ANNEXURE A

SECURITY OF EMPLOYMENT AND SEVERANCE PAY

For the purpose of this Annexure, notwithstanding the definition of "employee" in clause 3 of the Main Agreement, "employee" shall include persons employed in terms of clause 1(4) and (5) of Part I of the Main Agreement.

1. Retrenchments and/or Redundancies

1.1 Introduction

Any retrenchment of employees falling under the scope of this agreement must be undertaken in accordance with either Procedure A or Procedure B set out below. The procedure to be used will depend on:

- The size of the Company;
- The number of employees that the Company proposes to retrench; and
- The Company’s retrenchment history over the preceding twelve-month period.

1.2 Procedure A must be applied by those employers who:

1.2.1 Employ 50 or fewer employees; or
1.2.2 Employ more than 50 employees but who are contemplating retrenching less than the number of employees reflected hereunder:
   - For employers of up to 200 employees: 10 employees
   - For employers of more than 200 but not more than 300 employees: 20 employees
   - For employers of more than 300 but not more than 400 employees: 30 employees
   - For employers of more than 400 but not more than 500 employees: 40 employees
   - For employers of 500 or more employees: 50 employees;

   Where the number of employees retrenched in the 12-month period prior to the date of the notice of invitation to consult, together with the number of employees that the employer contemplates retrenching, is less than the above.

1.3 Procedure B applies to those employers who employ more than 50 employees and who are contemplating the retrenchment of at least the number of employees reflected hereunder:

- For employers of up to 200 employees: 10 or more employees.
- For employers of more than 200 but not more than 300 employees: 20 or more employees.
- For employers of more than 300 but not more than 400 employees: 30 or more employees.
- For employers of more than 400 but not more than 500 employees: 40 or more employees.
- For employers of 500 or more employees: 50 or more employees.

or

Where the number of employees retrenched in 12-month period prior to the date of the notice of invitation to consult, together with the number of employees that the employer contemplates retrenching, is equal to or exceeds the above.

1.4 For the purposes of this procedure:-

"Notice of invitation to consult" means the notice referred to in clauses 2.1.1 and 3.1.1; and "Employee" includes all persons employed by the legal entity that is the employer (e.g. a company, a CC or a sole proprietor) and is not confined to scheduled employees in terms of the Agreement.

1.5 This procedure is intended partly as a guide to the relevant provisions of the Act, and partly to establish specific terms regulating work security in the industry. If there is a conflict between this annexure and the Act, the Act prevails, except for those clauses which are intended to supplement the Act.
2. PROCEDURE A

2.1 Notice of proposed retrenchment

2.1.1 An employer must notify all relevant consulting parties and the Regional Bargaining Council when that employer contemplates terminating the employment of one or more employees for reasons related to its operational requirements.

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

2.1.2 Consulting parties include any registered trade union of which any of the employees potentially affected by the proposed retrenchment are members, and the nominated representatives of any potentially affected employees who are not members of a registered trade union.

2.1.3 The notice referred to in 2.1.1 must be given in writing, as soon as possible after retrenchment is contemplated but at least 21 days before the contemplated date of retrenchment.

2.1.4 In the written notice, the employer must invite the consulting parties to commence consultations over the proposed retrenchment. At the same time, the employer must disclose all relevant information to the consulting parties. This information must include, but is not limited to the following:

2.1.4.1 The reasons for the proposed retrenchment;
2.1.4.2 The alternatives that the employer considered before proposing the retrenchment, and the reasons for rejecting these alternatives;
2.1.4.3 The number of employees likely to be affected and the job categories in which they are employed;
2.1.4.4 The proposed selection criteria to be used to determine which employees to retrench;
2.1.4.5 The proposed date of retrenchment;
2.1.4.6 The proposed severance pay;
2.1.4.7 Any assistance which the employer proposes to offer to the employees who are likely to be retrenched;
2.1.4.8 The possibility of the future re-employment of the retrenched employees;
2.1.4.9 The number of employees employed by the employer; and
2.1.4.10 The number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding twelve-month period.

2.2 Consultation Process

2.2.1 The employer must engage in a meaningful joint consensus-seeking process with the appropriate consulting party, and attempt to reach consensus on:

2.2.1.1 Appropriate measures to:

- Avoid the retrenchment;
- Minimise the number of retrenchments;
- Change the timing of the retrenchment; and
- Mitigate the adverse effects of the retrenchment;

2.2.1.2 The method for selecting the employees to be dismissed; and
2.2.1.3 The severance pay for dismissed employees.

2.2.2 The employer must allow the consulting parties an opportunity to make representations about any of the above matters, and any other issues relevant to the proposed retrenchment.

2.2.3 The employer must consider and respond to any representations made and, if the employer does not agree with them, it must state the reasons for disagreeing. If the consulting party represents are made in writing, then the employer must respond in writing.

2.2.4 In any dispute in which an arbitrator is required to decide whether or not any information sought by the consulting parties is relevant, the onus is on the employer to prove that the information which it has refused to disclose is not relevant for the purposes for which it is sought.
2.2.5 The employer must select the employees to be dismissed according to selection criteria:
- That have been agreed by the consulting parties; or
- If no criteria have been agreed, criteria that are fair and objective.

2.3 Severance Pay

The formula contained in clause 35 of this Agreement must be used to determine the amount of severance pay to be paid to a retrenched employee.

2.4 Notification of termination of employment

When the consultation process has been concluded, the employer must give notice of termination to those employees selected for retrenchment on the following basis:
- One week, if the employee has been employed for six months or less; or
- Two weeks, if the employee has been employed for more than six months but less than twelve months.
- Four weeks, if the employee has been employed for twelve months and more.

(item 2.4 substituted by Government Notice R.868 of 9 September 2005)

2.5 Notification to the Bargaining Council

2.5.1 Once the affected employees have been given notice of the termination of their employment, the employer must inform the bargaining council’s Regional Office, in writing, of the number and occupational categories of the employees that have been retrenched.

2.6 Re-employment of retrenched employees

2.6.1 If an employer who has previously retrenched employees engages new employees, that employer must, as far as is practicable, give preference to the re-engagement of those persons who were retrenched from the establishment and who are qualified and available to undertake the categories of work required by the employer.

(substituted by Government Notice R.268 of 12 April 2013)

3. PROCEDURE B

3.1 Notice of proposed retrenchment

3.1.1 An employer must notify all relevant consulting parties when that employer contemplates terminating the employment of one or more employees for reasons related to its operational requirements.

3.1.2 Consulting parties include any registered trade union of which any of the employees potentially affected by the proposed retrenchment are members, and the nominated representatives of any potentially affected employees who are not members of a registered trade union.

3.1.3 The notice referred to in 3.1.1 must be given in writing, as soon as possible after retrenchment is contemplated.

3.1.4 In the written notice, the employer must invite the consulting parties to commence consultations over the proposed retrenchment. At the same time, the employer must disclose all relevant information to the consulting parties. This information must include, but is not limited to the following:

- The reasons for the proposed retrenchment;
- The alternatives that the employer considered before proposing the retrenchment, and the reasons for rejecting these alternatives;
- The number of employees likely to be affected and the job categories in which they are employed;
3.1.4.4 The proposed selection criteria to be used to determine which employees to retrench;
3.1.4.5 The proposed date of retrenchment;
3.1.4.6 The proposed severance pay;
3.1.4.7 Any assistance which the employer proposes to offer to the employees who are likely to be retrenched;
3.1.4.8 The possibility of the future re-employment of the retrenched employees;
3.1.4.9 The number of employees employed by the employer; and
3.1.4.10 The number of employees that the employer has dismissed for reasons based on its operational requirements in the proceeding twelve-month period.

3.2 Appointment of a CCMA facilitator

3.2.1 The employer, or the consulting parties representing the majority of the employees that the employer proposes to retrench may, within 15 days of the date of the employer's notice of invitation to consult, request the CCMA to appoint a facilitator to facilitate the retrenchment process in terms of section 189A of the Labour Relations Act.
3.2.2 If a facilitator is appointed, the facilitator will assist the parties to the consultation process and will act in terms of the Regulations made by the Minister.
3.2.3 If a CCMA facilitator has been appointed and 60 days have elapsed from the date of the employer's notice of invitation to consult:
   3.2.3.1 The employer may give notice of termination to those employees selected for retrenchment on the following basis:
   - One week, if the employee has been employed for six months or less; or
   - Two weeks, if the employee has been employed for more than six months but less than twelve months.
   - Four weeks, if the employee has been employed for twelve months and more.
   (item 3.2.3.1 substituted by G.N R.868 of 9 September 2005)
3.2.3.2 A registered trade union or the employees who have received notice of termination may, in accordance with the provisions of section 189A of the Act, may either:
   - Give notice of a strike in terms of the applicable provisions of the Act; or
   - Refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of the applicable provisions of the Act.

3.3 Procedure when a CCMA facilitator is not appointed

3.3.1 The employer must engage in a meaningful joint consensus-seeking process with the appropriate consulting party, and attempt to reach consensus on:
   3.3.1.1 Appropriate measures to:
   - Avoid the retrenchment;
   - Minimise the number of retrenchments;
   - Change the timing of the retrenchment; and
   - Mitigate the adverse effects of the retrenchment;
   3.3.1.2 The method for selecting the employees to be retrenched; and
   3.3.1.3 The severance pay for retrenched employees.
3.3.2 The employer must allow the consulting parties an opportunity to make representations about any of the above matters, and any other issues relevant to the proposed retrenchment.
3.3.3 The employer must consider and respond to any representations made and, if the employer does not agree with them, it must state the reasons for disagreeing. If the consulting party's representations are made in writing, then the employer must respond in writing.
3.3.4 In any dispute in which an arbitrator is required to decide whether or not any information sought by the consulting parties is relevant, the onus is on the employer to prove that the information which it has refused to disclose is not relevant for the purposes for which it is sought.
3.4 Selection criteria

3.4.1 The employer must select the employees to be dismissed according to selection criteria:
- That have been agreed by the consulting parties; or
- If no criteria have been agreed, criteria that are fair and objective.

3.4.2 A party may not refer a dispute over the retrenchment to the bargaining council unless a period of 30 days has elapsed from the date on which the employer’s notice of invitation to consult was given.

3.4.3 After a dispute has been referred to the bargaining council, and after the relevant period referred to in section 64(1)(a) of the Act has elapsed:

3.4.3.1 The employer must give notice of termination to those employees selected for retrenchment on the following basis:
- One week, if the employee has been employed for six months or less; or
- Two weeks, if the employee has been employed for more than six months.
- Two weeks, if the employee has been employed for more than six months but less than twelve months.
- Four weeks, if the employee has been employed for twelve months and more.

(substituted by G.N R.868 of 9 September 2005)

3.4.3.2 A registered trade union or the employees who have received notice of termination may, in accordance with the provisions of section 189A of the Act, either:
- Give notice of a strike; or
- Refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of the applicable provisions of the Act.

3.5 Severance pay

The formula contained in clause 35 of this Agreement must be used to determine the amount of severance pay to be paid to a retrenched employee.

3.6 Notification to the Bargaining Council

3.6.1 Once the affected employees have been given notice of the termination of their employment, the employer must inform the Bargaining Council’s regional office, in writing, of the number and occupational categories of the employees that have been retrenched.

3.7 Re-employment of retrenched employees

1.7.1 If an employer who has previously retrenched employees engages new employees, that employer must, as far as is practicable, give preference to the re-engagement of those persons who were retrenched from the establishment and who are qualified and available to undertake the categories of work required by the employer.

(item 3.7.1 substituted by G.N. R.1374 of 3 October 2003)

2. Lay-offs

For the purpose of this clause, “lay-off” means the temporary suspension, without pay, of employment for a minimum of five full consecutive shifts owing to a reduction in the volume of work in an establishment or section of an establishment or owing to any other economic reason or any other contingency or circumstance beyond the control of the employer.

The following procedures and conditions shall apply in respect of lay-off provisions:

(a) An employer shall give the Regional Office, affected employees and affected party trade unions fourteen clear working days’ notice of the intention to lay-off employees.
(b) The notification of lay-off shall provide the names of the affected employees, the reasons for the lay-off and the estimated duration of the lay-off.

(c) The employer shall, during the fourteen-day notification period, consult with the representatives of the trade unions and/or elected shop stewards on the reasons for the lay-off and the manner in which it will operate.

(d) The employer shall give the affected employees a minimum of five shifts notice of the intention to lay-off. This notice shall include the specific date on which the employees are to resume work.

(e) The employer shall not be required to pay wages to the employees on lay-off, provided that where the employer believes resumption of work can be affected and expressly instructs the employees to present themselves for employment on a particular day, they shall receive not less than four hours' work or pay in lieu thereof, in respect of such day.

(f) Lay-off may not continue beyond a period of eight weeks unless otherwise agreed between the employer and representatives of the party trade unions representing the affected employees or such other representatives of the affected employees.

(g) Periods not worked by an employee whilst on lay-off shall count as shifts actually worked and these employees shall be credited with the full shifts for an ordinary week, whilst on the lay-off, for purposes of paid leave and leave enhancement pay up to an eight week maximum in any calendar year.

(h) Employees on lay-off may engage in any other employment for remuneration during the duration of the lay-off.

(i) Should an employee on lay-off not return to employment within three working days of the due date. The employee shall be deemed to have terminated employment with the employer, unless the absence is condoned by the employer.

(j) The provisions of subclause (8)(i)(a) of this Agreement shall mutatis mutandis apply to the payment of earnings in respect of lay-off.

(substituted by G.N R.868 of 9 September 2005)

3. Limited duration contracts of employment

(a) Definition

An employer may employ an employee for a specified, limited contract period in terms of a limited duration contract of employment, otherwise known as a limited duration contract of employment, fixed term, short term or temporary contract as per the schedule hereto on the following specified categories of work:

(i) **Site work**

Employment in terms of a contract which specifies that employment is in respect of a specific construction site for the duration of the site contract or a specific portion or section thereof.

(ii) **Turnaround work**

Employment in terms of a contract of employment which specifies that employment is for the duration, or portion thereof, of

(aa) a contract secured by the employer to carry out specified installation, maintenance, overhaul or development work on existing equipment or on an installation not owned by the employer. or

(ab) major maintenance, overhaul or development work on equipment or an installation owned by the employer necessitating the recruitment of employees over and above the normal complement.

(iii) **Ship repair work**

Employment in terms of a contract of employment that specifies that employment is for the duration or portion thereof of a specific contract secured by the employer to carry out repairs on a particular vessel.

