



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

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### CONSOLIDATED PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE EASTERN CAPE REGION

Herewith follows the complete Agreement published under Government Notice R.1444 in Government Gazette No 20681 of 10 December 1999, duly updated as per the under-mentioned Amending agreement subsequently published:

Amended/Extended	Government Notice	Government Gazette	Date of Publication
Extended to 30 June 2005	R.666	21313	30.06.2000
Cancellation Notice	R.248	24481	21.02.2003
Re-Enacted & Amended	R.249	24481	21.02.2003
Amended	R.790	25082	20.06.2003
Correction Notice	R.1021	25220	25.07.2003
Cancellation Notice	R.1294	25456	19.09.2003
Re-Enacted & Amended	R.1295	25456	19.09.2003
Correction Notice	R.1571	25625	31.10.2003
Amended	R.516	26279	30.04.2004
Correction Notice	R.705	26423	11.06.2004
Cancellation Notice	R.1172	26878	15.10.2004
Re-Enacted & Amended	R.1173	26878	15.10.2004
Amended	R.588	27686	24.06.2005
Renewed from 07/10/05 to 31/08/06	R.968	28084	07.10.2005
Renewed from 08/09/06 to 31/08/07	R.885	29174	08.09.2006
Renewed from 14/09/07 to 31/08/12	R.842	30276	14.09.2007
Renewed from 18/01/13 to 31/08/15	R.17	36067	18.01.2013

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#### DISCLAIMER

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

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

#### REGIONAL CHAMBERS:

##### CAPE

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# GOVERNMENT NOTICE

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## DEPARTMENT OF LABOUR

No. R.1444

10 December 1999

### LABOUR RELATIONS ACT 66 OF 1995

#### CLOTHING INDUSTRY, EASTERN PROVINCE: EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Clothing Industry, Eastern Province, 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 20 December 1999 to 30 June 2005 and from 7 October 2005 to 31 August 2006.

**M. M. S. MDLADLANA**  
Minister of Labour

## SCHEDULE

### NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY PROVIDENT FUND COLLECTIVE AGREEMENT FOR THE EASTERN CAPE REGION

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

#### **Eastern Province Clothing Manufacturers' Association**

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

#### **Southern African Clothing and Textile Workers' Union**

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

### 1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry-
  - (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union;
  - (b) within the Magisterial Districts of-
    - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
    - (ii) within the Magisterial District of East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei which were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion which was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) The terms of this agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (3) Clauses 1 (1) (a), 2(1) and 7B of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

### 2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation-

- (1) in respect of the parties to this Agreement, on the date of signature;
- (2) in respect of non-parties, on the date fixed by the Minister of Labour, to be the effective date from which the Agreement shall be extended to become binding on non-parties; and shall remain in operation for the period ending 31 August 2012.

### SPECIAL PROVISIONS

The provisions of clause 7B of the Agreement published under Government Notice No. R. 1444 of 10 December 1999 as amended, extended and re-enacted by Government Notice No. R. 666 of 30 June 2000, No. R. 249 of 21 February 2003, No. R. 790 of 20 June 2003, R.1295 of 19 September 2003, R.516 of 30 April 2004, R.1173 of 15 October 2004 and R.588 of 24 June 2005 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

## GENERAL PROVISIONS

The provisions contained in clauses 3 to 7A and 8 to 9 of the Former Agreement (as further amended, extended and re-enacted from time to time), shall apply to employers and employees.

### 3. DEFINITIONS

All expressions used in this Agreement, which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments of such Act and, unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context-

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

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

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

A. and includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;

- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes

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

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

**"Council"**, means the Cape Chamber (Eastern Cape sub-chamber) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"establishment"** means any place in which any operation in connection with the Clothing Industry is carried on;

**"experience"** means the total length of all periods of employment in the Industry of an employee in respect of whom wages are prescribed in the Main Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose services are terminated at the end of his employer's working year and who resumes work with his former employer within 14 days of the reopening of the employer's factory shall be deemed to have worked continuously;

**"fund week"** means a week calculated from midnight between Friday and Saturday to midnight between the next Friday and Saturday;

