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No. R. 611**1 July 2005**

LABOUR RELATIONS ACT, 1995

**ROAD FREIGHT INDUSTRY: EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES
CANCELLATION OF GOVERNMENT NOTICE**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (7) of the Labour Relations Act, 1995, cancel Government Notice No. R. 499 of 27 May 2005 with effect from 18 July 2005.

M. M. S. MDLADLANA
Minister of Labour

No. R. 611**1 Julie 2005**

WET OP ARBEIDSVERHOUDINGE, 1995

**PADVRAGNYWERHEID: UITBREIDING VAN VOORSORGFONDS KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE
INTREKING VAN GOEWERMENSKENNISGEWING**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, trek hierby, kragtens artikel 32 (7) van die Wet op Arbeidsverhoudinge, 1995, Goewermentskenningsgewing No. R. 499 van 27 Mei 2005, in met ingang van 18 Julie 2005.

M. M. S. MDLADLANA
Minister van Arbeid

No. R. 612**1 July 2005**

LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY: EXTENSION OF PROVIDENT FUND
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Road Freight Industry and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 18 July 2005, and for the period ending 28 February 2006.

M. M. S. MDLADLANA
Minister of Labour

No. R. 612**1 Julie 2005**

WET OP ARBEIDSVERHOUDINGE, 1995

PADVRAGNYWERHEID: UITBREIDING VAN VOORSORGFONDS KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Engelse Bylae hierby verskyn en wat in die Nasionale Bedingingsraad vir die Padvragnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 18 Julie 2005, en vir die tydperk wat op 28 Februarie 2006 eindig.

M. M. S. MDLADLANA
Minister van Arbeid

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY: PROVIDENT FUND COLLECTIVE
AGREEMENT**

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

Road Freight Employers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), of the one part, and the

Africa Miners' and Allied Workers' Union

Motor Transport Workers' Union (South Africa)

Professional Transport Workers' Union of South Africa
South African Transport and Allied Workers' Union
 and
Transport and Allied Workers' Union

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the National Bargaining Council for the Road Freight Industry.

1. SCOPE OF APPLICATION

(1) With effect from the date upon which Government Notice No. R. 612 of 1 July 2005 becomes binding, the terms of this Agreement shall be observed in the Road Freight Industry in the Republic of South Africa, by all employers who are members of the employers' organisation and by all employees who are members of the trade unions, and who are engaged and employed in the said Industry, respectively.

(2) Notwithstanding the provisions of sub-clause (1), the Mandatory terms of this Agreement shall apply only to employees for whom minimum wages are prescribed in the Main Agreement and to the employers of such employees.

(3) Notwithstanding the provisions of sub-clause (1), but subject to clause 6 (1) (h), the provisions of this Agreement shall not apply to—

- (a) the owner of only one vehicle who is the permanent driver of such vehicle or to the employees employed by such owner;
- (b) an employer, the majority of whose Bargaining Unit Employees—
 - (i) do not belong to a trade union or trade unions;
 - (ii) belong to an Occupational Retirement Fund to which the employer contributes;
 - (iii) were not bound by the provisions of the Provident Fund Collective Agreement as it was worded prior to the coming into operation of this Agreement by virtue of the operation of clause 1 (3) of Government Notice No. R. 921 of 24 July 1998, as amended as extended from time to time.
 - (iv) have not agreed with the employer to be bound by the provisions of this Agreement, for so long as all of these exclusions continue to apply to the employer. If any of these exclusions cease to apply to the employer, the Mandatory terms of this Agreement will apply to the employer and his Bargaining Unit Employees from the date on which the exclusion cease to apply.

(4) The provisions of clause 1 (1) (a), 2 and 8 (1) of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade unions, respectively, who entered into this Agreement unless the Minister of Labour, by promulgation in the *Government Gazette*, declares the Agreement binding on such employers and employees in terms of section 32 (2) of the Act.

(5) The exclusion contained in subclause (3) above shall not apply in respect of clause 7 (4).