(iv) **Short-term fluctuations in workload**

Employment in terms of a contract of employment which arises out of a situation where the employer is required to take on additional employees as a result of having secured additional work of a short-term nature. This employment must be limited in duration to a period not exceeding four months. Provided that if a longer period is required to complete a specific task
or activity, then the period of the specific task or activity shall be specified in the limited
duration contract of employment.
Any other work, activity or requirement that falls outside the work categorised above, may not
be subject to a limited duration contract of employment, fixed term, short term or temporary
contract in terms of this agreement. This does not affect an employer’s right to implement the
probationary provisions prescribed in the Labour Relations Act in respect of new employees.

(b) General

(i) The provisions of the Main Agreement shall apply in respect of employees engaged on limited
duration contracts of employment. The provisions of clause 1 above shall not, however, apply
to such employees: Provided the termination of such employees’ services does not precede
the agreed expiry date of the limited duration contract.

(ii) An employer shall on engagement of an employee in terms of a limited duration contract of
employment give the employee a signed copy of the contract which has been entered into.

(iii) Every employer who has employees engaged in terms of a limited duration contract of
employment shall each month, in such form as required by the Council from time to time, notify
the Council of the number of such employees in his employ. The employer shall, at the request
of the representatives of the trade unions represented at the company, make this information
available to such representatives. This information shall include the names of the individual
employees, if required.

(iv) The Special Provisions Limited to Construction Sites covered by Project Labour Agreements are
set out in Annexure H.

(footnote: Whilst the provisions of this Annexure apply to party trade unions it is recommended that they also be observed in
respect of non-party trade unions and any employee representative body elected in terms of an agreed procedure,
unless such non-party trade union or employee representative body elects otherwise.

LIMITED DURATION CONTRACT OF EMPLOYMENT
Schedule referred to in clause 3(a) of Annexure A to the Main Agreement.

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

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

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

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

(ii) On completion of the contract detailed in (i) above, this contract shall automatically terminate. Such
termination shall not be construed as being retrenchment but as completion of contract.
The employee shall nonetheless still be given one shift notice of expiry of the contract period.

(iii) The remaining conditions of employment, not expressly detailed above, shall be existing employer policy,
rules and regulations and the general conditions of employment as contained in the Main Agreement for the
(iv) Where employment continues after completion of this contract in terms of (i) above this contract shall become null and void and the provisions of the Main Agreement shall apply.

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

(a) Occupation .................................................................

(b) Rate of pay .................................................................

(which shall not be less than the rate scheduled in the Main Agreement).

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

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

Employer .................................................................

Employee .................................................................

Witness .................................................................

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

(item 3, Limited Duration contracts of Employment substituted by G.N. R.1374 of 3 October 2003)

ANNEXURE B

FIVE-GRADE JOB AND WAGE STRUCTURE

1. Individual employers, together with worker representatives and/or registered trade unions recognised at establishment level, shall mutually agree on whether to adopt the new job and wage structure or to continue using the current thirteen grades and related arrangements.

2. It is the intention of the parties that the decision whether or not to adopt the new grading structure should be a voluntary one on both sides. However, where consensus on the matter cannot be reached between the parties at establishment level, the following disputes procedures shall apply:

Step 1:

The matter shall be referred to the relevant Regional Council for conciliation. Two assessors, one from the employer side and one from the trade union side may, by mutual agreement, be appointed to assist the conciliator. The assessors shall be selected from outside the establishment. Any costs arising from the use of assessors shall be borne by the parties concerned.

Step 2:

Where this is unsuccessful in resolving the dispute, both parties or either party may refer the matter to an arbitrator who will attempt to conciliate the dispute. The costs of the conciliation and subsequent advisory arbitration process (where this is undertaken) shall be negotiated at establishment level. Two assessors, one from the trade union side and one from the employer side, will be appointed. The assessors shall be selected from outside the establishment. Any costs arising from the use of assessors shall be borne by the parties concerned.

(Step 2 substituted by Government Notice R.1051 of 26 October 2001)

Step 3:

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

Step 4:

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

3. No party may adopt one element of this Agreement as set out below, without adopting all of the others, namely:

(a) Multi-skilling/multi-tasking/flexibility.
(b) The five-grade wage model.

(c) Job security as set out elsewhere in this Agreement.

It is, however, recognised that any job requires a degree of flexibility to meet normal operational requirements and changes. This degree of flexibility, therefore, under normal circumstances, will not constitute an element of this Agreement as specified above.

Should a dispute on this issue arise at a workplace then the dispute resolution process outlined in paragraph 4 of the Agreement shall be followed.

4. When agreement has been reached between the parties to adopt the new structure but where disputes arise regarding the grading of workers, the same procedure will be followed as outlined in paragraph 2 above. However, in this case the arbitrator will decide the matter in terms of final binding arbitration.

(Item 4 substituted by Government Notice R.1051 of 26 October 2001)

5. Where establishments adopt the new grading structure, employees will be required to undertake any tasks or combination of tasks falling within the scope of that employee’s job grade or any tasks or combination of tasks falling within any grade below this level: Provided that, if necessary, the employee has received or is receiving the necessary training to undertake the tasks in question. Employers will make the necessary mutually agreed training opportunities and assessment available to identified employees while employees will agree to attend the courses and undertake competency-based assessments in accordance with the relevant training requirements. No additional remuneration will be payable to the employee for such changes in area and scope of work over and above that set out under paragraph 8 of this Agreement.

6. The party trade unions undertake to use their best endeavours to ensure that their members are aware of the implications of the new job and wage structure and their obligation as employees, having agreed to enter the new structure, to undertake a broader range of work. To this end, where a decision has been taken in accordance with paragraph 1 above to implement the new job and wage structure, recognised shop stewards will be granted a minimum period of one day’s leave, subject to reasonable operational requirements, as a contribution towards a training course for shop stewards to be conducted under the auspices of the unions concerned with regard to this Agreement.

7. The parties will review the five skill definitions with a view to amending these to ensure that they effectively meet the multi-skilling and flexibility objectives of the parties. They will also agree on the new technical schedules in accordance with these definitions and indicative tasks.

**A. FROM THE COMING INTO OPERATION OF THIS AGREEMENT TO 30 JUNE 2015**

8. For those establishments that have implemented or intend to implement the new job and wage system, the following minimum wage shall apply for the new five-grade structure. For those establishments that have implemented the five-grade job and wage structure, the following increases shall apply on the same terms as set out in clause 1 of Part II of this Agreement.

The actual wage structure, including the benchmark figure for artisans, shall be agreed at company level depending upon the nature of multi-skilling, multi-tasking broad banding and employee flexibility agreed between the affected employer and trade union(s).

<table>
<thead>
<tr>
<th>Grade</th>
<th>Current Minimum Wage Rate</th>
<th>Increase on Actuals and Scheduled Wage Rates</th>
<th>Increase on Scheduled Wage Rate</th>
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Whichever is the greater personal increase
Note:
These amounts will be increased in line with the increases to be agreed in the 2015/2016 and subsequent annual Main Agreement negotiations.

The new five-grade wage structure will be phased-in in equal increments, over a maximum period of five years.

B. FOR THE PERIOD 1 JULY 2015 TO 30 JUNE 2016

Substitute the following for item 8:

8. For those establishments that have implemented or intend to implement the new job and wage system, the following minimum wage shall apply for the new five-grade structure. For those establishments that have implemented the five-grade job and wage structure, the following increases shall apply on the same terms as set out in clause 1 of Part II of this Agreement.

The actual wage structure, including the benchmark figure for artisans, shall be agreed at company level depending upon the nature of multi-skilling, multi-tasking broad banding and employee flexibility agreed between the affected employer and trade union(s).

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Note:
These amounts will be increased in line with the increases to be agreed in the 2016/2017 and subsequent annual Main Agreement negotiations.

The new five-grade wage structure will be phased-in in equal increments, over a maximum period of five years.

C. FOR THE PERIOD 1 JULY 2016 TO 30 JUNE 2017

8. For those establishments that have implemented or intend to implement the new job and wage system, the following minimum wage shall apply for the new five-grade structure. For those establishments that have implemented the five-grade job and wage structure, the following increases shall apply on the same terms as set out in clause 1 of Part II of this Agreement.

The actual wage structure, including the benchmark figure for artisans, shall be agreed at company level depending upon the nature of multi-skilling, multi-tasking broad banding and employee flexibility agreed between the affected employer and trade union(s).
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<td>2.91</td>
<td>44.48</td>
</tr>
<tr>
<td>1</td>
<td>35.82</td>
<td>7.00</td>
<td>2.51</td>
<td>38.33</td>
</tr>
</tbody>
</table>

Whichever is the greater personal increase

**Note:**
These amounts will be increased in line with the increases to be agreed in the 2017/2018 and subsequent annual Main Agreement negotiations.

The new five-grade wage structure will be phased-in in equal increments, over a maximum period of five years.

(new section 8 inserted by G.N. R.1051 dated 24 December 2014)

9. The parties will consider the introduction of a sixth and seventh grade (above Rate A/Grade 5) during the course of the 1997/8 Main Agreement.

10. No employer who agrees to adopt the five-grade job and wage structure on a voluntary basis in terms of paragraph 1 above may retrench any worker as a direct result of any arrangements implemented in terms of this Agreement during the phasing-in period of the new wage structures, unless such retrenchment is on a voluntary basis, or unless external circumstances beyond either party's control impact upon the enterprise. Where jobs become redundant as a result of the process outlined in this Agreement during this period, the following options will be available to employers:
   (a) Redeployment into other positions.
   (b) Reduction in the size of the workforce through natural attrition.
   (c) Voluntary retrenchment with or without further training.
   (d) Voluntary early retirement.

In all other circumstances and respects, the provisions of clause 35 of the Main Agreement will continue to apply.

11. The provisions of paragraph 10 above will also apply in the following circumstances:
   (a) The employer has indicated that he is not prepared to adopt the new job and wage structure; and
   (b) the matter has been referred to arbitration in terms of paragraph 2, Steps 3 or 4; and
   (c) the arbitrator decides that the company has no valid reasons for refusing to adopt the new structure and has not been dealing with the matter in good faith.

12. In all other cases where establishments adopt the five-grade job and wage structure following arbitration and/or industrial action or the threat of industrial action, the provisions of paragraph 10 above will not apply.

13. The period 1 July to 31 December 1996 will be used by the parties as a period of preparation to introduce the new job and wage structure and revised technical schedules and their benefits to the industry and to assess the likely usage of the new arrangements. Such assessment and introduction will be completed by 31 January 1997. Should the parties find that there are no establishments prepared to enter the new structure at this stage, negotiations will be re-opened. Parties at establishment level proposing to implement the new structure will notify one another of such proposal. The parties will then meet to discuss the proposal.

Should agreement be reached in principle, the parties will then discuss proposals relating to the method of introduction of the new structure and, in particular, how work will be restructured, which grades will apply and what training will be provided to employees to enable them to undertake a broader range of tasks.

The parties will also agree at establishment level on appropriate times and methods for worker representatives, shop stewards and management to communicate progress on and implementation of the new job and wage structure to the workforce. Establishments may decide to adopt the five-grade wage structure at
any time, subject to the provisions of this paragraph.

14. The parties also agree to the following:
   (a) To meet with experienced arbitrators in order to develop a set of guidelines to assist arbitrators in facilitating in disputes and in reaching arbitral decisions. For example, one such guideline shall be that arbitrators should not decide in favour of the new structure where either side is able to show that the change would be to their material disadvantage.
   (b) To define the precise role of the two assessors referred to in paragraph 2 above.
   (c) To give further consideration to a mechanism for resolving disputes that may arise where employers who have adopted the new job and wage structure seek to retrench workers for reasons unrelated to this.
   (d) To finalise the proposed Productivity Framework Document by 31 December 1996 for inclusion in this document.

15. The parties acknowledge the necessity to generate employment opportunities in the industry, the importance of the acquisition of skills, and the need to create career opportunities for new workers. Accordingly, new entrants to Grade 1 at the company shall, for a maximum 12-month period:
   (a) be trained to perform the Grade 1 tasks required at the company concerned, with the training required for these employees to be agreed on at establishment level; and
   (b) be paid a wage rate of not less than Grade 1 less 20%.

16. The parties, in order to promote local employment opportunities on construction sites, agree to apply the wage structure specified in paragraph 15 above to those construction site employees who are not covered by Schedule G, section (d) of the Main Agreement and:
   (a) who are employed on fixed-term contracts of employment for the duration of the construction project or a lesser defined period; and
   (b) who are sourced from local communities; and
   (c) whose activities are confined to general labouring tasks.

17. Where employers wishing to implement the five-grade job and wage structure wish to exclude any employees or category of employees from these arrangements they must obtain agreement on these exclusions with the worker representatives, trade unions and workers concerned at establishment level. Workers excluded in terms of this paragraph will continue to receive their current rates of pay increased in line with the annual Main Agreement negotiations. The Regional Council must be notified of these exclusions.

18. In terms of the 1993 Main Agreement Settlement, none of the above arrangements will apply to Schedule G, Section (d): Structural Engineering (paragraph will be further debated with representatives of the Constructional Association).

19. **Industry training issues**
   1. Principles that should inform the Recognition of Prior Learning Process (RPL)
      The parties have agreed to the following:-
      (a) RPL is a process to give recognition to workers for the skill and knowledge that they already have. The RPL process involves assessment against agreed standards to obtain credits leading to certification.
      (b) In companies implementing the Five Grade system, all workers wishing to be assessed for the purpose of RPL in terms of unit standards required by the company for the employees’ current occupations shall be allowed this opportunity. The time-frame for this assessment shall be agreed between worker representatives and management at company level. In companies not implementing the Five Grade system, assessment for the purpose of RPL shall take place by mutual agreement.
      (c) No worker shall be obliged to participate in the RPL process.
      (d) No worker can be downgraded as a result of the RPL process.
      (e) Workers shall be assessed in a language of their own choice, insofar as this is practicable at the company concerned.
      (f) All decisions relating to the RPL process shall be decided on by the unions and employers jointly at national level.
(g) RPL is not a once-off process but is an ongoing process.

2. Training Modules: Five Grade Structure

The parties have agreed to conclude negotiations on the number of unit standards per grade, by 31 March 1998.

3. Training of Industry Employees

(i) The employer and trade union parties have agreed that workers identified in subparagraph (ii) shall have access to paid training which will provide them with career development opportunities. Such paid training shall be appropriate to the needs of the organisation and the industry.

(ii) In order to achieve this objective management shall jointly consider with worker representatives, at company level, appropriate training programmes to address identified skill deficiencies, the amount of training required and the identification of which employees require training.

