassionate leave.**

Compassionate leave may be taken once an employee has exhausted his entitlement to “family responsibility leave” in terms of Clause 42 of the Main Agreement.

In the event of the employee not falling under the provision of the Main Agreement, the provisions of Section 27 of the Basic Conditions of Employment Act will apply.

- (3) No claims shall be recognised by the Fund if not submitted within 30 days after the first absence from employment on account of illness and if the employee has failed to act upon proper medical advice; nor shall payment be made for any prior period of more than three days before the employee first consulted his medical practitioner.
- (4) No claims shall be recognised by the Fund in respect of adoption benefits if not submitted within 52 weeks from the date of adoption concerned and unless the member concerned was in employment as a member, or was otherwise in employment, for at least 18 weeks during the period of 52 weeks immediately preceding the date of adoption.

It shall be sufficient payment of any claim if a cheque is dispatched by prepaid post to the address given in the claim form prescribed by the Management Committee. And if any cheque so sent is not paid within 18 months of the date of issue, the claim shall be forfeited for the benefit of the Fund: Provided that the Management Committee shall have discretionary powers to make an *ex gratia* payment in respect of any claim forfeited in terms of this section.

11. ADMINISTRATION

- (1) Control and administration of the Fund shall vest in a Management Committee which shall consist of one member nominated by each trade union which is a party to this Agreement and an equal number of employer members nominated by the employers' organisations jointly. Alternates may be appointed if deemed necessary by the Management Committee. Should the Management Committee be unable to perform its duties for any reason whatsoever the Executive Committee shall perform these duties and exercise its functions and powers.
- (2) The Management Committee shall have the power to make and alter rules governing the administration of the Fund and to appoint such sub-committee/s as it may deem fit to assist in the administration of the Fund.

Copies of the rules and amendments thereto, which shall not be inconsistent with this Agreement or any act, shall be lodged with the Director-General of Labour.

12. INDEMNITY

The members of the Management Committee and the officers and employees of the Fund shall not be liable for the debts and liabilities of the Fund and they are hereby indemnified by the Fund against all losses and expenses incurred by them in or about the *bonafide* discharge of their duties.

13. FINANCIAL CONTROL

- (1) The Management Committee shall cause full and true accounts of the Fund to be kept.
- (2) Benefits shall be suspended whenever the amount standing to the credit of the Fund falls below R2 million and payment shall not recommence until the amount standing to the credit of the Fund has reached the sum of R3 million: Provided that upon payment or benefits being resumed, claims made during such period of suspension shall be met from the Fund in the order in which they were received.
- (3) All monies paid to the Fund shall be deposited in a banking account to be opened at a bank and/or institution approved by the Management Committee
- (4) All payments from the Fund shall be by cheque drawn on the Fund's account and such cheques shall be signed by two persons duly authorised thereto by the Management Committee.
- (5) All moneys regarded by the Management Committee as being surplus to the Fund's immediate requirements may be invested only in –
 - (a) Savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - (b) Internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No.66 of 1975);
 - (c) A registered unit trust; or
 - (d) Any other manner approved by the Registrar of Labour Relations, on such conditions as may be determined by the Management Committee from time to time.
- (6) All expenses incurred in connection with the administration of the Fund shall form a charge upon the Fund.
- (7) The Management Committee shall furnish the Management Committee of the Council with quarterly reports giving a general review of the operation of the Fund and on the income and expenditure for the period to which the report relates.
- (8) An auditor or auditors shall be appointed by the Management Committee. Such auditor(s) shall be registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No.51 of 1951).
- (9) As soon as possible after 31 December in each year the Management Committee shall prepare an account of the revenue and expenditure of the Fund for the 12 months ended 31 December and a statement showing the Fund's assets and liabilities which shall be certified by the auditor and submitted together with any report by the auditor thereon to the Management Committee for transmission to the Council.

- (10) The certified accounts and statements and any report made by the auditor thereon shall be open for inspection at the head office of the Council. The certified accounts and statement countersigned by the Chairman of the Council, together with any report by the auditor shall be transmitted to the Director General of Labour within six months of the close of the period covered thereby.

14. LIQUIDATION AND WINDING UP

- (1) Upon expiry of the Agreement by effluxion of time or any other reason and unless within two years it is renewed or replaced by another agreement perpetuating the Fund, or if the Fund, is not transferred by the Council to any other Fund constituted for the same purpose in accordance with the provisions of clause 17, trustees shall be appointed to continue payments from the Fund as provided for as if the Agreement was still in existence, that is to say, to pay out claims for benefits in terms of the expired Agreement, any creditors, administration costs and liquidation expenses until such time as the moneys standing to the credit of the Fund are exhausted. Such trustees shall be appointed by the Management Committee and if the Committee should be unable or unwilling to appoint the said trustees, the Registrar of Labour Relations may appoint trustees to deal with the Fund in the aforesaid manner.
- (2) If circumstances arise at any time which in the opinion of the Management Committee render the winding up of the Fund desirable or necessary, the Management Committee shall, with the separate approval of a simple majority of the employer's organisations and a simple majority of the trade unions be empowered to wind up the Fund, in which event the excess of assets over liabilities of the Fund shall be dealt with in such manner as the Management Committee, with the separate approval of a simple majority of the employers' organisations and a simple majority of the trade unions, may determine.

15. AGENTS

The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement. For the purpose of enforcing or monitoring compliance with this agreement, as the case may be, an agent of the Council shall have the right to enter and inspect premises, examine records and question the employer and/or his employees in any manner that he deems appropriate provided that such rights be exercised only as is reasonably required for the purpose of enforcement of, or monitoring compliance with the Agreement.