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act and shall remain in force until 28 February 2006.

3. DEFINITIONS

Unless less the contrary intention appears, any expression used in this Agreement which is defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act; any reference to an Act shall include any amendment to such Act; any reference to the singular shall include the plural and vice versa; and reference to any gender shall include the other gender, and further unless inconsistent with the context—

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

"Associated Fund" means an Occupational Retirement Fund established by a trade union which meets the conditions set out in clause 5 (3) and is in terms of this Agreement deemed to be an Associate Fund, or which has been approved by the Council as an Associated Fund to which an employee may belong in place of the Bargaining Council Fund;

"auditor" means any person who is registered to practice in the Republic of South Africa as a public accountant and auditor;

"Bargaining Council Fund" means the Provident Fund of the Council as provided for in this Agreement;

"Bargaining Unit Employee" means an employee for whom minimum wages are prescribed in the Main Agreement and includes—

- (i) a part-time employee who works 15 hours or more per week; and
- (ii) a part-time employee who works less than 15 hours per week and has chosen to join a Fund, but excludes a relief employee;

- "Committee"** or **"Management Committee"** means the Management Committee appointed in terms of rule 12.1 of the Rules of the Bargaining Council Fund;
- "contributions"** means the money payable to an Occupational Retirement Fund in terms of this Agreement;
- "Council"** means the National Bargaining Council for the Road Freight Industry;
- "dependent"** means a dependant as defined in the Rules of the Bargaining Council Fund;
- "employee"** for the purpose of this Agreement only, means an employee employed in the Industry who is a Bargaining Unit Employee or a Non-Bargaining Unit Employee, as the case may be;
- "employer"** means any person whomsoever who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate such other person or who, subject to section 3 of the Act, permits any other person whomsoever in any manner to assist him in carrying on or conducting of this business or undertaking and **"employ"** has a corresponding meaning;
- "Employer Fund"** means an Occupational Retirement Fund registered in terms of the Pension Funds Act to which an employer contributes for the benefit of its employees;
- "Fund"** means the Bargaining Council Fund or an Associated Fund;
- "Main Agreement"** means the Collective Agreement of the Council, published in terms of section 32 of the Act under Government Notice No. R. 493 of 30 April 2004, as amended, and extended from time to time, in which minimum wages are prescribed;
- "Mandatory terms"** means terms of this Agreement which impose an obligation on, and do not just create a right for, an employee;
- "member"** when used in relation to a fund, means an employee who is a member of an Occupational Retirement Fund and **"membership"** has a corresponding meaning;
- "Non-Bargaining Unit Employee"** means an employee for whom minimum wages are not prescribed in the Main Agreement;
- "normal retirement age"**, in relation to a member, means the normal retirement age specified in an employee's conditions of service, provided that it is not earlier than 60 and not later than 65 years of age;
- "Occupational Retirement Fund"** means the Bargaining Council Fund, an Associate Fund or an Employer Fund to which an employee belongs;
- "ordinary wage"** means—
- (i) in respect of a Bargaining Unit Employee, the wage based on the employee's earnings and payable had he worked the maximum ordinary hours, excluding overtime, bonuses and allowances for the week, as regulated by the Main Agreement; and
 - (ii) in respect of a Non-Bargaining Unit Employee who is a member of the Bargaining Council Fund, such amount as the employer of that employee advises the Council in writing;
- "part-time employee"** means an employee not working full-time, but who is employed on a permanent bases and who is only required to work a fixed and limited number of hours per day, per week or per month;
- "Pension Funds Act"** means means the Pension Funds Act, 1956, Act No. 24 of 1956, as amended;
- "relief employee"** means an employee, other than a temporary employee of a temporary employment service, who is employed by the same employer for not more than 16 shifts in a 30 day period and not more than 114 shifts in a 52 week period;
- "retirement"** means permanent retirement from the Industry through incapacity, ill-health or the attainment of normal retirement age, and, and **"retire"** has a corresponding meaning;
- "Road Freight Industry"** or **"Industry"** means the Industry in which employers and their employees are associated for carrying out one or more of the following activities for hire or reward:
- (1) The transportation of goods by means of motor transport;
 - (2) the storage of goods, including the receiving, opening, unpacking, packing, dispatching and clearing or accounting for of goods where these activities are ancillary or incidental to paragraph (1) above; and
 - (3) the hiring out by temporary employment services of employees for activities or operations which ordinarily or naturally fall within the transportation of goods, irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer.