(iii) The above provisions will not affect existing company-level training arrangements falling outside this framework.

ANNEXURE C

THE SKILLS DEFINITIONS ACCOMPANYING THE NEW FIVE-GRADE STRUCTURE

The prime objective of the proposed definitions is to move from the current individual task descriptions to one which defines an employee’s area and scope of work in terms of competently held skills. In other words, at the end of the restructuring period the only restriction on any employee’s work is whether he or she is formally skilled to carry out a particular task. This situation currently only exists with artisans who can be legally asked to carry out any task that lies within their discipline.

The position cannot be achieved overnight, for a number of reasons. Firstly, it will take a few years to reorganise the training infrastructure to provide for standardised modular training at all levels of the new career structure. Even if such modules were available it would not be economically feasible to bring all engineering employees up to the levels of formal skill required by the grade in which they have been placed by virtue of the current wage level. Finally, it will take a considerable period of cultural adjustment for the industry to understand the new system and take maximum productivity advantage of it.

For these reasons, it is essential that the parties see the foreseeable future (i.e. until the new industry training framework is in place) as a period of transition where it will be necessary, because of the diversity of the industry, to live in both the new and old worlds. The definitions proposed below deal with this transition by providing some broad guidelines as to the work performed by employees at each level. It is for this reason that both a skill definition and a general scope of work definition appear at each level.

Workers will not be expected to be able to perform all of the indicative tasks in a particular grade to qualify as workers in that grade. Which particular tasks workers will be required to perform is a matter for discussion between management and workers and this will be one of the determining factors in deciding whether or not the establishment will adopt the new five-grade system.

In order to fully utilise manpower resources, all employees will perform work within their skills and capabilities. To this end, employees will accept any necessary training and be prepared, after consultation, to perform tasks within their grade as the needs of the operation require.

The requirements specified under each grade in this document will be revised and amended in line with the requirements of the to-be-agreed national training framework on an ongoing basis.

Definition of terms used in these levels

Where the expression formally competent in X modules appears, this shall mean the employee has completed training modules that are recognised by the Metal and Engineering Industry Education and Training Board and, where applicable, the Plastics Industry Training Board to the specified competency standard.

The indicative tasks associated with each of the five grades will be used by the parties and the Technical Work Group in restructuring the current Main Agreement technical operations into five grades. However, specific
operations that include these indicative tasks may, by agreement of the parties at central level, be graded into either a higher or lower grade, dependent upon particular circumstances. Where agreement cannot be reached by the parties on the grading of particular operations the matter will be referred to an agreed arbitrator who will decide the matter on the basis of the skill definitions and indicative tasks contained in this document, taking into account any particular circumstances that may apply. The definitions will require examination to ensure that they conform with occupational health and safety legislation and relevant licensing arrangements.

The new skill definitions of the five-grade job structure are set out below. During the period September 1996 to January 1997 all the current job descriptions of the Main Agreement will be reclassified into five grades for utilisation by those companies where the new five-grade structure is to be implemented.

**GRADE 1**
An employee at this level will undergo an induction training period, including occupational health and safety, and perform duties that are essentially of a manual and/or repetitive nature. Minimal skill, discretion and judgement is required as set procedures generally apply and the employee works mainly under direct supervision. He or she has no supervisory responsibility.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 1 worker. Which particular tasks employees will be required to perform at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

**Indicative tasks**
The following indicative tasks apply to this grade:

- Operation of automatic machines requiring no setting beyond the location of material and running the machine. Able to carry out basic pre-start machine inspection and lubrication.
  - Operation of machines where such operation is limited to loading, setting the machine in motion, stopping and unloading the machine.
- Drilling to jigs, fixtures, stops, templetts or dimples.
- Operating automatic submerged arc or gas shielded wire or flux cored wire arc welding machines (excluding setting up), butt, flash, projection, resistance or spot or arc spot or seam stud welding machine.
- Cutting to pre-set stops, grinding and/or deburring.
- Assembly of pre-manufactured components from stock requiring no interpretation or adjustments, but including deburring.
- Identification of different products and materials used in the product process of the plant in the area in which the employee works.
- The use of basic measurement tools such as a rule, tape, slip and 'no-go' gauges, etc.
- Write labels, weigh and record.
- Operate basic materials handling equipment such as pallet truck and mechanical and fixed pendant hoists.
- Packing, stocking, loading, unloading and cleaning duties in tool and/or stock and/or materials stores directly linked to the shopfloor and/or production process.
- Operating plastic production machines, including running adjustments.
- General labouring and cleaning duties, including removal of rust or coating and boiler cleaning and oiling and greasing on non-operating machinery.

**GRADE 2**
An employee at this level is formally competent in modules and carries out work within the area and scope of this training; or is required to exercise a limited degree of discretion and judgement that may become virtually automatic with practical experience. The employee

1. works under direct supervision or functions as a member of a work team;
2. understands and utilises basic statistical process control procedures, including the measurement of output specifications; and
3. consistently meets the production and quality standards set for activities at this level.
Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 2 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

**Indicative tasks**

The following indicative tasks apply to this grade:

- Repetition work on semi-automatic or single purpose machines or equipment, including adjustment of material or tools within clearly defined limits.
- Assembles components using basic written, spoken and/or diagrammatic instruction in a mass production assembly environment, including mechanical adjustment and the identification of parts and their location.
- Basic gas welding skills not involving codes, or oxyacetylene cutting of scrap.
- Hand-welding by mechanically fed electrodes or preliminary welding or welding in fixtures (and completion of weld when removed from the fixture.)
- Operation of pre-set machines, including random checking with fixed gauges and replacement of tipped tooling.
- Use of measurement equipment related to the functions of this grade.
- Use of power-driven materials handling equipment such as a floor-operated crane, forklift and stacker (relevant license to be held where applicable).
- Use of computer to input data, produce reports and maintain database.
- Receiving locating preparing and issuing materials, tools and/or stock from requisition lists, in tool and/or stock and/or materials stores directly linked to the shopfloor and/or production process, including:
  - picking of stock;
  - checking and recording of stock; and
  - operation of materials and handling equipment.

**GRADE 3**

An employee at this level is formally competent in 'X' modules and carries out work within the scope of this training; or is required to exercise a considerable degree of discretion and judgement and demonstrate a basic analytical ability. The employee:

1. works under routine supervision or functions as a member of a work team;
2. understands and can interpret statistical process control procedures, including the measurement of output specifications and the plotting of charts; and
3. consistently meets the production and quality standards set for activities at this level.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 3 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

**Indicative tasks**

The following indicative tasks apply to this grade:

- Use of drawings and written instructions to set up machines or installation of programs in the case of numerically controlled machines.
- Complex assembly of components or sub-assemblies that may require routine adjustment.
- Basic fault-finding, basic service and lubrication on machines or products with which the employee is familiar in line with maintenance and/or quality schedules.
- Use of keyboard or hard copy to compile statistics and records of activities up to this grade.
- Ability to measure accurately, including the use of precision-measuring instruments normally used in the particular work area.
- Down hand ferrous welding in a finished run.
- Operation of multi-head oxyacetylene cutting, profiling, flame planning or bevel cutting machine.
- Setting of plastic production machines.
GRADE 4
An employee at this level is formally competent in various modules and carries out work within the area and scope of this training; or has the knowledge and skill to perform autonomous, non-routine tasks of some complexity and is required to exercise analytical, problem-solving and decision-making skills and exercise judgment acquired after considerable practice and experience.

The employee:
1. works from complex instructions and procedures and can generate reports in a fixed format on activities up to level four when required;
2. may assist in the provision of on-the-job-training;
3. works under or functions as a leader of a work team, and plans and organises activity in his or her immediate area of work;
4. consistently meets the production and quality standards set for activities at this level; and
5. uses tools and equipment within the scope of his or her training or competency.

Employees will not be expected to undertake all of the following indicative tasks to qualify as a Grade 4 worker. Which particular tasks employees will be required to undertake at this level is a matter for discussion between management and the affected employee(s). These tasks should, within reason and subject to current operational practices, not be in unrelated areas.

**Indicative tasks**
The following indicative tasks apply to this grade:
- Measure and monitor production output and quality standards within a set area or plant with available resources and equipment.
- Machinist’s work, including setting up and grinding own tools and maintaining a limited number of machines in terms of their operation and basic service (excluding toolroom).
- Marking and setting out.
- Using a computer to construct simple graphs and spreadsheets.
- Inventory and store control, including supervision of Grade 2 employees in tool and/or stock and/or material stores directly linked to the shopfloor and/or production process.

GRADE 5
An employee at this level is formally competent in various modules and carries out work within the area and scope of this training; or is normally a qualified artisan (or the equivalent thereof) who is able to exercise the skills and knowledge of a trade. He or she:
1. understands and applies quality control techniques;
2. exercises good interpersonal and communication skills;
3. exercises discretion within the scope of this grade;
4. works under plant level supervision or a part of a team;
5. performs non-artisan tasks incidental and peripheral to his or her work, including the operation of materials handling equipment and the cleaning of work areas.

**GRADING OF SUPERVISORS**
Supervisors will be graded in the grade immediately above that of the employees whom they supervise.

**Notes:**
1. In due course it will be necessary to develop further criteria for production employees who operate at an equivalent level to the qualified artisan, i.e. Grade 5.
2. The tasks listed above are merely given as an initial guide as to the types of task that are general characteristics of that particular grade.
3. Employees in any given grade may also be required to undertake work in lower grades.
4. The parties will consider the introduction of a sixth and seventh grade (above Rate A/Grade 5) during the course of the 1997/98 Main Agreement.
ANNEXURE D
PRODUCTIVITY BARGAINING

1. **Objective**
   Subject to the provisions of clause 37 of the Main Agreement, an employer, his employees, any employee representative body and any trade unions representing the affected employees may, by mutual agreement, enter into voluntary negotiations to conclude a productivity agreement with the objective of achieving measurable improvements in productivity performance and work life at company level in terms of the principles and guidelines contained in this Annexure.

2. **Productivity Guidelines**
   An opportunity exists for employers, employees, trade union representatives and other employee representative bodies to negotiate agreements, at company level, with the objective of achieving measurable improvements in productive performance, increase productivity, efficiency, effective utilisation of all resources, flexibility and other related objectives. The negotiations to achieve these objectives should be conducted in accordance with the following principles and guidelines:
   (a) No party may adopt one element of the five grade job and wage structure agreement annexed to this agreement without adopting all of the other components of that agreement, namely:
      (i) Multi-skilling/multi-tasking/flexibility;
      (ii) The five grade job and wage model; and
      (iii) Job security as set out in the five grade job and wage structure agreement.
   (b) It is however recognised, in terms of the five grade job and wage structure agreement that any job requires a degree of flexibility to meet normal operational requirements and changes. Under normal circumstances, this flexibility will therefore not, for purposes of (a) above, constitute an element of the job and wage structure agreement.
   (c) Any wage increases, benefit improvements and/or improvements to any other working conditions and conditions of employment negotiated in terms of the productivity improvement agreement must be directly linked to measures designed and agreed by the employer, employees, trade union representatives and other employee representative bodies to achieve real gains in productivity, efficiency, effective utilisation of all resources, flexibility and other related objectives. Any wage and/or benefit increases resulting from productivity gains shall be shared among the workers concerned. These gains shall be reflected separately from normal earnings. At company-level the parties shall determine how these productivity gains will be shared.
   (d) All work re-organisation and other related issues undertaken within the context of this clause shall be a matter for negotiations including new methods and approaches to work and work organisation.
   (e) Changes negotiated in terms of this procedure at the workplace, must be genuine, be in accordance with the objectives and principles of this Annexure, be designed to improve efficiency and enhance productivity and living standards without compromising health, safety and environmental standards.
   (f) It is the express intention of the parties to the Bargaining Council that the decision whether or not to negotiate and introduce productivity and efficiency improvement agreements at company level should be a voluntary one on both sides.
   (g) Any productivity agreement concluded, in terms of this agreement, shall be recorded in writing and signed by the employer, any trade unions representing the affected employees and/or employee representative body and should contain the following elements:
      (i) The parties to the agreement including any representative trade unions and employee representative bodies;
      (ii) The date of the implementation, period of operation, termination provisions and renegotiation of productivity targets where appropriate;
      (iii) Details of the relevant wage increases, bonus, benefit improvement and/or improvements to any other working conditions and conditions of employment in accordance with the terms of the productivity improvement agreement;
(iv) A commitment to the disclosure of any relevant available information appropriate to the attainment of the objectives of the productivity agreement in accordance with the provisions of the Act;

(v) A statement of intent with regard to the overall purpose and objectives of the productivity agreement.

(vi) Any relevant productivity formulae, indices, standards, targets and/or objectives appropriate to the productivity agreement;

(vii) A mechanism for evaluating the scheme on an on-going basis and for making adjustments in the light of developments and changing circumstances;

(viii) A feedback and communication system to inform employees and their representatives of targets reached, standards met and the applicable incentive rewards;

(ix) A dispute resolution procedure; and

(x) Details of how the productivity gains will be shared at company-level.

3. Any agreement entered into in terms of this section shall be submitted to the National Bargaining Council for record purposes.

ANNEXURE E
EMPLOYEE SHARE OPTION PARTICIPATION SCHEMES (ESOPS) AND THE REQUIREMENTS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT (BBBEE Act)

The parties agreed as follows:

(1) That in compliance with the objectives of black ownership targets as set out in terms of the BBBEE Act and Codes, it is desirable to consider broadening the ownership of businesses through, amongst other initiatives, the establishment of broad based employee ownership schemes (Esops).

(2) That Esops, properly implemented, can assist in the promotion of an inclusive, ownership culture and thereby contribute to the broadening of the foundation of shared interests between employees and the company.

(3) That the establishment of Esops is a voluntary choice of the shareholders in deciding how the company is to comply with the ownership criteria contained in the BBBEE Act and related Codes.

(4) That where companies decide to implement Esops the following broad guidelines are recommended for the Esop establishment process:

- That the company will develop the desired allocation, financial, legal, governance and benefit model of the Esop.
- That the parties engage in a consultative, consensus seeking process in the roll out and administration of the Esop in order to enhance the value creation, benefit realization and overall understanding of the scheme by all parties.
- That Esops should be structured on non-racial, equal allocation criteria within the bargaining unit in particular.
- That the Esop outcomes should create sustainable financial, legal, company and employee empowerment benefits that deliver long term value and savings benefits to the beneficiaries.
- That the Esop implementation process should be complemented by an effective education and communication program for the trustees and beneficiaries during both the establishment processes and the ongoing management of the trust after establishment.
That the Esop Trust should be adequately resourced with company, employee beneficiary, and independent trustees and have sufficient independent operational capacity for the Trust to be effectively managed to the highest standards of corporate governance on behalf of beneficiaries

(5) That they will engage constructively in the Esop consultative processes with the specific understanding that the establishment of employee ownership is about forging labour-management partnerships to create shared wealth, grow that wealth and enhance the understanding of all stakeholders about the value drivers of the company.