**"Main Agreement"** means the Agreement of the Council, published in terms of the Act, which prescribes wages for employees in the Industry;

**"member"** or "member of the Fund" means any person who contributes or has contributed to the Fund as an employee in terms of this Agreement;

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

**"nominee"** means any person appointed by a member to whom any benefits accruing to such member at the time of his death shall be paid;

**"redundancy/retrenchment"** means the termination of the employment of an employee for any or all of the following reasons:

- (a) The business activity of the company is decreasing because of a deteriorating economic

situation, resulting in organisation changes whereby certain positions in the company will be eliminated on a permanent basis, and/or sufficient work is not available, thereby necessitating a cutback in the workforce;

- (b) The operations of the company, or parts thereof are closing down or are undergoing changes because of-
- (i) a relocation of facilities;
  - (ii) technological or technical changes;
  - (iii) automation;
  - (iv) mergers and takeovers; or
  - (v) any other event which may be deemed by the company and the trade union to be of such a nature that it warrants redundancy/retrenchment of employees;

**"retiral age"** means the age of 60 years;

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

**"wage"** means the weekly wage (excluding overtime or any supplementary wage) prescribed in the Main Agreement.

#### 4. PROVIDENT FUND

- (1) The Fund established in terms of the Agreement published under Government Notice No. R. 607 of 20 March 1953, and known as the Provident Fund for the Clothing Industry, Eastern Province (hereinafter referred to as "the Fund"), is hereby continued for the purpose of providing benefits to employees in the Industry.

The Fund shall consist of-

- (a) any moneys standing to the credit of the said Fund as at the date of coming into operation of this Agreement;
  - (b) contributions paid into the Fund in accordance with this clause;
  - (c) interest derived from the investment of any moneys of the Fund;
  - (d) any other moneys to which the Fund may become entitled.
- (2) The Fund shall be under the control of a Management Committee appointed by the Council, consisting of three representatives of the employers and three representatives of the union.

An alternate may be appointed in respect of each representative. The Management Committee shall elect a chairperson and a vice-chairperson from among its members and shall specify its own rules of procedure. Should the Management Committee be unable to perform its duties for any reason, the Council shall perform such duties and exercise its powers.

- (3) The Management Committee shall have the power to make, amend and alter rules governing the administration of the Fund and copies of such amendments must be forwarded to the Department of Labour.
- (4) The Management Committee shall collect all revenue and shall have the power to invest moneys surplus to current requirements as set out in clause 4 (7) (b). The Management Committee shall have the power to appoint an auditor, an actuary, a secretary and staff on such terms and conditions as it thinks fit, and may vary such appointments.

#### CONTRIBUTIONS

- (5) (a) All employees for whom wages are prescribed in the Main Agreement of the Council, having not less than a total of six months' experience in the Industry, shall become members of the Fund and contribute on the following basis:
- (i) All employees earning an amount equal to or more than the weekly wage of a qualified machinist, shall contribute 3,6% per week.

- (ii) All employees earning an amount less than the weekly wage of a qualified machinist, shall contribute 3,8% per week.
- (b) Every employer shall on each pay day contribute for each of his employees who are members of the Fund, the following amount in accordance with paragraph (a):
  - (i) All employees who are earning an amount equal to or more than the weekly wage of a qualified machinist— 6,79% per week;
  - (ii) all employees who are earning an amount less than the weekly wage of a qualified machinist— 6,99% per week.

The employer shall forward the total amount to the Secretary by not later than the seventh day of the following month, together with a statement in such form as the Management Committee may from time to time specify.