The 'transportation of goods' does not include the following:

- (1) The undertakings, industries, trades or occupations in respect of which the Transnet Industrial Council was registered on 2 October 1991. The interests in respect of which that Council was registered where the undertakings, industries, trades or occupations of Transnet Limited known as Spoornet, South African Airways, Autonet, Portnet, Transnet, Transwork, Promat, Protekon, or any other business, undertaking, industry, trade, occupation, unit, department or section of Transnet Limited.

- (2) The Motor Ferry Industry, which means the Industry in which employers and their employees are associated for the transportation of motor vehicles by road, sea or rail between vehicle manufacturers and motor dealerships;

“Rules” means only the Rules of the Bargaining Council Fund made in terms of clause 12 of this Agreement.

“rules” means the rules of the Occupational Retirement Fund to which an employee belongs.

4. CONTINUATION OF THE BARGAINING COUNCIL FUND

The Bargaining Council Fund established by the Council under the provisions of the Agreement published under Government Notice No. R. 3146 of 20 December 1991, is hereby continued.

5. OBJECTS OF THE BARGAINING COUNCIL FUND AND ASSOCIATE FUNDS AND CONDITIONS WITH WHICH THEY MUST COMPLY

- (1) The object of each Fund shall be to provide benefits for members and their dependants.
- (2) The Bargaining Council Fund must comply with the following conditions:
 - (i) It must be and remain in a ‘pension fund’ or a ‘provident fund’ as defined in the Income Tax Act, 1962, Act No. 58 of 1962, as amended;
 - (ii) it must be and remain a defined contribution fund which provides no benefits other than those which are funded by means of contributions payable by employers and employees at the fixed rates determined in accordance with this Agreement;
 - (iii) its Rules—
 - (a) must, subject to clause 7 (1) (a) (ii), provide for rates of contribution by employers and employees which are no greater and no less than those determined in terms of this Agreement;
 - (b) may not expose any employer to the risk of liability in excess of the liability to make contributions at the fixed rate determined in terms of this Agreement;
 - (c) must provide that the whole of the contribution payable by an employee to the Fund must be used to fund retirement benefits for that employee;
 - (d) must provide that, of the contribution that an employer may be required to make to the Fund in terms of its Rules in respect of an employee employed by such employer—
 - (aa) not less than 20% must be used to fund retirement benefits for the member;
 - (aa) up to 80% as is determined from time to time by the Management Committee may be used to—
 - (1) pay the Fund’s fees and expenses; and
 - (2) pay premiums to insurers in respect of Fund death, disability and funeral benefits;
 - (e) must provide that, in the event that the premium payable for the insured benefits provided for in terms of the Rules exceeds the share of the employer contributions referred to in subclause (2) (ii), the value of the insured benefits will be immediately reduced to the extent required to make them affordable to the Fund in terms of its Rules;
 - (f) must be consistent with clause 6;
 - (g) must, in particular, provide that in the event that a member’s membership of a trade union changes, he will terminate membership of the Fund to which he belonged immediately before such change in order to comply with the provisions of clause 6;
 - (h) must provide that the costs to a Fund of any transfer of assets and liabilities in respect of an employee from one Fund to another Fund, other than the first such transfer following the coming into operation of this Agreement, will be drawn from the Fund credit of the member concerned and that no more than two transfers between Funds in respect of that member will be permitted within any period of 52 weeks;
 - (i) must provide that the Council will appoint two members of the Management Committee, but may not require the participation of the employers’ organisation in the appointment of any other members of the Management Committee, or in any other aspect of the management of the Fund;
 - (j) must allow for the early retirement of a member, with the consent of his employer, at any time from the age of 55;
 - (k) must allow for the retirement of a member on the attainment of his normal retirement age: Provided that, in the case of an employee who is a member as at the date of coming into operation of this Agreement, the member will be entitled to retire at the age of 65;
 - (l) must provide that, in the event that the Fund ceases to meet any of the conditions set out in this Agreement, the assets and liabilities of members who are employees as defined in clause 3 will, subject to any applicable provisions of any law, immediately be transferred to another Occupational Retirement Fund which is either an Associate Fund or which has been approved for that purpose by the Council, or to both;