(6) Upon these guidelines being substantively agreed by the industry, organised labour specifically commits to work in partnership with the employer parties to:

(a) At industry level:

   to jointly promote in the NEDLAC Metals and Engineering Sector Summit planning committee, and any subsequent industry Codes which may emerge from this process, a customisation of the ownership portion of the scorecard contained in the DTI Codes of Good Practice, in favour of maximising ownership points to secure the full and unfettered allocated ownership points to any company in the industry that enters an employee ownership transaction in substantive compliance with the terms of this guideline

   where requested by a member company or union, to collaboratively engage parties at company level to assist in building partnerships around employee ownership solutions in a facilitated, problem solving and consultative way

   jointly market and promote consultative, partnership driven processes to establish employee ownership at company level in public and for training interventions

(b) At company level to

   support company ownership accreditation applications and lobby for the maximisation of ownership points with the relevant authorities and/or ratings agencies wherever companies have entered an employee ownership transaction in substantive compliance with the terms of this guideline

   participate positively in collaborative and joint communication and education processes to promote the understanding of employee beneficiaries of the ownership transaction.”

(inserted by G.N. R.839 dated 14 September 2007)

ANNEXURE F

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

1. INTRODUCTION

1.1 The Human Immunodeficiency Virus (HIV) and the Acquired Immune deficiency Syndrome (AIDS) are serious public health problems which, have socio economic, employment and human rights implications.

1.2 It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.

1.3 HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.

One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and program. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.

Furthermore the Code seeks to assist with the attainment of the broader goals of:

- Eliminating unfair discrimination in the workplace based on HIV status;
- Promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
- Promoting appropriate and effective ways of managing HIV in the workplace;
- Creating a balance between the rights and responsibilities of all parties; and
- Giving effect to the regional obligation of the Republic as a member of the Southern African Development Community.

The HIV/AIDS Technical Assistance Guidelines have been published by the Department of Labour and is available from all their offices.

It provides comprehensive guidelines on how to manage HIV/AIDS in the workplace.

(footnote substituted by G.N. R.1165 of 8 October 2004)

2. **OBJECTIVES**

2.1 The Code’s primary objective is to set out guidelines for employers and trade unions to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:

(i) creating a non-discriminatory work environment;
(ii) dealing with HIV testing, confidentiality and disclosure;
(iii) providing equitable employee benefits;
(iv) dealing with dismissals; and
(v) managing grievance procedures.

2.2 The Code’s secondary objective is to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1, on the following:

(i) creating a safe working environment for all employers and employees;
(ii) developing procedures to manage occupational incidents and claims for compensation;
(iii) introducing measures to prevent the spread of HIV;
(iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
(v) supporting those individuals who are infected or affected by HIV/AIDS so that they may
continue to work productively for as long as possible.

2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:

(i) between employers, employees and trade unions in the workplace; and
(ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

3.1 The promotion of equality and non-discrimination between individuals with HIV infection and those without and between HIV/AIDS and other comparable health/medical conditions.

3.2 The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.

3.3 The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.

3.4 HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programs.

3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and program.

4. APPLICATION AND SCOPE

4.1 All employers and employees, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programs to suit the needs of their workplaces.

4.2 For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.

4.3 This Code however does not impose any legal obligation in addition to those in the Employment Equity Act and Labour Relations Act, or in any other legislation referred to in the Code. Failure to observe it does not, by itself, render an employer liable in any proceedings, except where the Code refers to obligations set out in law.

4.4 The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

5.1 The Code should be read in conjunction with the Constitution of South Africa Act, No. 103 of 1996, and all relevant Legislation which includes the following:
(i) Employment Equity Act, No. 55 of 1998;
(ii) Labour Relations Act, No. 66 of 1995;
(iii) Occupational Health and Safety Act, No. 85 of 1993;
(iv) Mine Health and Safety Act, No. 29 of 1996;
(v) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
(vi) Basic Conditions of Employment Act, No. 75 of 1997;
(vii) Medical Schemes Act, No. 131 of 1998; and

5.2 The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programs in terms of the statutes listed above.

5.3 The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1 The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No. 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2 Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3 No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4 In accordance with Section 187 (1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188 (1)(a)(i).

5.3.5 In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993, an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6 Section 2(1) and Section 5(1) of the Mine Health and Safety Act, No. 29 of 1996 provides that an employer is required to create, as far as reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.7 In accordance with Section 24(2)(e) of the Medical Schemes Act, No. 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of Section 67 (1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
5.3.8 In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

6.1 No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

(i) recruitment procedures, advertising and selection criteria;
(ii) appointments, and the appointment process, including job placement;
(iii) job classification or grading
(iv) remuneration, employment benefits and terms and conditions of employment;
(v) employee assistance programs;
(vi) job assignments;
(vii) the workplace and facilities;
(viii) occupational health and safety;
(ix) training and development;
(x) performance evaluation systems;
(xi) promotion, transfer and demotion;
(xii) disciplinary measures short of dismissal; and
(xiii) termination of services.

6.2 To promote a non-discriminatory work environment based on the principle of equality, employers and trade unions should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

(i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programs for the workplace;
(ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
(iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
(iv) providing support for all employees infected or affected by HIV and AIDS; and
(v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1 HIV Testing

7.1.1 No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee’s HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2 Whether Section 7(2) of the Employment Equity Act prevents an employer provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts.
The Employment Equity Act does not make it a criminal for an employer to conduct a test in violation of section 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the CCMA for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

7.1.3 In implementing the sections below, it is recommended that parties take note of the position set out in item 7.1.2.

7.1.4 Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

(i) during an application for employment;
(ii) as a condition of employment;
(iii) during procedures related to termination of employment;
(iv) as an eligibility requirement for training or staff development programs; and
(v) as an access requirement to obtain employee benefits.

7.1.5 Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

(i) as part of a health care service provided in the workplace;
(ii) in the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
(iii) for the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

(i) at the initiative of an employee;
(ii) within a health care worker and employee-patient relationship;
(iii) with informed consent and pre-and post-test counseling, as defined by the Department of Health’s National Policy on Testing for HIV; and
(iv) with strict procedures relating to confidentiality of an employee’s HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health’s National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No.116 of 1990.

7.1.7 Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research. Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person’s HIV status can be deduced from the results.

3 See amongst others the Department of Health’s National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

Confidentiality and Disclosure

7.2.1 All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2 Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee’s express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

7.2.3 Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:

(i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programs;
(ii) encouraging the development of support groups for employees living with HIV or AIDS;
(iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

PROMOTING A SAFE WORKPLACE

8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.

8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and the Mine Health and Safety Act, and that its policy deals with, amongst others:

(i) the risk, if any, of occupational transmission within the particular workplace;
(ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
(iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
(iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
(v) the procedures to be followed in applying for compensation for occupational infection;
(vi) the reporting of all occupational accidents; and
adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

9.1 An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

9.2 Employers should take reasonable steps to assist employees with the application for benefits including:

(i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and

(ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

9.3 Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

10.1 Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits.

10.2 Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.

10.3 Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.

10.4 Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

11.1 Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.

11.2 Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee’s services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

11.3 The employer should ensure that as far as possible, the employee’s right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.
12. GRIEVANCE PROCEDURES

12.1 Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.

12.2 Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

12.3 Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

13.1 The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst other, the following elements:

13.1.1 An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2 Long and short term measures to deal with and reduce this impact, including:

(i) An HIV/AIDS Policy for the workplace
(ii) HIV/AIDS Programs, which would incorporate:
   (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
   (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
   (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

14.1 Employers and trade unions should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in co-operation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2 Broadly, impact assessments should include:

(i) Risk profiles; and
(ii) Assessment of the direct and indirect costs of HIV/AIDS.

14.3 Risk profiles may include an assessment of the following:

(i) The vulnerability of individual employees or categories of employees to HIV infection;
(ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migration or hostel dwellings);
(iii) A profile of the communities from which the organisation draws its employees;
(iv) A profile of the communities surrounding the organisation’s place of operation; and
(v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

(i) Direct costs such as to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS program;

(ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption.

The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment.

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1 A Workplace HIV/AIDS Policy

15.1.1 Every workplace should develop an HIV/AIDS policy, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

(i) the organisation’s position on HIV/AIDS;
(ii) an outline of the HIV/AIDS program;
(iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance and procedures to be followed to determine medical incapacity and dismissal);
(iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
(v) grievance procedures in line with item 12 of this Code;
(vi) set out the means of communication within the organisation on HIV/AIDS issues;
(vii) details of employee assistance available to persons affected by HIV/AIDS;
(viii) details of implementation and co-ordination responsibilities; and monitoring and evaluation mechanisms.
(ix) Monitoring and evaluation mechanisms.

This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

15.1.2 All policies should be developed in consultation with key stakeholders within the workplace including trade unions, employee representatives, occupational health staff and the human resources department.

15.1.3 The policy should reflect the nature and needs of the particular workplace.

15.1.4 Policy development and implementation is a dynamic process, so the workplace policy should be:

(i) communicated to all concerned;
(ii) routinely reviewed in light of epidemiological and scientific information; and
(iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2 Developing Workplace HIV/AIDS Programs

15.2.1 It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS program aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.
15.2.2 The nature and extent of a workplace program should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace program should attempt to address the following in co-operation with the sectoral, local, provincial and national initiatives:

(i) hold regular HIV/AIDS awareness programs;
(ii) encourage voluntary testing;
(iii) conduct education and training on HIV/AIDS;
(iv) promote condom distribution and use;
(v) encourage health seeking behaviour for STDs;
(vi) enforce the use of universal infection control measures;
(vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
(viii) endeavour to establish a wellness program for employees affected by HIV/AIDS;
(ix) provide access to counseling and other forms of social support for people affected by HIV/AIDS;
(x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
(xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4;
(xii) regularly monitor, evaluate and review the program.

15.2.3 Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psychosocial facilities within the community, if such services are not provided at the workplace.

16. INFORMATION AND EDUCATION

16.1 The Department of Labour should ensure that copies of this code are available and accessible.

16.2 Employers and employer organisations should include the Code in their orientation, education and training programs of employees.

16.3 Trade unions should include the Code in their education and training programs of shop stewards and employees.

GLOSSARY

Affected employee: an employee who is affected in any way by HIV/AIDS e.g. if the have a partner or a family member who is HIV positive.

AIDS: AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.

Epidemiological: the study of disease patterns, causes, distribution and mechanisms of control in society.
HIV: HIV is the acronym for “human immuno deficiency virus”. HIV is a virus which attacks and may ultimately destroy the body’s natural immune system.

HIV testing: taking a medical test to determine a person’s HIV status. This may include written or verbal questions inquiring about previous HIV tests, questions related to the assessment of risk behaviour (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee or job applicant’s HIV status.

HIV positive: having tested positive for HIV infection.

Infected employee: an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.

Informed consent: a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.

Policy: a document setting out an organisation’s position on a particular issue.

Pre and post test a process of counseling which facilities an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.

Reasonable means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.

STD’s: acronym for “sexually transmitted diseases”. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhea and HIV.

Surveillance testing: This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

(new Annexure F inserted by Government Notice R.1051 of 20 October 2001)

ANNEXURE G:
ATTENDANCE OF WORKER REPRESENTATIVES ON NATIONAL AND REGIONAL BARGAINING COUNCIL COMMITTEES

Substitute the following for the existing Annexure:

- The employer and trade union parties agree that it is important that workers representatives, appointed by the unions to serve on the Bargaining Council National and Regional Committees, should participate at that level.

- To this end the trade unions will by 31 January of each year, notify the Council Secretary in writing of the names and contact details of the union worker representatives appointed to serve on these National and Regional Committees.
• The Council will maintain a register of these union representatives.

• The Council will, during February each year, notify the companies concerned of the appointment of their employees onto the specific Bargaining Council Committee/s and of the scheduled meeting dates of the committee/s for the year ahead.

• Where the company is unable, for operational or other valid reasons to accept the absence of the employee on the dates concerned it shall immediately communicate with the Council in order that the problem be addressed. The Council Secretary may call upon a senior trade union official and employer representatives to assist in attempting to achieve an amicable resolution of the problem, including meeting with the employer in order to address the specific problems identified.

• Absence from the workplace to attend each scheduled meeting must be based on reasonable prior notice of the meeting to the employer supported by the presentation of the Agenda of the Meeting by the worker representative.

• An employee who is an office bearer of a party trade union, is entitled to take reasonable leave during working hours for the purposes of performing the functions of that office.

• The party trade union and the employer may agree to the number of days of leave, the number of paid leave and the conditions attached to any leave.

• A trade union representative will be entitled to a minimum of 10 days leave per annum for purposes of performing his/her duties.

• This provision constitutes a minimum floor of rights any current rights at plant level exceeding these will remain in force.

• As far as it is practicably possible to do so, the trade unions will endeavor to ensure that employers are not unnecessarily prejudiced by the obligations of any one shop steward being unnecessarily burdened with representational and/or trustee duties resulting in unreasonable absences from work.

• The representative’s traveling and accommodation expenses will be borne by the Council.

(.substituted by Government Notice R.1051 dated 24 December 2014)

“ANNEXURE H:

CONSTRUCTION SITES COVERED BY A PROJECT LABOUR AGREEMENT

1. General provisions:

1.1 The provisions of this Annexure are confined to employers and employees operating on multi-disciplinary construction sites (i.e. sites where metal, electrical contracting, piping, civil and building activities are being undertaken) where a Project Labour Agreement (PLA) or equivalent agreement has been negotiated, or an exemption to apply these provisions to a specific construction site has been granted by a national committee representing the signatories to this Annexure and the Council.

1.2 The provisions of this Annexure shall only be applied to a construction site where a Project Labour Agreement or equivalent has been negotiated or where an exemption to apply these provisions has been granted by a national committee
1.3 The aim of this section is to ensure commonality of conditions of employment between the various industries working together on a construction site.

1.4 For the purposes of this section “construction site” within the context of the provisions of sub clause 1.1 above means an area where:

(a) A structure including but not limited to a building, a plant, a pipeline, and a tower is being erected or built; and/or

(b) Refurbishment, overhaul, maintenance, alteration upgrading etc of an existing structure referred to in (a) above.

(c) Shipbuilding and/or ship repair work is specifically excluded from the definition of “construction site”.