- (c) Contributions in respect of a member who receives wages for one day or more during a fund week shall be payable in respect of a whole week.
- (d) Where a member is employed by more than one employer in the Industry during a fund week, the employer by whom he is last employed during such week shall pay both his own contributions and those due by the member in respect of the whole week, and may deduct the contribution due by such member from his earnings as provided in clause 4 (5) (b), and no further contribution shall be payable by or in respect of such member in respect of that week.
- (e) An employer shall not deduct the whole or any part of his own contributions from the earnings of a member or receive any consideration from the member in respect of such contributions.
- (f) When a member is on leave on full pay or pay less than full pay, both his own and the employer's contributions shall be continued.
- (g) Where a member works short-time, both his own and his employer's contributions shall be continued in accordance with subclause (a) hereof.
- (h) If any contribution is made in error to the Fund, the Fund shall not be liable to repay that contribution after the lapse of six months from the date of such payment.
- (i) Whenever any benefit has been mistakenly paid to a member as a result of such member having made to the Fund payments which were not due, the Management Committee may set off the amount of benefits so paid-
  - (i) against any sum claimed from the Fund as a repayment of such contributions which were not due; and
  - (ii) against any future benefits that may become due by the Fund to the said member.
- (j) Any member who re-enters the Industry after having left and received benefits in terms of clause 4 (6) (a) hereof, shall on production of evidence of previous membership of the Fund forthwith be readmitted to membership, but shall be regarded as a new member as from the date of readmission: Provided that if he repays to the Fund in cash the full amount which he received on leaving the Industry, the Management Committee shall have the power to reinstate him with credit for his previous period of membership.
- (k) A member who becomes re-engaged in the Industry without having received payment of benefits in terms of clause 4 (6) (a) hereof, shall immediately become disentitled to any benefits which might have been payable had he not so become re-engaged and shall have credit from his previous period of membership.

#### BENEFITS

- (6) (a) If a member shall leave the Industry permanently for any reason other than those under paragraph (b), (bA) and (c) hereof, he shall be entitled to the following benefits:
  - (i) if the total period of his contributions does not exceed one year, the total amount contributed by him;
  - (ii) if the total period of this contributions exceeds one year, the total amount contributed by him plus 10 per cent thereof;

- (iii) if the total period of his contributions exceeds two years, the total amount contributed by him plus 20 per cent thereof;
- (iv) if the total period of his contributions exceeds three years, the total amount contributed by him plus 30 per cent thereof;
- (v) if the total period of his contributions exceeds four years, the total amount contributed by him plus 40 per cent thereof;
- (vi) if the total period of his contributions exceeds five years, the total amount contributed by him plus 50 per cent thereof;
- (vii) if the total period of his contributions exceeds six years, the total amount contributed by him plus 60 per cent thereof;
- (viii) if the total period of his contributions exceeds seven years, the total amount contributed by him plus 70 per cent thereof;
- (ix) if the total period of his contributions exceeds eight years, the total amount contributed by him plus 80 per cent thereof;
- (x) if the total period of his contributions exceeds nine years, the total amount contributed by him plus 90 per cent thereof;
- (xi) if the total period of his contributions exceeds ten years, the total amount contributed by him plus 100 per cent thereof;

and the total amount shall be paid three months after his leaving the Industry: Provided that the Management Committee may pay moneys due to members in instalments over a period not exceeding six calendar months, should members so desire.

- (b) If a member leaves the Industry on or after reaching retirement age, or if a member is compelled to retire from work owing to incapacitation prior to reaching retirement age and the Management Committee is satisfied that such incapacitated member is totally unable to earn his living in the Industry, it shall grant such member benefits up to the full amount of his own and the employer's contributions.
  - (bA) If a member leaves the Industry as a result of redundancy/retrenchment, and his employer submits proof to this effect acceptable to the Management Committee, the provisions of subclause (6) (a) shall not apply and he shall be entitled to the following redundancy/retrenchment benefits:
    - (i) the total amount contributed by the member in terms of subclause (5) (a); plus
    - (ii) the total amount contributed towards the member's retirement benefit by the employer in terms of subclause (5) (a); plus
    - (iii) interest on the amounts referred to in subparagraphs (i) and (ii) hereof at a rate determined by the Management Committee and based on the report of the auditor upon the financial position of the Fund as at 31 December prior to the member's leaving the employer's service.

Provided that where an employee has been certified as being terminally ill by a registered medical practitioner, the disability benefit shall become immediately due and payable.