- (iv) it must—
- (a) within 10 days after the date of the conclusion or amendment of a policy in terms of which an insurer agrees to underwrite any of the Fund's actual or potential liabilities—
 - (aa) furnish a copy of that policy or endorsement, as the case may be, to the Council; and
 - (bb) furnish the Council with such information as it may reasonably require to determine compliance with these conditions;
 - (b) at the commencement of each Fund financial year, furnish to the Council a statement by its auditor in which it is certified that—
 - (1) the cost to the Fund of its insured benefits does not exceed the limit referred to in sub-clause (2) (iii) (d) (bb) (2);
 - (2) the Fund continues to comply and, for the foreseeable future will continue to comply, with the conditions set out in this subclause;
 - (c) have and maintain a level of fidelity insurance cover which is acceptable to the auditor;
 - (d) have and maintain risk management controls which are acceptable to the auditor;
 - (e) provide the auditor within a reasonable period of time before the end of each financial year with such information as he may reasonably require to determine compliance with these conditions;
- (3) No Occupational Retirement Fund will be an Associate Fund unless it demonstrates to the satisfaction of the Council that—
- (i) it is an Occupational Retirement Fund registered in terms of the Pension Funds Act; and
 - (ii) it is a Fund established by a party to the Council; and
 - (iii) it complies with the conditions set out in sub-clause (2), other than the condition in subclause (2) (iii) (i) that the Council will appoint two members of the Management Committee.

6. MEMBERSHIP OF OCCUPATIONAL RETIREMENT FUNDS

- (1) With effect from the date upon which Government Notice No. R. 612 of 1 July 2005 comes into operation and subject to the rules of any Occupational Retirement Fund to which an employee belongs which may be inconsistent with these provisions—
- (i) a Bargaining Unit Employee, other than an employee specified in clause 1 (3), who is a member of a trade union which has established an Associate Fund must belong to that Associate Fund;
 - (ii) a Bargaining Unit Employee, other than an employee specified in clause 1 (3), who is not a member of a trade union which has established an Associate Fund must belong to the Bargaining Council Fund;
 - (iii) a Bargaining Unit Employee, other than an employee specified in clause 1 (3), who becomes a member of a trade union which has established an Associate Fund must, subject to the rules of the Bargaining Council Fund or Employer Fund to which he belongs, cease to be a member of the Bargaining Council Fund or Employer Fund, as the case may be, and become a member of that Associate Fund;
 - (iv) a Bargaining Unit Employee, other than an employee specified in clause 1 (3), who is a member of an Associate Fund because he is a member of the trade union which established it and who ceased to be a member of that trade union, must cease to belong to that Associate Fund and—
 - (a) if he joins another trade union which has established an Associate Fund, become a member of that Associate Fund; or
 - (b) become a member of the Bargaining Council Fund;
 - (v) a Bargaining Unit Employee, other than an employee specified in clause 1 (3), who—
 - (a) is employed as a Bargaining Unit Employee after the date of coming into operation of this Agreement; and
 - (b) is not at that date a member of a trade union which has established an Associate Fund, must in writing within 13 weeks after the date of his employment, elect—
 - (aa) to join a trade union which has established an Associate Fund, in which event he must become a member of that Associate Fund; or
 - (bb) not to join a trade union which has established an Associate Fund, in which event, or if he does not make any election within the 13 week period, he must become a member of the Bargaining Council Fund, pending which election—
 - (1) he will not be a member of any Occupational Retirement Fund and the Council must procure death and disability cover for him of equivalent value to that to which he would have been entitled had he been a member of the Bargaining Council Fund from the date of his employment;
 - (2) the contributions which would have been payable by him and his employer had he joined a Fund with effect from the date of his employment must be paid to the Council, kept in a suspense account, and, following the expiry of the 13 week period, paid to the Fund of which he becomes a member;