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

1.5 “Project Labour Agreement (PLA) or equivalent agreement” means an agreement entered into between the parties concerned regulating specific conditions applicable to the specific construction site concerned, including the agreed wage structure.

1.6 In order to ensure flexibility and commonality on construction sites, the parties may agree in a PLA to:

- Work normal time of up to 45 hours per week;
- Structure the working week;
- Pay Sunday time as normal time until the normal working hours have been made up

1.7 The standard wage rates payable to the scheduled employees reflected on the schedule herein, on a specific construction site will be subject to the provisions of clause 1.1 above.
ANNEXURE H: SPECIAL PROVISIONS RELATED TO CONSTRUCTION SITES COVERED BY A PROJECT LABOUR AGREEMENT (PLA)

Substitute the following for item 1.8:

A. FROM THE COMING INTO OPERATION OF THIS AGREEMENT TO 30 JUNE 2015

“1.8 Any person who is able to demonstrate that he/she has obtained previous knowledge and skills of working on a construction site, and is able to perform work in a higher grade, and subject to such work being available may not be employed in Grade (a), Grade 1 and Grade 2 and on the rates herein unless the employee elects otherwise. The period that an employee may be remunerated on Grade 1(a) and 2(a) rates will be the subject of a PLA, but shall not be longer than 4 months.

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B. FOR THE PERIOD 1 JULY 2015 TO 30 JUNE 2016

Substitute the following for item 1.8:

“1.8 Any person who is able to demonstrate that he/she has obtained previous knowledge and skills of working on a construction site, and is able to perform work in a higher grade, and subject to such work being available may not be employed in Grade (a), Grade 1 and Grade 2 and on the rates herein unless the employee elects otherwise. The period that an employee may be remunerated on Grade 1(a) and 2(a) rates will be the subject of a PLA, but shall not be longer than 4 months.

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C. FOR THE PERIOD 1 JULY 2016 TO 30 JUNE 2017

Substitute the following for item 1.8:

1.8 Any person who is able to demonstrate that he/she has obtained previous knowledge and skills of working on a construction site, and is able to perform work in a higher grade, and subject to such work being available may not be employed in Grade (a), Grade 1 and Grade 2 and on the rates herein unless the employee elects otherwise. The period that an employee may be remunerated on Grade 1(a) and 2(a) rates will be the subject of a PLA, but shall not be longer than 4 months.

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(Substituted by G.N. r.1051 DATED 24 December 2014)

1.9 Any PLA in existence at the date of coming into operation of this Agreement shall remain valid until expiry of that Agreement.

2. Inclement weather:

2.1 Whenever the prescribed ordinary hours of work are reduced on account of inclement weather, it will be dealt with as follows:

2.1.1 If work is not possible any time during the first four (4) hours of work due to inclement weather then four (4) hours will be paid provided that the employee has reported for work;

2.1.2 If work is not possible any time after four (4) hours due to the inclement weather, the actual hours worked for that day will be paid;

2.1.3 If employees are informed the day before not to report for work on that or subsequent days because work will not be possible due to inclement weather, then no payment will be made for that day/s;

2.1.4 In cases where work can continue under cover, the provisions of this clause shall not apply;
2.2 Notwithstanding the above, employees shall be paid not less than 66% of their weekly wage, irrespective of the number of hours by which the hours for that week were reduced due to inclement weather.

3. Retirement benefit funds:

3.1 Employees engaged on limited duration contracts of employment during their first consecutive 12 months of employment with the same employer are not required to contribute to the Industry\'s benefit funds. In these circumstances the employer is required to provide death and disability cover through the Industry\'s benefit funds to these employees.

3.2 Where these employees have been in the continuous employ of the same employer for more than 12 months then they must participate in the Industry\'s benefit funds. (Annexure H substituted by Government Notice R.77 of 2 February 2007)

ANNEXURE I

INDUSTRY POLICY FORM

1. Preamble

As signatories to the Industry Settlement Agreement reached on the 18th July 2011, the union and employer parties having noted the significant challenges facing the Metal and Engineering Industry in the context of the imperative of creating and sustaining decent jobs and competitive manufacturing capability in the domestic and global market, have agreed to establish an Industry Policy Forum (hereinafter referred to as the IPF) under the auspices of the MEIBC. The parties have further agreed that in referring the matters contained in this document to the IPF, each party reserves its right to negotiate on the said matter in the IPF.

2. Definition and objectives

The IPF will be tasked with having the mandate of securing agreement between the parties on changes required to promote the growth and viability of the industry as a key contributor to SA\'s growth, investment and employment objectives.

The purpose of the Forum shall be to provide leadership and to serve the common good of the Metal and Engineering Industry and all its stakeholders in the furtherance of the following key goals and objectives:

- Formulate an overall strategy aimed at securing the sustainability and growth of all industry stakeholders.
- Formulate an industry view on national industrial and trade strategy.
- Become a leading role-player in the national discourse on national economic policy.
- Promote international trade and provide assistance to neighbouring states as they develop their industrial policies.
- Develop employment retention and job creation programs.
- Facilitate the allocation of industry funds.
- Promote the well-being of all employees and employers in the industry.
- Implement programmes and strategies aimed at reducing the cost of living for employees,
improving their standard of living and reducing the cost of business in the industry.

- Formulate strategies to secure the increased allocation of Merseta funds for skills training and bursaries and mechanisms to secure access to funds from national Skills Fund.
- Identify industry challenges and threats and devise appropriate strategies to positively address these.
- Any other jointly agreed objectives and strategies aimed at the common good of the industry and all its stakeholders.

3. Terms of reference

Without limiting the scope of issues the parties will need to address in the IPF, the following matters will be addressed as part of the mandate of the committee:

- **Strategies to promote job retention and employment creation**
  
  To investigate and seek consensus on all those factors that contribute to the decline of the industry in terms of output, employment, contribution to the GDP etc. To design strategies and implementation plans to grow investment, skills jobs and markets.

- **Strategies to modernize and transform the MEIBC**
  
  To develop strategies and implementation plans that secure the long term future of the council parties on a level playing field that is globally competitive.

- Legal compliance
- Grading and new entry level minimum rates
- Small business
- Regional dispensation
- Exemptions
- Clause 37
- House Agreements
- Demarcation
- Any other relevant policy

- **Industrial and Trade Policy**

  To develop strategies and implementation plans and secure the consensus of the appropriate stakeholders on such matters as:

- Trade and tariff policies
- Steel pricing policies
- Importation of steel products by parastatals
- Export opportunities and demand site measures
- National power and water challenges
- Transport logistics
- Any other relevant policy

- **Rationalization and optimization of industry institutions**

  To develop strategies and implementation plan to optimize the use of industry funds to achieve improvements in:

- Employment housing
4. **Composition, Meetings and timeframes**

Composition of the forum will be two representatives per party.

The forum will invite relevant government department representatives on matters requiring government support as the parties deem appropriate.

Meetings will be convened by the CEO of the MEIBC within a month of the finalization of the Main Agreement negotiation.

The parties will determine their own work program, schedule and time table inclusive of:

- Determination of issues
- Alignment of issues with MEIBC forums and processes
- Prioritization of issues
- Time frames for delivery
- Resources required
- Meeting schedules
- Administrative support
- Reporting mechanisms
- Other

5. **Resourcing and research capacity**

To investigate the need and resource appropriately the MEIBC to create the capacity to deliver and inform and well researched set of strategies, policies and implementation plans to affect the work of the IPF

6. **Dispute resolutions**

The parties will use MEIBC dispute resolution procedures.

*(Annexure I inserted by Government Notice R.268 dated 12 April 2013)*
ANNEXURE J.  FUTURE OF COLLECTIVE BARGAINING

The parties have considered the effectiveness of Section 37 of the MA and agreed that the viability and sustainability of the collective bargaining structures and processes is under threat from two key socio-economic forces. These forces are the enhanced requirement for increased company competitiveness in the context of de-industrialisation through the globalization of manufactured goods and the urgent need to address the social living conditions of employees in the context of enhanced labour market instability, and environment made worse by both inequality and poor social service delivery.

The parties believe that in order to develop company competitiveness to deliver long term job security and human dignity in employment and living conditions, the parties need to urgently review the architecture of collective bargaining in the engineering, metals and related broader automotive supply chain industries.

To this end the parties agree to review collective bargaining in a consultative process with the parties to MEIBC, MIBCO, NTMIBC and ANBF on the following, non-exclusive, list of items:

1. Levels of bargaining and what to bargain at which level, including scheduled and actual rates and the bargaining cycle and processes.
2. A rational value chain based bargaining systems covering the metal, engineering, motor component and assembly industry.
3. Socio-economic issues as they impact on employees’ rights to humane living conditions.
4. Productivity and performance issues as they impact on the employer competitiveness.
5. Exemption processes and procedures.

It is agreed by the parties that the purpose of this engagement process is to find consensus over a three year period of discussions to design and implement an entirely new collective bargaining dispensation for the said industries for implementation in 1 July 2017. This new dispensation must be founded on promoting enhanced employee benefits and human dignity aligned through structures and processes that facilitate a growing and competitive manufacturing sector.

The composition of the Collective Bargaining Dispensation Forum (CBDF) will be agreed to between the parties. The CBDF will invite relevant government department representatives on matters requiring government support as the parties deem appropriate.

Meetings of the Collective Bargaining Forum (CBDF) will be convened by the MEIBC and will take place in the Industry Policy Forum structure, not later than three months after the finalization of the Main Agreement negotiation.

The parties will determine their own work program, schedule and timetable provided that the parties commit to engage with all other affected parties to have the new collective bargaining dispensation agreed for implementation by the time of the expiry of this agreement.

(inserted by Government Notice R.1051 dated 24 December 2014)
**ANNEXURE K: NATIONAL EXEMPTIONS POLICY**

Insert the following new Annexure:

**METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL**

**NATIONAL EXEMPTIONS POLICY**

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EXEMPTIONS POLICY

1. **Introduction**

1.1 The purpose of this document is to set out the policies which will apply to the consideration of applications for exemptions.

1.2 Each Regional Council should determine the appropriate level at which exemption decisions will be made and may choose to implement one of the following approaches in this regard:

   1.2.1 Determine the specific types of exemption applications which the Regional Office may deal with and those which must be referred to the Regional Council for decision; or

   1.2.2 Determine that all exemption applications must be dealt with by the Regional Council or an appointed sub-committee of the Regional Council.

1.3 Exemptions shall be dealt with within 45 days of receipt thereof.

1.4 Where the Regional Office is given the authority to deal with a specific exemption application and an appeal is lodged against the Office’s decision then this appeal must be referred to the Independent Exemptions Appeal Board.

1.5 An appeal lodged against a decision by the Regional Council must be referred to the Independent Exemptions Appeal Board for final decision.

1.6 Exemption applications must be considered on the basis of criteria established by the Management Committee in order to ensure consistency in the granting or refusing of exemption applications and in accordance with the provisions of Clause 23 of the Main Agreement.

1.7 Regional Councils wishing to apply other criteria to address specific regional situations must make specific recommendations in this regard to the Management Committee to obtain approval prior to implementing the desired criteria.
1.8 Reasons for granting or refusing an application shall be recorded and retained by the Regional Office. The applicant must on request be supplied with reasons for refusal of an application for exemption.

1.9 The Council may withdraw the exemption at its discretion.

2. **Fundamental Principles**

The following are fundamental principles which are legal obligations imposed on the Council by its Agreements and which will also be applied by the Independent Exemptions Appeal Board (IEAB).

2.1 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, for consideration by the Council. Supporting documentation and details of consultations shall be submitted in accordance with the requirements as set out in the Application form.

2.2 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.

2.3 The exemption shall not contain terms that would have an unreasonably detrimental effect on the fair, equitable and uniform application of the Main Agreement in the Industry.

2.4 Wage and wage related exemptions should not generally be granted beyond the expiration of the agreement provided that the Council may at its discretion and on good cause shown agree to a longer period (but not an indefinite period)

2.5 The employer must consult with the work force, through a trade union representative or, where no trade union is involved, with the work force itself, and must include the views expressed by the work force in the application.

2.5.1 Where the views of the work force differ from that of the employer, the reasons for the views expressed must be submitted with the application.

2.5.2 Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application.
2.6 The authority of the Council is to consider applications for exemption. In the event of an appeal against the decision of the Council, the Secretary will on receipt of the appeal submit it to the IEAB for consideration and finalisation.

2.7 Retrospectivity

Applications for exemption involving monetary issues may not be granted retrospectively.

2.8 Urgent applications

2.8.1 In cases of urgent applications, details may be faxed, e-mailed or delivered to the Council in the region where the applicant is located.

2.8.2 The Council or Chairperson and Vice Chairperson and Regional Manager will consider the application, make a decision and communicate that decision to the applicant without delay.

The decision will be ratified and minuted at the next meeting of the Council.

2.8.3 The applicant is expected to put forward a substantive explanation as to the urgency of the application.
3. **Small Business Exemption Policy**

Exemptions in this category will be granted for a period not exceeding 36 months. The exemption shall be in respect of the entire Main Agreement or in respect of specified clauses of the Main Agreement but shall not apply to any other collective agreement of the Council.

The Council will consider applications on merit taking into account one or more of the following factors:

3.1 That the business is not a subsidiary of another company;

3.2 It employs no more than ten *scheduled employees; *(A scheduled employee is an employee engaged in production related activities and whose job is contained in Part II of the Main Agreement)

3.3 It has been operating for a period of less than three years;

3.4 It is able to show that such an exemption will enable it to retain existing jobs or create additional jobs in the firm. This particular factor must be covered in the motivation;

3.5 The financial situation of the business;

4. **Struggling Business Exemptions**

4.1 Application for exemption or deferment of implementation from specified provisions of the Main Agreement will be dealt with after giving consideration to the following:

4.1.1 clear evidence of financial difficulties including:

4.1.1.1 the most recent set of annual financial statements and auditor’s report signed by the auditor (or accounting officer in the case of CC’s);

4.1.1.2 management accounts covering the period from the date of the above financial statements to two months prior to the date of application;
4.1.2 An explanation of the difficulties being faced by the company.

The exemption will be valid for a period of one year and any extension will require re-application.

5. Application for deferral of compliance with an agreement:

5.1 Application for exemption for deferral of compliance with one or more of the following:
- The guaranteed personal increases;
- The lump sum wage adjustment;
- Payment of Leave Enhancement Pay;

must be accompanied by:

5.1.1 A detailed motivation for the application.

5.1.2 An indication of the date by which full compliance is expected which must not be later than the expiry of the agreement in question.