After each inspection of an employer's records and operations the Agent shall prepare a report for the attention of the employer, worker representatives and in the case of an

individual complainant, the complainant concerned, confirming the date and time of the inspection and, if any contraventions of the Agreement were identified, a summary of the contraventions and the action that management is required to take to rectify the contraventions. Any disclosure of information shall comply with the provisions of the Labour Relations Act, No.66 of 1995:

A designated Agent shall have the powers set out in sections 33 and 33A and Schedule 10 of the Act.

16. EXHIBITION OF AGREEMENT

Every employer shall affix and keep affixed in or at the place where his employees are working, a legible copy of this Agreement.

17. EXPIRY OF THE AGREEMENT

- (1) Should this Agreement expire by effluxion of time or for any other reason, the Fund shall continue to be administered by the Management Committee last in office until it be either dealt with in terms of clause 14 or is transferred by the Council to any other Fund constituted for the same purpose as that for which this Fund was created.
- (2) In the event of the dissolution of the Council or in the event of its ceasing to function in terms of clause 59 of the Act during any period within which this Agreement is binding, the Management Committee shall continue to administer the Fund and the members of such Committee at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purpose:
Provided, however, that any vacancies occurring on such Committee may be filled by the Registrar of Labour Relations from employers or employees in the Iron Steel Engineering and Metallurgical Industries to ensure an equality of employer and employee representatives and alternates in the membership of the Committee.
- (3) In the event of the Management Committee being unable to unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar of Labour Relations, he may appoint a trustee or trustees to carry out the duties of such Committee and who shall possess all the powers of such Committee for the purpose.

18. BENEFITS NOT ALIENABLE OR EXECUTABLE

The benefits provided for by the Fund shall not be transferable and any employee who attempts to assign, transfer or otherwise cede or pledge or hypothecate his right shall have all benefits from the Fund immediately suspended for a period of three months.

19. POWERS AND DUTIES OF MANAGEMENT COMMITTEE

Subject to the general direction of the **Management** Committee of the Council and the terms of this Agreement, the Management Committee shall have full control of the affairs of the Fund and in particular may-

- (a) Engage employees to assist in the administration of the Fund, fix their remuneration and define their duties;
- (b) Refuse any or all benefits to an employee who has acted in a manner calculated or reasonably likely to injure the interest of the Fund: Provided that such employee shall be permitted to appear before the Management Committee to state his case;

- (c) Sanction expenditure from the Fund;
- (d) Take steps to enforce payment of contributions or any sums due to the Fund;
- (e) Where an employee has in its opinion drawn excessive benefits, cause an enquiry to be instituted and withhold such further benefits for such periods as it may determine.

20. EXEMPTIONS

1. *General*

- (a) Any person bound by this Agreement may apply for exemption.
- (b) The authority of the Council is to consider applications for exemptions and grant exemptions.
- (c) Where additional and/or outstanding information is requested in respect of an exemption application and such information is not received within a period of 90 days the applicant shall be informed that the application will lapse.

2. *Fundamental principles for consideration*

- (a) All applications must be in writing and fully motivated and sent to the Regional Office of the Council for the area in which the applicant is located.
- (b) In scrutinising an application for exemption the Council will consider the views expressed by the employer and the workforce, together with any other representations received in relation to that application.
- (c) The employer must consult with the workforce, through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application. Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application. Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
- (d) The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of this Agreement in the Industry.
- (e) An application for exemption shall not be considered if the contents of the application are covered by an arbitration award binding the applicant.

3. *Urgent applications*

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

- (c) The applicant is expected to put forward a substantive explanation as to the urgency of the application.

4. Process

- (a) The Council shall issue to every person to whom exemption has been granted an exemption licence, setting out the following:
 - (i) the full name of the person or enterprise concerned;
 - (ii) the provisions of this Agreement from which the exemption has been granted;
 - (iii) the conditions subject to which exemption is granted;
 - (iv) the period of the exemption;
 - (v) the date from which the exemption shall operate; and
 - (vi) the area in which the exemption applies.
- (b) The Council shall ensure that –
 - (i) all exemption licences issued are numbered consecutively;
 - (ii) an original copy of each licence is retained by the Council;
 - (iii) a copy of the exemption licence is sent to the applicant.
- (c) Unless otherwise specified in the licence of exemption, any exemption from this Agreement shall be valid only in the region of the Council in which the application was made.
- (d) The Council may withdraw the exemption at its discretion.

5. Appeals

- (a) An independent body, referred to as the Independent Exemptions Appeal Board (the Board) shall be appointed and shall consider any appeal against an exemption granted or refused by the Council, or a withdrawal of an exemption in respect of parties and non-parties.
- (b) The Council Secretary shall, on receipt of an appeal against a decision of the Council, submit it to the Independent Exemptions Appeal Board for consideration and finalisation.
- (c) In considering an appeal the Board shall consider the recommendations of the Council, any further submissions by the employer and employees shall take into account the criteria set out above and also any other representations received in relation to the application.

- (d) Should the appeal be successful an exemption shall be issued in terms of clause (4)(a) and (b) above and shall be subject to clause (4)(c) and (d)".

21. RESOLUTION OF DISPUTES

Any dispute about the interpretation, application, or enforcement of this Agreement shall be referred to the Council and shall be dealt with in accordance with the provisions contained in the Metal and Engineering Industries Bargaining Council Dispute Resolution Agreement (published under Government Notice No. **R.834 of 18 August 2006**).

Thus signed, for and on behalf of the parties, the 12th **August 2009**.
at Johannesburg.

L Trentini
Member.

V Mabho
Member.

A Smith
Chief Executive Officer