- (vi) a Bargaining Unit Employee who is a member of an Associate Fund because he was a member of the trade union which established it and who ceases to be a member of that trade union must cease to belong to the Associate Fund and become a member of the Bargaining Council Fund;
- (vii) a Bargaining Unit Employee who—
- (a) becomes a Non-Bargaining Unit Employee; and
 - (b) in writing within 13 weeks of ceasing to be a Bargaining Unit Employee elects—
 - (aa) to remain a member of the Associate Fund of which he is a member; or
 - (bb) to remain a member of the Bargaining Council Fund if he is already a member thereof; or
 - (cc) if the rules of the Employer Fund, if any, permit him to become a member thereof, a cease to be a member of the Associate Fund or the Bargaining Council Fund, as the case may be, and join the Employer Fund to which his employer contributes for the benefit of his employees, must be permitted to do so;
- (viii) a Bargaining Unit Employee contemplated in clause 1 (3) (b) who is for any period in excess of 52 weeks (the "waiting period"), not eligible for membership of the Employer Fund contemplated in that clause must, for the duration of the waiting period, belong to the Bargaining Council Fund;
- (ix) a Non-Bargaining Unit Employee who—
- (a) is a member of a trade union which as established an Associate Fund; and
 - (b) is employed in the Industry as at the date of coming into operation of this Agreement and in writing within 13 weeks of such date, or such other period as the Council may determine, elects to—
 - (aa) join the Bargaining Council Fund; or
 - (bb) join an Associate Fund established by a trade union of which he is a member; or
 - (cc) remain a member of the Employer Fund to which he belonged as at the date of coming into operation of this Agreement, must be permitted to do so;
- (x) a Non-Bargaining Unit Employee who—
- (a) is a member of the Bargaining Council Fund;
 - (b) is not a member of a trade union which has established an Associate Fund;
 - (c) is employed in the Industry as at the date of coming into operation of this Agreement; and
 - (d) in writing within 13 weeks of the date of coming into operation of this Agreement, or such other period as the Council may determine, elects to—
 - (aa) remain a member of the Bargaining Council Fund; or
 - (bb) join an Employer Fund to which his employer contributes, if the rules of such Fund permit him to become a member thereof, must be permitted to do so;
- (xi) a Non-Bargaining Unit Employee who—
- (a) is a member of the Bargaining Council Fund;
 - (b) is a member of a trade union which has established an Associate Fund; and
 - (c) is employed in the Industry as at the date of coming into operation of this Agreement and who in writing within 13 weeks of the said date, or such other period as the Council may determine, elects—
 - (aa) to remain a member of the Bargaining Council Fund;
 - (bb) to join the Associate Fund established by the trade union of which he is a member; or
 - (cc) to join an Employer Fund to which his employer contributes, if the rules of such Fund permit him to become a member thereof, must be permitted to do so;
- (xii) a Non-Bargaining Unit Employee who—
- (a) is employed after the date of coming into operation of this Agreement;
 - (b) is a member of an Employer Fund; and
 - (c) after the said date becomes a member of a trade union and who in writing within 13 weeks of the date on which he joins the trade union, or such other period as the Council may determine, elects to—
 - (aa) join the Bargaining Council Fund, if he is not a member of a trade union which has established an Associate Fund;
 - (bb) join the Associate Fund established by the trade union of which he is a member; or

(cc) remain a member of the Employer Fund, if any, to which his employer contributes for the benefit of its employees,

must be permitted to do so.