5.1.3 The written agreement where an agreement between the employer, registered trade union and the workforce is reached.

6. Labour Broker Package Rate Exemptions

6.1 The Council may at any time after prior notification, withdraw the exemption either wholly or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption.

6.2 The exemption shall apply only in respect of workers supplied to clients by the labour broker within the meaning of the provisions dealing with labour broking in the Labour Relations Act, No. 66 of 1995.

6.3 The exemption shall apply only in respect of a worker with whom the labour broker has entered into a written site contract of employment in the same form as the contract incorporated herein (Refer Annexure 2) and only for the duration of the mentioned site contract.

6.4 Any matter not dealt with in the mentioned contract, whether through mere omission by one or both the parties to the contract or for whatever other reason, shall not be regulated by the exemption but shall be regulated in terms of the relevant provision dealing with the matter in the industrial agreements.

F.E.P. 2
6.5 The exemption shall only apply if the labour broker has complied and continues to comply with the registration requirements prescribed in Clause 20(3) of Outwork, Temporary Employment Services and Limited Duration Contracts of the Main Agreement applicable in the Industry.

6.6 A signed copy of the prescribed contract entered into shall be made available to the worker concerned, on the worker's request, or his representative's request and a copy thereof shall be retained in the employer's filing system.

6.7 The worker shall be paid a minimum package rate per hour consisting of:

i) An amount of not less than the prescribed minimum hourly rate in the Main Agreement for his class of work to which shall be added an amount in respect of each of the following items. The amount shall be calculated using the percentages of the actual basic wage rate as given below.

ii) Overtime (based on the table annexed hereto as Annexure 1 and to be determined in terms of the overtime requirements of each separate site/project).

iii) Leave pay : 6.4% of the actual basic wage rate
iv) Leave enhancement pay : 8.3% of the actual basic wage rate
v) Public holiday : 5.1% of the actual basic wage rate
vi) Sick leave : 4.3% of the actual basic wage rate
vii) Family responsibility leave : 1.28% of the actual basic wage rate.

6.8 The labour broker shall be liable for and pay over to the Council in respect of each worker an amount per hour (which is limited to the maximum working hours per week as per the Main Agreement) consisting of:

i) A contribution to the Industry Retirement Funds of 13.2 per cent of the employee's pensionable remuneration. (See note below).

ii) A Council administration contribution of R1.18 per week or part thereof per employee, subject to the condition that if the total amount payable in respect of the Council administration contributions is less than the minimum monthly payment required from each employer in terms of the Council's Registration and Administration Expenses Agreement, the labour broker shall make up the difference and forward the total amount to the Council.

F.E.P. 2
NOTE: For the purpose of this exemption pensionable remuneration is defined as being the employees actual total remuneration excluding only overtime pay, leave enhancement pay and allowances.

Pensionable remuneration therefore includes, in addition to the actual basic rate of pay, payment for sick leave, family responsibility leave, annual leave, public holidays and all bonuses other than the leave enhancement pay. This definition is consistent with the definition in the Industry Fund Agreements.

6.9 The provisions of the respective industrial agreements regulating payment and application of contributions in respect of Provident Fund, and the administration expenses of the Council shall, in so far as they are not inconsistent with the provisions of this Agreement, apply in respect of the contributions payable in terms of subclause 6.8 of this exemption and shall prescribe the times of payment, the addresses at which payment must be made, and the payment of interest on late payments.

6.10 Provident fund contributions shall be accompanied by a form prescribed from time to time by the Council wherein shall be specified the full amount payable and in respect of each worker:

i) His/her full name;
ii) His/her identity number;
iii) the period in respect of which the contributions are being made;
iv) the amount of contributions;
v) the classification of the workers work.

6.11 Council administration contributions shall be accompanied by a form prescribed from time to time by the Council wherein shall be specified:

i) the period in respect of which contributions are being made;
ii) the number of employees in respect of whom contributions are being made;

iii) the full amount payable.

6.12 The exemption shall be granted for the period of the limited duration contract entered into with the employee or for a period determined by the Council whichever is the earlier.

F.E.P. 2
7. **Labour Broker Fund Exemptions**

7.1 Definition
Construction site is defined as:

(a) an area, excluding a manufacturing environment, where a structure (which may be, but is not limited to, a building, ship, plant, pipe line, or tower) is being erected or built; and/or

(b) an area where refurbishment of, or alterations to, an existing structure, plant etc. (as defined in 7.1(a) above) is being carried out; and/or

(c) an area where a plant is temporarily shut down for the purpose of overhaul, maintenance, alteration, upgrading etc.

7.2 All labour brokers employees engaged on "construction site" (as defined above) must receive death and disability insurance cover throughout the period of employment.

7.3 All labour brokers employees engaged on construction sites, whose contract/s with labour brokers together extend for a continuous period of twelve months or longer, must join, and contribute to, the Industry provident fund.

7.3 Irrespective of the length of their contract/s, all labour broker employees, engaged on construction sites, must be given the option of joining the Industry provident fund:

(a) the said employee must be given the option in writing, setting out the consequence, in respect of their wage, of joining or of not joining the Industry provident fund;

(b) the said employee must exercise his/her option and clearly indicate this in writing;

(c) should the said employee elect not to join the Industry provident fund, his/her wage must be increased by the employer contribution of 3%, which would have been paid to the fund less applicable administrative and death or disability insurance costs.

7.5 All labour broker employees, engaged on construction sites, and who are members of the Industry provident fund, must be given the option of withdrawing from the fund once his/her contract expires:

F.E.P. 2
Such a labour broker employee should be entitled to the value of their own contributions plus those of the employer, less applicable administrative and death or disability insurance costs.

7.6 Exemptions

All labour brokers wishing to follow the procedure set out in Clauses 7.1 to 7.5 above, will be required to request exemption from the existing MEIBC retirement funding requirements:

(a) such exemption shall be granted for an indefinite period, until withdrawn by the MEIBC.

(b) in order to retain their exemption, individual labour brokers must have:

   (i) a review of the degree of their adherence to the requirements of this proposal, completed by an independent auditor on a six monthly basis (January to June and July to December);

   (ii) a satisfactory report (as detailed in Annexure 3) on the results of this review submitted by the auditor directly to the MEIBC, within two months of the above period ending.

8. Pension, Provident and Sick Pay Fund Exemptions

The criteria for determining exemptions from industry benefit funds are as follows:

8.1 Total contributions must be at least equal to those required in terms of the industry Fund Agreement.

8.2 Contribution holidays are to be specifically excluded from proposed rules of Defined Benefit Funds.

8.3 Overall benefit package must be on the whole not less favourable than the benefits provided by MIPF/EIPF and Sick Pay Fund with particular emphasis on the following:

   8.3.1 Proportion of employer net contributions paid out on withdrawal;

   8.3.2 The right to transfer actuarial reserve to EIPF/MIPF on withdrawal;

   8.3.3 Cover for death and disability;
8.3.4 In the case of Defined Benefit funds the basis on which the pension is calculated;

8.3.5 In the case of the Provident and Defined Contribution funds, the net percentage of the employers’ and employees’ salary actually credited to the fund after allowing for deduction of administration fees and the cost of insured benefits.

8.3.6 There must be no waiting period for membership of the fund.

8.4 Funds’ representatives are to be given the opportunity to address management and the workforce prior to exemption being considered.

8.5 The majority of the employees must support the application for exemption and the remainder will be required to follow the majority decision. Exemption will only be given in respect of all employees in order to avoid selective membership to the disadvantage of the Industry funds.

8.6 Where the employees are members of a party trade union, the trade union must support the application.

8.7 The exemption must stipulate that it may be withdrawn should circumstances warrant it.

8.8 Employees are to be represented on the Board of Trustees of the domestic fund by representatives elected by them.

8.9 Benefits may not be reduced.

8.10 Full details will be submitted to the Fund Administrators (MIBFA) and a recommendation obtained.

9. **Exemptions from payment of interest**

9.1 Applications for exemption from payment of interest levied on payment of fund contributions which are in arrears must be submitted to the Regional Council for consideration.

9.2 Applications will be considered by the Regional Council Committee.

9.3 Applications must be accompanied by the reasons as to why the payment of funds is in arrears.
10. **Ship Building and/or Ship Repair Work**

Employment in terms of a contract of employment that specifies that employment is for the duration or portion thereof of a specific contract secured by the employer to carry out repairs on a particular vessel.

**Ship Building and Ship Repair Exemption**

1. An employer engaged in ship, oil rig and related vessel building and/or repair activities, whether undertaken on ships, oil rigs or related vessels, in a ship-yard, or in an establishment not situated in the shipyard but directly related to and directly associated with such activities, may apply to the bargaining council for exemption to apply the bargaining council’s package rate exemption or any other form of wage exemption to employees engaged on Limited Duration Contract of employment that specify that employment is for the duration or portion thereof of a specific contract secured by the employer to build or to carry out repairs on a particular vessel, ship or oil rig.

2. The provisions of clause 1 shall be limited in its application to employees engaged in ship building and/or repair activities only and shall not apply to employees engaged in a workshop on Main Agreement activities.

3. Any employee engaged on a LDC in a workshop on Main Agreement activities who is subsequently re-deployed to undertake ship building and/or repair activities in terms of a new LDC may be so employed on a package rate exemption or any form of wage exemption as applied for by the employer whilst so employed in these activities.

4. The parties engaged in a ship building or ship repair project may choose to enter into a Project Labour Agreement (PLA) or equivalent agreement regulating specific conditions applicable to the project in terms of the provisions of Annexure H of the Main Agreement or apply for exemption to apply the visions of the Annexure.

5. In the event of inclement weather being of such serious nature as to Prevent any ship building or repair work being undertaken anytime during the first four hours of work, then that work should continue under cover. Where this is not practically possible, then four hours’ wages will be paid to the employees concerned.

F.E.P. 2
6. Subject to 7 below, employees engaged on limited duration contracts of employment during their first consecutive 12 months' employment with the same employer are not required to contribute to the Industry's benefit funds. Under these circumstances, the employer is required to provide death and disability cover through the industry's benefit funds to these employees. Where these employees have been in the continuous employ of the same employer for more than 12 months then they must participate in the industry's benefit funds.

7. The abovementioned contribution arrangement shall not apply where an employee chooses to participate in the industry's pension or provident fund during his or her first 12 months' employment with the same employer.
APPLICATION FOR EXEMPTION QUESTIONNAIRE
[Section 23 of the Council’s Main Agreement]

DATE OF THIS APPLICATION ..................................................................................

PART 1. REGISTRATION DETAILS:
1. 1. Council Registration Number.................................................................
1. 2. Date the firm was Registered with the Council........................................
1. 3. Name of firm...........................................................................................
1. 4. Address of firm........................................................................................
1. 5. Telephone Number F ax Number ............................................................
1. 6. E-mail Address........................................................................................
1. 7. Contact person........................................................................................
1. 8. Name of Employer Organization..............................................................
1. 9. Activities of firm....................................................................................... PART 2. LABOUR DETAILS:
2. 1. Total Number of Employees.................................................................
2. 2. Total Number of Scheduled Employees...................................................
2. 3. Name/s of Trade Union/s involved..............................................................
2. 5. If No, please specify the % of the Rates presently being paid..............
PART 3. EXEMPTION DETAILS:

3.1. Specify Exemption applied for..............................................................

3.2. Are any Director/s – Member/s – partner/s – owners/s of the firm a Shareholder in any other Business?  If yes please specify..........................

3.3. Specify by ticking, whether the Exemption will affect [Workshop] [Site] [all Employees].

3.4. Have Trade Union/s been consulted?  [Yes]  [No]  [NA].

3.5. Date of consultation/s..............................................................................

3.6. Did Trade Union/s support the Application?  [Yes] [No] [NA].  If not, why?

3.7. Have affected employees been consulted?  [Yes]  [No].

3.8. Did affected Employees support the Application?  [Yes] [No]. (If not, attach reasons thereto)

3.9. Has the following been attached to this Application?

3.9.1. Minutes of Meetings with Employees and Trade Union?  [Yes]  [No]

3.9.2. Name & signatures of Trade Union Official/s and employees who attended the meeting?  [Yes]  [No]
3. 11. Has the firm during the past 12 months had to institute (please tick)
[short time] [lay off] [retrenchment] Please supply details (eg:
specify date/s – period/s and number of employees affected............

3. 12. Are the firm’s levy and retirement benefit contributions paid up to
date?  If not, please state reason............................................
If yes, please attach Bank Deposit Slips as proof of payment.

3. 13. Audited Financial Statements for the financial year and Auditors
Report together with Balance Sheets and Income Statements for
the three months immediately prior to the application

3. 14. MOTIVATION:  an explanation of the difficulties being faced by the
firm. Please attach to the Exemption Application Questionnaire. If
no Motivation is attached to the Application, the request will not be
considered.

3. 15. BUSINESS PLAN:  give dates – amounts – percentages and the
period it will take for the firm to comply with the latest Main
Agreement Minimum Rates of Pay, having regard for annual
increases effective from 01 July. Please attach to the Exemption
Application Questionnaire. If no Business Plan is attached to the
Application, the request will not be considered.

PLEASE NOTE:

1. All relevant documentation pertaining to the Application MUST be
attached in order to ensure an expeditious reply. If any Section of this
document is NOT completed or any document/s is not attached, the
Council will not consider the Application.
2. The details reflected in this document have been provided by the employer or person so designated as true and correct to the best of their knowledge at the date of this Application. It is understood that all information contained in this document is subject to verification if required. Any information found to have been incorrect would result in immediate disqualification of the Application.

SIGNED........................................................................................................

DATE...........................................................................................................

PLEASE PRINT NAME...................................................................................

DESIGNATION...............................................................................................
APPLICATION FOR EXEMPTION FROM METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL

We:

1. …………………………………………………………………………………………………………………………………………………….
2. …………………………………………………………………………………………………………………………………………………….

being the duly appointed Employees Representatives, do hereby confirm that the Management of:

…………………………………………………………………………………………………………………………………………………………….

discussed and consulted with all employees of the establishment and explained the necessity for the Application for Exemption.

The employees unanimously accepted and agreed to Management’s reasons for the Application and as a result, requested endorsement of all documentation by initialing to give effect thereto:

Signed …………………………………………………………………………………………………………………………………………………….
Signed …………………………………………………………………………………………………………………………………………………….

Designation …………………………………………………………………………………………………………………………………………………….
Designation …………………………………………………………………………………………………………………………………………………….