- (c) On proof, satisfactory to the Management Committee, of the death of a member, the Fund shall pay a lump sum equal to the aggregate amount of his own and the employer's contributions to a nominee appointed by the member before his death, or into the estate of the deceased member. In the event of the appointed nominee being dead at the time when payment of the benefit is due, such benefit shall be paid into the estate of the deceased member. If the nominee is a minor, the Management Committee shall pay the benefit to such minor's legal guardian.

On similar proof of the death of an employee who has retired from his employment, and was receiving benefits from the Fund, the Fund shall pay to a nominee or into the deceased's estate, as provided in the foregoing paragraph, the difference, if any, by which the aggregate amount calculated in terms of clause 4 (7) (a) or (b) exceeds the total payments which have been made to the retired member.

The Management Committee shall be advised in writing of the appointment of a nominee or



of any change in regard to such appointment and of the address of such nominee. If a deceased member shall have failed to advise the Management Committee in writing of the name and address of his nominee in terms of this subclause, any benefit due in terms of this subclause shall be paid into the estate of such deceased member.

- (d) If a member has received benefits to which he is not entitled under the provisions of this Fund and the matter is not dealt with in the manner set out in clause 4 (5) (j), he shall be liable to repay the Fund the amount of the benefit so received: Provided that the if the Management Committee deems it inequitable in any particular case to demand repayment of the whole amount of the benefit, it may in its discretion demand repayment of any lesser amount or relieve such member of the repayment of the whole amount.
- (e) Any member who leaves the industry while having an outstanding housing loan offered by the Fund Housing Loan Scheme through a financial institution, the balance of the housing loan shall be deducted before the Provident Fund benefit is paid out to the member.
- (f) Such as is provided in this subclause, no benefit or right to benefit shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or subject to any execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or to pledge or hypothecate any benefit or right of benefit, payment of benefit may be withheld, suspended or entirely discontinued if the Management Committee so determines.
- (g) Nothing contained in this Agreement shall in any way affect the right of any member or his dependants to claim compensation or damages payable to workmen or dying from any accident arising out of and in the course of their employment; and the amount payable under this subclause shall not be reduced by reason of any payment that may be made under any other law.
- (h) On admission to the Fund a member shall submit a birth certificate or such other proof of age as is satisfactory to the Management Committee.

If any benefit due and payable, other than to a nominee appointed in terms of subclause 6 (c) of this clause, is not claimed within one year from the due date thereof, the Management Committee shall within three months of the expiration of the said period of one year cause a notice to be published in successive issues of two newspapers circulating in the Eastern Province, one of which shall be a newspaper circulating in the town in which the member to whom the benefit is due was normally resident at the time such benefits became due, stating that a list of all persons who have not claimed their benefits within the period of one year stated above, is available for inspection at the offices of the Council and of the trade union which is a party to the Agreement, and calling upon interested persons to submit claims for such benefits within a period of three months from the date of the last insertion of the advertisement and to furnish full details of the grounds on which such claims are made.

Such claims shall be met in accordance with the provisions of paragraphs (a), (b) and (c) of this subclause: Provided that the Management Committee may, if it deems fit, deduct the cost of advertising. In the event of no claim being made by or on behalf of the person whose name appears on the list, any benefits due to him shall be forfeited to the Fund: Provided that the Management Committee may at its discretion authorise the payment of benefits in the event of a claim being made after the benefits have been forfeited to the Fund.

#### FINANCE

- (7) (a) The moneys accruing to the Fund shall be paid into bank or banks or building society or societies on current or deposit account, and all cheques shall be signed by such persons as the Management Committee may appoint.
- (b) Any moneys not required to meet current payments and are therefore surplus to the Fund's requirements, or the expenses of the Fund, shall be invested in-
  - (i) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
  - (ii) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1 975);
  - (iii) a registered unit trust; or