(xiii) a Non-Bargaining Unit Employee who—

(a) is employed after the date of coming into operation of this Agreement; and

(b) is at the commencement of his employment a member of, or thereafter becomes a member of, a trade union and who in writing within 13 weeks of the date of such commencement of employment, or within 13 weeks of the date on which he becomes a member of the trade union, as the case may be, elects—

(aa) to join the Bargaining Council Fund if he is not a member of a trade union which has established an Associate Fund; or

(bb) to join an Associate Fund established by a trade union of which he is a member; or

(cc) if the rules of an Employer Fund permit him to become a member thereof, to join such Fund, must be permitted to do so.

(2) Membership of the Bargaining Council Fund shall cease when a member—

(i) leaves the Industry permanently and has received all his benefits in terms of the Rules of the Bargaining Council Fund;

(ii) joins an Associate Fund or an Employer Fund as specified in subclause (1); or

(iii) belongs to the Bargaining Council Fund in terms of subclause (1) (viii) and becomes eligible for membership of the Employer Fund contemplated in that subclause.

(3) Each employer and each trade union party must take such steps as are within its powers to ensure that each Fund from which and to which an employee is to transfer in terms of subclause (1), will within 13 weeks of the date on which the election referred to in that subclause was made, take all such steps as are within its powers to procure the transfer of assets and liabilities in respect of that employee to his new Fund.

(4) Each party to the Main Agreement and each employer must, within 13 weeks of the date of coming into operation of this Agreement, take such steps as are within its powers to procure such amendments to the rules of such Fund or Employer Fund to which its members or employees, as the case may be, belong, as may be required—

(i) to give effect to the principal purpose of this Agreement which is to procure that all Bargaining Unit Employees belong to either the Bargaining Council Fund or an Associate Fund; and

(ii) to facilitate compliance with subclause (1).

(5) If a party or an employer fails to comply with its obligations in terms of subclause (3) or (4), the Council must take such steps as are within its powers, including legal action, to procure the amendment of the rules of the Occupational Retirement Funds referred to in that subclause. Nothing in this Agreement will be construed as limiting the rights of parties to it to exercise such other rights as they may have in terms of the Act or any other statute or law to procure compliance with the Agreement.

7. CONTRIBUTIONS

(1) (a) (i) Subject to the provisions of paragraph (b), every employer shall on the first payday after the date upon which this Agreement comes into operation and thereafter on every payday of every week, deduct from the wage of each member in his employ, the amount specified in column A of Annexure A to this Agreement. To the amount so deducted the employer shall add a contribution as specified in column B of Annexure A to his Agreement.

(ii) If an employee who was a member of an Employer Fund becomes a member of the Bargaining Council Fund or an Associate Fund and the rate of contributions payable by him and by his employer to the Employer Fund was higher than the rate of contributions specified in this Agreement, he and his employer must contribute to the Bargaining Council Fund or the Associate Fund, as the case may be, at the higher rate.

(iii) The Council must pay the contributions paid to it in respect of an employee, to the Fund to which the employee belongs by no later than seven days after the date on which they are received.

(b) Notwithstanding anything to the contrary contained in this Agreement, should a member, other than an employee referred to in paragraph (d) below, work for less than 16 hours during any week, no contributions shall be made by the member or the employer.

(c) Deductions shall be made from the wages received by a member and contributions shall be made by the employer for periods of paid leave of absence from work and for paid holidays, as though the member concerned had been present at work as he normally would have been during any period of employment.

(d) (i) A temporary employment service who employs an employee on a fixed term contract of a duration of less than 2 months; or

(ii) the employer of a part-time employee who works less than 15 hours per week and who elects in writing not to join a Fund; or

(iii) the employer of a relief employee who is employed on more than 90 days in a 52 week period, shall, in addition to the normal wage due to such employee in respect of ordinary hours worked, pay the employee an allowance equal to the percentage specified in column B of Annexure A to this Agreement, of the employee's normal wage for every hour worked in a job category in lieu of contributions due by the employer in terms of subclause (1) (a) (i) and (ii).