Date …………………………………………………………………………………………………………………………………………………….
Date …………………………………………………………………………………………………………………………………………………….
Employee / Trade Union Acknowledgment of this application

We the undersigned do hereby confirm, as required by Part 3 (3.4) above, that we have been consulted about the employers need to submit this application. We are aware of the need to submit in writing reasons for objecting to this exemption application. Attached as annexure to this application.

__________________________________________  ________________________________
SIGNED ON BEHALF OF THE EMPLOYEES    DATE
EMPLOYEE REPRESENTATIVE

__________________________________________  ________________________________
PLEASE PRINT NAME CLEARLY    DESIGNATION

__________________________________________  ________________________________
SIGNED ON BEHALF OF TRADE UNION    DATE

__________________________________________  ________________________________
PLEASE PRINT NAME CLEARLY    DESIGNATION
APPLICATION FOR EXEMPTION FROM THE METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL

We, the employees of …………………………………………………………………………………… hereby confirm that the establishment’s Management called a meeting on ……………………… to discuss and consult with us their need to make Application for Exemption from the Metal Engineering Industries Bargaining Council.

We fully understand the reasons for and the effect an Application will have on us as well as the firm.

We unanimously support this Application and agree with its contents.

Signed at ……………………………………………………………... on ……………….. day of ……………….. .………..2006.

SIGNATURES OF EMPLOYEES

________________________________________  _________________________________  ____________________________

________________________________________  _________________________________  ____________________________

________________________________________  _________________________________  ____________________________

________________________________________  _________________________________  ____________________________

________________________________________  _________________________________  ____________________________
ANNEXURE 2

APPLICATION FOR THE PACKAGE RATE EXEMPTION

NAME OF FIRM: ........................................................................... DATE: .................
POSTAL ADDRESS: .................................................................................................
PHYSICAL ADDRESS: .................................................................................................
........................................................................................................................................

TELEPHONE NO. : .............................................. FAX NO.: ......................
COUNCIL ACC. NUMBER :- ................................. APPLICANT: .................

PARTICULARS OF SITE FOR WHICH EXEMPTION IS REQUIRED

<table>
<thead>
<tr>
<th>Client Name</th>
<th>Client Address</th>
<th>Physical Location of Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tel No :-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of Site (mark 'X')</th>
<th>Shutdown</th>
<th>Ship Repair</th>
<th>Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of Contract</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Employees</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of work to be done</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DECLARATION BY APPLICANT

I, the above mentioned applicant, do hereby declare that I fully understand the following conditions which apply to the issuing of the Package Rate Exemption.

1. A separate application must be completed for each site.
2. No application for a Package Rate Exemption will be considered for any workshop or manufacturing establishment.
3. The Package Rate method of payment may not be applied in such establishment mentioned in two (2) above.
4. The Council may withdraw the exemption at any time and non-compliance with all the conditions contained in the Package Rate Exemption will render the entire exemption null and void.

SIGNED: .............................. DATE: ..............................

MEIBC-LBAF2/02/08/2004
ANNEXURE “A”

CONDITIONS OF EXEMPTION FOR A TEMPORARY EMPLOYMENT SERVICE. (T.E.S.)

{Labour Broker – Package Rate Exemption}

Applicable to the site located at Sasol – Secunda on the hereinafter conditions from all the provisions in the industrial agreements applicable in the Metal and Engineering Industries Bargaining Council in so far as they are not inconsistent with the matters regulated under this licence of exemption.

CONDITIONS ON WHICH THIS EXEMPTION IS GRANTED

A) The Council may at any time after prior notification, withdraw the exemption either wholly or in part, or amend the conditions under which the exemption was issued, or amend the conditions of employment and other matters regulated under the exemption.

B) The exemption shall apply only in respect of workers supplied to clients by the T.E.S. within the meaning of Section 198 of the Labour Relations Act, No 66 of 1995.

C) The exemption shall apply only in respect of a worker with whom the T.E.S. has entered into a written site contract in the same form as the contract incorporated herein and only for the duration of the mentioned site contract.

D) Any matter not dealt with in the mentioned contract, whether through mere omission by one or both the parties to the contract or for whatever other reason shall not be regulated by the exemption but shall be regulated in terms of the relevant provision dealing with the matter in the applicable industrial agreement.

E) The exemption shall only apply if the T.E.S. has complied and continues to comply with the registration requirements prescribed in clause 20(3) of the Main Agreement applicable in the Industry.

F) Employers who have been granted a 'Package-rate' exemption in terms of which all employee entitlements are incorporated into a single, comprehensive hourly wage may only apply this to employees engaged on work on construction sites. Such exemptions may NOT be applied in workshops, manufacturing or production establishments.

G) A signed copy of the prescribed contract entered into shall be given to the worker concerned, and the original copy thereof shall be retained by the employer.

fA1ò

MEIBC-LBCE6/16/08/2005
AMENDED 22/08/2005
1. **MATTERS REGULATED UNDER THIS LICENCE OF EXEMPTION**

A) The worker shall be paid a **minimum package rate** per hour consisting of:

i) An amount of not less than the prescribed minimum hourly rate in the Main Agreement for his class of work to which shall be added an amount in respect of each of the following items which amount shall not be less than the per centum of the actual basic wage rate as given below.

ii) Leave pay 6.4% of the actual basic wage rate

iii) Leave Enhancement pay 8.33% of the actual basic wage rate

iv) Public Holiday 5.13% of the actual basic wage rate

v) Sick leave 4.27% of the actual basic wage rate

vi) Family Responsibility leave 1.28% of the actual basic wage rate

vii) Where option B of the Provident Fund is pursued 3% of the actual basic wage rate

viii) **Overtime and payment for work on Sundays to be paid as follows:**

(a) Overtime on a normal working day is paid at **time plus one half**

(b) Where a five day week is normally worked, time worked on Saturdays is paid at **time plus one half**

(c) Payment for work on Sundays is paid at **double time** and for the purpose of this calculation the hours worked are deemed to be **at least** the hours of a normal shift regardless of the hours actually worked.

(d) Hours worked on a public holiday which falls on a day which is an ordinary working day shall be paid as follows: payment in addition to the ordinary hours for that shift, shall be at one and one third for such hours worked up to the normal hours of that shift, thereafter at two and a half times the ordinary hourly rate.

(e) Hours worked on a public holiday which is not an ordinary working day for the employee shall be payable on the same basis as (d) above.

(f) Contributions to the funds as administered by the Metal and Engineering Bargaining Council:

i) A contribution to the Council’s Provident fund of 13.2 per centum of the employees pensionable remuneration; (See note below)

ii) A Council administration contribution total of R2.36 per week, per employee, subject to the condition that if the total amount payable in respect of the Council administration contributions is less than R118.00 per month the T.E.S. shall make up the amount of a minimum contribution of R118.00 and forward that amount to the Council.

iii) A contribution total of 82 cent per week, per employee to the dispute resolution levy.

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MEIBC-LBCE6/16/08/2005
AMENDED 22/08/2005
iv) A contribution of one (1) per centum of the employees weekly wage, calculated on the “Basic Rate per hour” is payable to the Collective Bargaining Levy if the employee is not a member of a Trade Union that is a party to the MEIBC and a contribution of R150.00 per month is payable by the T.E.S. if the T.E.S. is not a member of an employer organisation that is a party to the MEIBC.

For the purposes of this exemption pensionable remuneration is defined as being the employees actual total remuneration excluding overtime pay, leave enhancement pay and any allowances. 
Pensionable remuneration therefore includes, in addition to the actual basic rate of pay, payment for sick leave, annual leave, public holidays and family responsibility leave.

B) Provident fund contributions shall be accompanied by a form prescribed from time to time by the Council wherein shall be specified the full contribution in respect of each worker. Each worker shall be identified by:

i) his full name;
ii) his identity number;
iii) the period in respect of which the contributions are being made;
iv) the amount of the contributions;

C) Council administration and dispute levy contributions shall be accompanied by a form prescribed from time to time by the Council wherein shall be specified:

i) the period in respect of which contributions are being made,
ii) the number of employees in respect of whom contributions are being made;
ANNEXURE “C”

LABOUR BROKING CONTRACT PRESCRIBED IN TERMS OF THE EXEMPTION
GRANTED BY THE METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL

TO Messrs._____________________________________________________________

ON_____________________________________(DATE)

Entered into between

é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é
LABOUR BROKER (T.E.S.)
on the one hand

and

é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é
Identity numberé é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é
THE EMPLOYEE

Of (address)

é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é
on the other

DATE:é é é é é é é é é é é é é é é

THE PARTIES RECORD THEIR AGREEMENT ON THE FOLLOWING:

1. Actual basic hourly wage rate Ré é é é é é é é é é é é é é é é é é é é é é é é é . h
2. Occupationé é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é é
3. Main Agreement job categoryé é é é é é é é é é é é é é é é é é é é é é é é é é

fC1ò
MEIBC-LBCEC6/16/08/2005
AMENDED22/08/2005
4. The Labour Broker supplies the client with proof:
   a) that he has been allocated a registration number by the Director-General of the Department of Labour in pursuance of the application of the provisions of the Unemployment Act 30 of 1966,
   b) that he has been allocated a registration number allocated by Compensation Commissioner in pursuance of the application of the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993;
   c) that he has been issued a registration number by the Council in pursuance of the Council’s Registration and Administration Expenses Agreement

5. The Employer conducts business as a Temporary Employment Services (T.E.S)

6. The employer seeks to employ the employee who seeks to be employed by the employer for a limited duration relative to the specific work.

7. The employer hereby employs the employee for completion of the specific work subject to the terms and conditions of this contract.

8. The Contract of Employment is entered into in accordance with the provisions of Section 35 and Annexure "A" of the Main Agreement and shall commence on ……. to ……. or until completion of the specific work described as follows viz :
   - ……..
   - ……..

The employer may employ the employee for a specified limited contract period in terms of a limited duration contract of employment as provided below on the following specified categories of work.

Any expression used in these provisions which are defined in the Main Agreement, shall have the same meaning as in the Main Agreement, and any reference to the Main Agreement shall include any amendments to the Main Agreement; further unless inconsistent with the context -

8.1 “Construction Site” means
   8.1.1 an area where a structure including but not limited to a building, a ship, a plant, a pipeline, and a tower is being erected or built; and / or
   8.1.2 an area where refurbishment of, or alterations to, an existing structure as is referred in 8.1.1 above is being carried out; and / or

rC2ò

MEIBC-LBCEC6/16/08/2005
AMENDED22/08/2005
8.1.3 an area where a structure as is referred to in 8.1.1 above is temporarily shut down for the purpose of overhaul, maintenance, alteration upgrading etc; and/or

8.1.4 a shipyard where refurbishing, repair, overhaul and maintenance of ships is being carried out.

9. This agreement shall endure from the commencement date referred to in clause (8) and on completion of the work relative to that specified work in clause (8), this contract shall automatically terminate.

9.1 The remaining conditions of employment, not expressly detailed here, shall be the existing Employer policies, rules and regulations, as well as the general conditions of employment contained in the Main Agreement for the Metal and Engineering Industries Bargaining Council subject to the limitation set out in (9.4) below.

9.2 On completion of this contract as detailed in clause (8) above, this contract shall automatically terminate. Such terminations shall not be construed as being retrenchment nor redundancy, but shall be the completion of the contract. No enquiry is required, nor is notice of termination of employment required to be given when this contract terminates through fluctuation of time.

9.3 In the event of a conflict between the provision of this contract and the existing employer policy rules and regulations and the general conditions of employment as may prevail from time to time, the provisions of this contract shall prevail provided that in neither event shall the employee be employed on terms less favourable that the general conditions of employment as contained in the Main Agreement.

9.4 The parties undertake to be bound by the terms and conditions of employment as laid down in the Main Agreement, from time to time, of the Metal and Engineering Industries Bargaining Council and any complementary terms and conditions of the Company, which include the disciplinary code and procedure of the Company.

9.5 The employee shall observe all material times the company’s standing orders, on health, safety and security, as they are in force from time to time.

10. Remuneration payable to the employees shall consist of a package rate per hour made up as follows:

<table>
<thead>
<tr>
<th>Amount per hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>I) An actual basic wage rate of R...</td>
</tr>
<tr>
<td>(Note: The basic rate shall not be less than the prescribed minimum for the applicable class of work specifies in the Main Agreement)</td>
</tr>
</tbody>
</table>

\[\text{R}\text{C3}0\]

MEIBC-LBCEC6/16/08/2005
AMENDED 22/08/2005
II) The following allowance per hour, which shall not be less than the per centum of the basic wage rate as indicated hereunder:

a) Leave pay (6.4%) Ré é é é é é é.

b) Leave enhancement pay (8.33%) Ré é é é é é é.

c) Public holidays (5.13%) Ré é é é é é é.

d) Sick leave (4.27%) Ré é é é é é é.

e) Family responsibility leave (1.28%) Ré é é é é é é.

f) Provident fund Option B (3%) Ré é é é é é é é é é.

Total of allowance é é é é é é é.. % Ré é é é é é é é.

Total value of package Rate Ré é é é é é é.

g) Please refer to example as indicated in annexure 1 (pages 4 ñ 6).

Conditions of employment, including payment of funds to the Council, not expressly regulated in this contract shall be regulated by the collective agreement of the Council.

I am duly authorised to sign this for and on behalf of the T.E.S

__________________________________________________________
PRINT NAME

__________________________________________________________
SIGNATURE {Rep of T.E.S}

__________________________________________________________
SIGNATURE OF EMPLOYEE

WITNESSES

__________________________________________________________
PLACE : é é é é é é é é é é é é é é é é é é é

DATE : é é é é é é é é é é é é é é é é é é é.

Received copy of contract.

__________________________________________________________
SIGNATURE OF EMPLOYEE

PLEASE NOTE: PAGES “C1 - C4” TO BE INITIALED BY BOTH PARTIES

RéC4ò

MEIBC-LBCEC6/16/08/2005
AMENDED22/08/2005
METAL AND ENGINEERING INDUSTRIES BARGAINING COUNCIL

INDEPENDENT EXEMPTIONS APPEAL BOARD

GUIDELINES IN RESPECT OF THE CONSIDERATION OF EXEMPTIONS AND EXEMPTION APPEALS

a) Proper completion of the application form and in particular:

- Clear details of the exemption requested.
- A proper motivation
- A costing of the likely savings that will result if the exemption is granted
- A business plan with an estimated timeframe within which the business will be able to resume paying the prescribed wages.

b) Financial statements

It is essential that the applicants submit the financial statements as requested in the application form i.e.

- The full set of the latest available audited statements (in the case of close corporations, the statements signed by the accounting officer) and management accounts for the period from the date of the last audited statements to two months prior to the date of the application.
- The external auditor’s review report must also be submitted.

The auditor should also be requested to indicate the following in his report:

- The financial impact of the exemption applied for (i.e. if the exemption is in respect of leave enhancement pay and the applicant firm has say, 83 employees the financial impact would be $83 \times 4000 = R332000$).
- He should not make a recommendation, but should merely give general comments.

c) Consultations

Consultations with the workforce are of particular importance.

Basicly the Board wants to know:

- What is representation of trade unions.
- Were all the employees / trade unions consulted; and
- Did they support or not support the application.

The schedule attached to the application form must be completed in full.
d) The **reasons** for the Regional Council declining the exemption must be minuted.

**Note:** If a Committee member has a direct interest in the exemption, he should **recuse** himself when the matter is considered.

e) Advising the parties:

- In your letter advising the employer that the exemption has been declined you should cite the **reasons** and incorporate the following paragraph:

  You have the right to appeal against the decision of the Regional Council Committee. The appeal must be submitted to this office within 14 days of date of receipt of this letter and must clearly set out your grounds for appeal.

  It is important to note that all representative trade unions should also be advised of the decision (c.c. the letter). There is nothing preventing a representative trade union from appealing against the **granting** of an exemption (again setting out grounds for appeal).

/LK
16/08/06
CONSTITUTION

THE INDEPENDENT EXEMPTIONS APPEAL BOARD
FOR THE METAL AND ENGINEERING INDUSTRIES
BARGAINING COUNCIL

(As approved at a Management Committee Meeting of the Council on 15 March 2005)
Contents

Part 1: Introductory provisions
1. Purpose of Constitution
2. Application of Constitution
3.
4. Nature of appeal
5. Criteria on appeal

Part 2: The Board
6. Purpose of Board
7. Composition of Board
8. Chairperson of Board
9. Conduct of members of Board
10. Quorum
11. Decisions of Board
12. Meetings of Board
13. Convenor of Board

Part 3: Appeal procedures
14. Lodging an appeal
15. Duty of convenor on receipt of appeal
16. Incomplete applications
17. Answering submissions by other interested parties
18. New evidence
19. Condonation
20. Oral submissions
21. Board meetings open to public
22. Finding and reasons for decision

Schedule: Definitions
PART 1: INTRODUCTORY PROVISIONS

1. Purpose of Constitution
   The purpose of this Constitution is to govern the procedures of the Independent Exemptions Appeal Board (the Board), established by the Metal and Engineering Industries Bargaining Council (the Council), in terms of Section 32(3)(e) of the Labour Relations Act and Clause 23 of the Main Agreement and to ensure that the Board operates in an orderly and transparent manner.

2. Application of Constitution
   This Constitution applies to all exemption appeals except to the extent that a collective agreement sets out a different procedure for the hearing of exemption appeals in respect of an application to be exempt from any provision of that particular collective agreement.

3. Nature of appeal
   3.1 An exemption appeal may be lodged by any affected party in respect of the whole or part of a decision of an exemption committee of Council.
   3.2 Except in exceptional circumstances, an appeal lodged with the Board is considered on the papers filed by all interested parties.
   3.3 An exemption appeal is a re-consideration of the merits of the original exemption application.

4. Criteria on appeal
   4.1 In considering an appeal the Board must take into account
       4.1.1 the criteria set out in clause 23(2) of the Main Agreement of the Council;
       4.1.2 any criteria established or approved by the management committee of the Council in terms of the national exemptions policy of Council.²
   4.2 In addition the Board must consider
       4.2.1 the financial hardship of the applicant for exemption;
       4.2.2 the potential impact an exemption may have on the collective bargaining process;

¹ Terms that appear in italic are terms defined in clause 21 of this Constitution.
4.2.3 whether alternatives to exemption were considered or implemented;
4.2.4 the need to avoid retrenchments;
4.2.5 any other factors relevant to the particular exemption application.

PART 2: THE BOARD

5. Purpose of Board

5.1 The purpose of the Board is to hear and decide all appeals against exemptions—

5.1.1 brought by parties to the Council;
5.1.2 brought by non-parties to the Council.
5.1.3 This will include a refusal by the Council to grant an exemption or a withdrawal of an exemption.

6. Composition of Board

6.1 The Council must appoint to the Board, on such terms and conditions they deem fit. The Board will comprise:

6.1.1 three permanent members;
6.1.2 three alternate members.

6.2 Board members hold office until

6.2.1 they resign on three months’ written notice to the Council; or
6.2.2 the Council resolves to terminate their membership of the Board.

7. Chairperson of the Board

7.1 The Board shall elect one of the permanent Board members as chairperson of the Board.

7.2 If the chairperson is not present at a meeting of the Board, the other Board members present must elect a chairperson for that meeting.

8. Conduct of members of Board

8.1 Members of the Board ė

8.1.1 must be independent and impartial and perform the functions of office in good faith;
8.1.2 must recuse themselves from any appeal hearing, if they have a direct financial interest or any other conflict of interest in the subject matter of the appeal.

9. **Quorum**

9.1 Subject to sub-clauses 9.2 and 9.3, two members of the Board form a quorum for any meeting of the Board.

9.2 If only two members are present at a meeting and they cannot reach consensus on any issue to be determined, the appeal must be postponed to a further meeting of the Board and that further meeting must be attended by three Board members.

9.3 If an application to lead oral evidence or to present oral submissions is granted, the appeal must be heard by a meeting attended by three members of the Board.

10. **Decisions of Board**

10.1 A decision of a quorate meeting of the Board is a decision of the Board.

10.2 A decision agreed and confirmed in writing by three members of the Board, is as valid as a decision adopted at a duly convened meeting of the Board.

10.3 A decision of the Board must be signed by the Chairman.

10.4 Proceedings of the meetings of the Board shall be minuted by the Council secretariat. Such minutes shall be confirmed at the next meeting of the Board and signed by the Chairman.

11. **Meetings of Board**

11.1 Unless otherwise provided for in this clause, the chairperson of the Board must determine the date and time for Board meetings, in consultation with the Council.

11.2 The Board must meet

11.2.1 at least once a month, unless there are no appeals to be considered; or

11.2.2 when requested to do so by the Council or by the chairperson and vice-chairperson of the Council, on the basis of the urgency of an appeal.
11.3 If a meeting of the Board does not finalise an appeal, the meeting may be postponed to a date and time agreed by the Board.

12. **Convenor of the Board**
   12.1 The Chief Executive Officer of the Council shall appoint an employee of the Council as convenor of the Board.
   12.2 The convenor may participate in Board meetings but may not vote.
   12.3 The convenor is responsible for:
   
   12.3.1 giving Board members notice of meetings;
   12.3.2 keeping minutes of Board meetings;
   12.3.3 tape-recording Board meetings, if required to do so by the Board;
   12.3.4 carrying out any other duties imposed by this Constitution or required of the convenor by the Board or the Council.
   12.4 The Chief Executive Officer of the Council may delegate any of the convenor’s functions to any other employee of the Council.

**PART 3: APPEAL PROCEDURES**

13. **Lodging an appeal**
   13.1 An appeal against a decision or part of a decision of an exemption committee must be lodged with the convenor of the Board no later than fourteen days after the party appealing the decision has received a copy of the decision in writing.
   13.2 The notice of an appeal must:
   
   13.2.1 set out the name and contact details of the party lodging the appeal;
   13.2.2 provide a summary of the grounds for the appeal;
   13.2.3 identify the collective agreement to which the exemption application relates;
   13.2.4 identify the exemption committee that heard the initial application and provide the date of the relevant exemption committee’s meeting.
   13.3 The following documents must be attached to a notice of appeal:
   
   13.3.1 a copy of the decision of the exemption committee and the reasons for that decision;
   13.3.2 a copy of the original exemption application;
13.3.3 copies of any notices, letters, affidavits or other documents handed to the exemption committee by any interested party;
13.3.4 minutes of the relevant exemption committee meeting or, if required a transcript of the relevant exemption committee meeting, if that meeting was tape-recorded, and
13.4 If any of the documents referred to in clause 13.3 are not in the possession of the party lodging the appeal, the notice of appeal must ï
13.4.1 specify which documents should be attached but are not attached;
13.4.2 set out why the documents are not in the possession of the party lodging the appeal.
13.5 The appellant may attach to its notice of appeal written submissions on any issue raised by the appeal.

14. **Duty of convenor on receipt of appeal**
14.1 On receipt of a notice of appeal the convenor must ï
14.1.1 confirm that the appeal is an appeal to be determined by the Board;
14.1.2 ensure that service on interested parties if required has been effected;
14.1.3 ensure that all relevant documentation is attached;
14.2 If the convenor is of the view that the appeal is not one to be determined by the Board, the convenor must return the appeal to the relevant Regional Council together with an explanation as to how the matter should be dealt with.

15. **Incomplete applications**
If an appeal application is incomplete in any respect, the convenor must notify the party that lodged the appeal and give that party a further seven days from date of notification to file the additional information.

16. **Answering submissions by other interested parties**
Other interested parties may file written submissions on the appeal with the convenor, within seven days of receiving a copy of the notice of appeal.

17. **New evidence**
17.1 An interested party may apply to the Board to lead new evidence on appeal.
17.2 New evidence may relate to facts or events that took place before or after the date of the initial exemption application.

17.3 An application to lead new evidence must ĭ
   17.3.1 be on affidavit;
   17.3.2 show that the evidence sought to be lead is material and relevant to the issue on appeal;

17.4 The Board may ĭ
   17.4.1 refuse the application for the leading of new evidence;
   17.4.2 grant the application for the leading of new evidence in whole or part and ĭ
      (a) consider the evidence itself;
      (b) remit the appeal to the relevant exemption committee with an instruction for the committee to consider the new evidence and reconsider its decision in the light of that evidence.

17.5 If the Board decides to consider the evidence itself, and the evidence is not documentary evidence, it must direct whether the evidence should be presented orally or on affidavit.

17.6 If oral evidence is lead, all interested parties must be given an opportunity to ĭ
   17.6.1 cross-examine any person giving evidence;
   17.6.2 lead their own witnesses to refute any evidence lead.

17.7 If the Board directs that evidence must be on affidavit ĭ
   17.7.1 the relevant affidavits must be filed with the convenor within seven days of the Board decision to allow the evidence to be lead;
   17.7.2 other interested parties may file answering affidavits within seven days of receiving an affidavit containing new evidence;
   17.7.3 the party that filed the affidavit containing new evidence may, within seven days of receiving any answering affidavit, file ĭ
      (a) a replying affidavit;
      (b) supplementary submissions;
   17.7.4 other interested parties may file supplementary submissions ĭ
      (a) within seven days of receiving any supplementary submissions or replying affidavits;
      (b) if no supplementary submissions or replying affidavits are filed, within seven days of the filing of any answering affidavit; or
(c) if no answering affidavits are filed, within seven days of receiving
the affidavit containing new evidence.

18. **Condonation**
   18.1 The Board may, on good cause shown, condone the late filing of any
documents.
   18.2 An application for condonation must be on affidavit.

19. **Oral submissions**
   19.1 Subject to sub-clause 18.2, the Board decides appeals based on the papers
filed.
   19.2 Any *interested party* may apply to the Board for an opportunity to present oral
submissions.
   19.3 In deciding whether to allow oral submissions, the Board must take into account
   19.3.1 the complexity of the matter;
   19.3.2 the comparative abilities of the parties to present their submissions in
writing;
   19.3.3 the interests of justice.
   19.4 If an application for oral submissions is granted, the *convenor* must notify all
*interested parties* and all *interested parties* must be given an equal opportunity
to make oral submissions.
   19.5 The Board may limit the time allocated to each party for oral submissions.

20. **Board meetings open to public**
   20.1 Board meetings that hear oral evidence or oral submissions may be open to the
public at the discretion of the Board.
   20.2 The Board may meet behind closed doors if the Board is meeting to deliberate
on any matter.

21. **Finding and reasons for decision**
   21.1 Within two weeks of a meeting of the Board where an appeal has been
considered, the Board must provide the *convenor* with a written decision on the
appeal and with brief reasons for that decision.
21.2 The *convenor* must circulate the Board’s decision and reasons to all *interested parties*.

**SCHEDULE**

**Definitions**

Unless the context indicates that another meaning is intended:

“*appellant*” means the body lodging an *exemption appeal*;

“*convenor*” means an employee of the Council tasked with convening meetings of the Board;

“*exemption appeal*” means an appeal from a decision of an *exemption committee* concerning an application for exemption from a collective agreement of the Council, and includes an appeal from a decision -

(i) granting an exemption;

(ii) refusing an exemption; and

(iii) withdrawing an exemption;

“*exemption committee*” means any committee of the Council authorise with hearing and deciding exemption applications;

“*interested party*” means any party that made or opposed an exemption application, and, depending on the context, may include the *appellant*;

“*members of the Board*” means permanent and alternate members of the Board.

(Annexure K inserted by Government Notice R.1051 dated 24 December 2014)

Signed at Johannesburg, for and on behalf of the parties, this 29 July 2014

**Seifsa on behalf of its Associations** :..............................................................

Name

1. Association of Electrical Cable Manufacturers of South Africa
2. Association of Metal Service Centres of South Africa
3. Constructional Engineering Association (South Africa)
4. Eastern Cape Engineering and Allied Industries Association (ECEAIA)
5. Electrical Engineering and Allied Industries’ Association
6. Electrical Manufacturers’ Association of South Africa (EMASA)
7. Gate and Fence Association
8. Hand Tool Manufacturers’ Association (HATMA)
9. KwaZulu-Natal Engineering Industries’ Association
10. Lift Engineering Association of South Africa
11. Light Engineering Industries’ Association of South Africa
12. Non-ferrous Metal Industries’ Association of South Africa
13. Pressure Vessel Manufacturers’ Association of South Africa
14. Refrigeration and Air Conditioning Manufacturers’ and Suppliers’ Association
15. South African Electro-Plating Industries’ Association
16. South African Engineers’ and Founders’ Association
17. South African Fastener Manufacturers’ Association (SAFMA)
18. South African Refrigeration and Air Conditioning Contractors’ Association (SARACCA)
19. South African Post Tensioning Association (SAPTA)
20. South African Pump Manufacturers’ Association
21. South African Reinforced Concrete Engineers’ Association (SARCEA)
22. South African Valve and Actuator Manufacturers’ Association (SAVAMA)

NUMSA : ..............................................
          Name and signature

CEPPWAWU : ..............................................
             Name and signature

MEWUSA : ..............................................
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UASA : ..............................................
       Name and signature

SAEWA : ..............................................
       Name and signature

General Secretary : ..............................................
                    Name and signature