(2) (a) Subject to the provisions of paragraph (b), an employer shall pay the total contributions referred to in subclause (1), whether they relate to membership of the Bargaining Council Fund or an Associate Fund, monthly at the Head Office of the Council on the Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 7th day of the month following that during which the members' deductions were required to be made, a monthly return with the particulars in the form specified by the Council for that purpose, including each member's full names, surname, date of birth and identification number: Provided that the Council may in writing permit an employer to pay contributions due to an Associate Fund directly to such Fund.

(b) An employer who is in arrears with payments referred to in paragraph (a) and who fails, after having been warned in writing by the Council, to forward the outstanding amounts within seven days of the date of such warning, shall, on being notified by the Council in writing to do so, submit the contributions referred to in subclause (1) (a) (i) and (ii) week by week, so as to reach the Secretary of the Council not later than the Friday following the payday of the week in respect of which the contributions are due. The payment submitted in respect of the last payday of each calendar month shall be accompanied by the return referred to in paragraph (a). An employer to whom the provisions of this paragraph have been applied shall only on being notified by the Council in writing revert to the payment of contributions on the monthly basis provided for in terms of paragraph (a).

(c) If not already furnished in respect of present employees, but in any event whenever a new employee enters the industry, the first return referred to in paragraph (a) or (b) following the date upon which such employee became eligible for membership of the Bargaining Council Fund, shall be accompanied by a schedule reflecting the full names of the employee, as well as such employee's address and identity number and the addresses and identity numbers, where available, of the member's dependants and any changes therein and any other information as may be required by the Committee from time to time.

(d) Every member, if he has not already done so, but in any event on joining the Fund, shall advise his employer of his address and identity number and of the addresses and identity numbers, where available, of his dependants. Every member shall furnish his employer with any change of address of his dependants and every employer shall advise the Secretary of the Council thereof in writing.

(3) If any contribution is made in error to the Bargaining Council Fund, that Fund shall not be liable to repay that contribution after the lapse of 26 weeks from the date of such payment. From the weekly contributions received from the employer as specified in column B of Annexure A, the Bargaining Council Fund shall deduct the cost of insured benefits and pay them to a registered insurance company or companies for the purpose of providing members with the insured benefits provided for in the Rules of the Bargaining Council Fund as amended from time to time.

(4) Employees who are members of pension or provident funds referred to in clause 1 (3) and their employers shall make contributions to those funds at rates not lower than the percentage deductions specified in Annexure A to this Agreement.

8. AGENTS TO THE COUNCIL

(1) One or more persons shall be appointed by the Council as agents to assist it in enforcing the provisions of this Agreement.

(2) The Council may request the Minister of Labour to appoint any person as a designated agent of the Council in terms of section 33 of the Act.

(3) A designated agent shall have all the powers conferred on him by section 33A and Schedule 10 of the Act.

9. EXEMPTIONS

Applications from non-parties for exemption from any of the provisions of this Agreement will be considered in terms of the Exemption clause of the Council's Exemption and Dispute Resolution Collective Agreement published under Government Notice No. R. 919 of 24 July 1998, as amended.

10. NO COUNCIL LIABILITY FOR UNPAID CONTRIBUTIONS

(1) The Council and the members of the Council shall not be held responsible for any act which may result in loss to the Fund where such act was performed in good faith and shall not be liable for the debts and liabilities of the Fund.

(2) The Council shall not be held responsible for any contributions deducted and any contributions due and payable by an employer that are not paid to the Council on sequestration or liquidation of an employer's estate.

11. GENERAL PROVISIONS

(1) Any benefit, right or interest to which a member of the Fund may claim to be entitled in terms of this Agreement shall not be used as a ground for damages in any action brought by such member against his employer in respect of dismissal. Nothing in this Agreement shall in any way restrict the right of an employer to terminate the employment of such a member.

(2) No person, whether a member or otherwise, shall have any claim, right or interest in respect of a Fund or any contributions thereto, or any claim against the Council or his employer, except under and in accordance with the provisions of this Agreement and the Rules of his Fund.

(3) Subject to the provisions of the Insolvency Act, 1936, or any other law, if the estate of any member or his dependant is sequestrated or assigned, the benefit to which such member or dependant is entitled in terms of the Rules of the Fund shall not form part of the assets of his insolvent or assigned estate, but shall revert to the Fund and may be dealt with by the Management Committee in a manner calculated in the opinion of the Committee to benefit such member or dependant.

(4) Should any amount due in terms of this Agreement not be received by the Council by the 7th day of the month following that in respect of which it is payable, the employer shall forthwith be liable for and be required to pay interest on such amount, or on such lesser amount as remains unpaid, at 2% per 30 days, subject to the provisions of the Prescribed Rate of Interest Act, 1975, calculated from such 7th day to the day on which payment is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

(5) Any interest payable in terms of subclause (4) shall be paid into the Distribution Account referred to in Rule 8, of the Rules.

12. RULES OF BARGAINING COUNCIL FUND

The Management Committee shall have the power, subject to the approval of the Council, to make, amend and withdraw Rules governing the administration of the Bargaining Council Fund: Provided that such Rules and any amendment thereof shall be inconsistent with the provisions of this Agreement or with the provisions of any law. A copy of the Rules must be forwarded to the Director-General of Labour. The Rules of the Bargaining Council Fund are binding on its members.

13. EXPIRY OF AGREEMENT, DISSOLUTION OF COUNCIL AND LIQUIDATION OF THE FUND

(1) If this Agreement expires by effluxion of time, or ceases for any other cause, and no subsequent Agreement has been negotiated for the purpose of continuing the operation of the Bargaining Council Fund, or the Bargaining Council Fund has not been transferred by the Council to any other fund constituted for the same purpose within 12 months of the date of expiry of this Agreement, the Bargaining Council Fund shall be liquidated in terms of its Rules.

(2) If the Council is dissolved or if it ceases to function during any period in which this Agreement is binding in terms of section 59 of the Act, the Bargaining Council Fund shall continue to be administered by the Committee or such persons as the Registrar of Labour Relations may designate in terms of that section. Any vacancy occurring on the Committee filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure the equality of employer and employee representatives on the Committee. If the Committee is unable or unwilling to discharge its duties, or a deadlock arises thereon which renders the administration of the fund impracticable or undesirable in the opinion of the Registrar, he shall appoint a person who shall forthwith co-opt two more persons, one being as member of the Fund or a paid official of one of the trade unions and the other being a member of the employers' organisation or a paid official thereof, and these persons together shall be the Board of Trustees in whom all power, rights and duties of the Committee shall vest. If there is no Council the Fund shall be liquidated upon the expiry of the Agreement by the Committee or the Trustees, as the case may be.

(3) Any vacancy occurring on the Board of Trustees, as constituted in terms of subclause (2), shall be filled in the manner provided for in that subclause.

14. RESOLUTION OF DISPUTES

Disputes about the interpretation, application or enforcement of this Agreement must be resolved in accordance with the procedure laid down in the Council's Exemptions and Dispute Resolution Collective Agreement, published under Government Notice No. R.919 of 24 July 1998.

ANNEXURE A

Employees for whom wages are prescribed in the Main Agreement	A Weekly deductions from employee's wages	B Employer's weekly contribution
	8% of ordinary wage	8% of ordinary wage

Signed at Johannesburg for and on behalf of the parties to the Council on this 30th day of September 2004.

G. F. VAN NIEKERK
Chairman of the Council

J. J. DUBE
Vice-Chairman of the Council

B. S. E. GRATZ
Secretary of the Council