- (iv) any other manner approved by the Registrar.
- (7A) The Management Committee shall also have the power to furnish a guarantee in respect of a loan by some other person to a member for the purpose of a housing loan.
- (8) An accountant shall, at such times as the Management Committee in its discretion may require, conduct investigations into the Fund and a valuation of the liabilities of the Fund, and shall make recommendations for the declaration as a bonus or the creation of a reserve for additional benefits.
- (9) The Management Committee shall, if it deems fit, declare a bonus based on the recommendations of the accountant, and any bonus so declared shall be credited to the contributors' accounts and shall be payable to such members at the time and in addition to the benefits described in clause 4 (6) of this Agreement, or shall, if it deems fit, create a financial reserve for the payment of additional benefits to members who are compelled to retire from the Industry in terms of clause 4 (6) (b). Such additional benefits shall be based on a formula to be approved by the Council and related to the period of service in the Industry of such member.
- (10) (a) The Secretary of the Management Committee shall, as soon as possible after 31 December each year, prepare statements in a suitable manner showing the position of the Fund as at that date. The statements shall be audited by a public accountant appointed by the Management Committee and shall be submitted to the Council.
- (b) The audited consolidated statements and the auditor's report thereon shall lie for inspection at the head office of the Council and copies of them shall be sent to the Registrar of Labour Relations within three months of the close of the period covered by it.
- (c) All expenses incurred in the administration of the Fund shall be a charge upon the Fund.

#### GENERAL

- (11) If an employee is transferred or promoted to an occupation the wages for which are not specified, he shall cease to contribute to the Fund and shall be entitled to the benefits of clause 4 (6) (a).
- (12) Upon the expiration of this Agreement or any extension thereof, and in the event of no subsequent agreement being negotiated for the purpose of continuing the operation of the Fund within 12 months from the expiration of this Agreement or any extension thereof, the Fund shall continue to be administered by the Management Committee and, in the event of a subsequent agreement not being negotiated within a period of 12 months from the expiration of this Agreement or any extension thereof, the Fund shall be either liquidated as though the employees in question had left the Industry, or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created.
- (13) In the event of the dissolution of the Council or in the event of it ceasing to function in the period during which this Agreement is binding in terms of section 32 of the Act, the Management Committee shall continue to administer the Fund, and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and/or alternates in the membership of the Committee.

In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising with regard to such duties which renders the administration of the Fund impracticable or undesirable in the opinion of the Director: Collective Bargaining, Department of Labour he may appoint a trustee or trustees to carry out the duties of the Committee and such trustee or trustees shall possess all the powers of the Committee for such purpose. If there is no Council in existence upon the expiration of this Agreement, the Fund shall be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in clause 5.

#### 5. LIQUIDATION

Upon liquidation of the Fund in terms of clause 4 (12), and the payment of moneys due to members in terms of that subclause, the moneys remaining to the credit of the Fund after payment of all claims

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

## 6. AGENTS

The Council shall appoint one or more persons as Agents and, in terms of section 33 of the Act, request the Minister of Labour to appoint persons as designated Agents regarding the non-parties, to assist in giving effect to the terms of this Agreement. It shall be the duty of every employer and employee (party and non-party) to permit such Agents to enter his establishment to institute such enquiries and to examine such documents, books, wage sheets, pay envelopes and pay tickets and to interrogate such individuals as may be necessary for the purpose of ascertaining whether the provisions of this Agreement are being observed.

## 7. EXEMPTIONS

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

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this Agreement may apply to the Council for exemption from any or all of the provisions of this Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
  - (a) The period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this Agreement from which the exemption is sought;
  - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultation shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
  - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
  - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submission.

- (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
  - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) the conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
    - (i) the cost incurred for the hearing of the appeal;
    - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
  - (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of cost incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.

- (6)
  - (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
  - (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
  - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
  - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
  - (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the Industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
  - (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.
  - (e) Any existing projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.

- (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this Agreement.

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

- (1) Exemption from the provisions of this Agreement shall be granted in the following circumstances:
- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
    - (i) the collective agreement does not contravene the minimum employment standards set out in this Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and

- (ii) wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio.

#### **8. DISPUTES ABOUT THE INTERPRETATION, APPLICATION AND ENFORCEMENT OF THIS AGREEMENT**

Any dispute concerning the interpretation and/or application of this Agreement shall be determined by arbitration or otherwise if so required, by the dispute resolution provisions of the 2002 Constitution of the National Bargaining Council for the Clothing Manufacturing Industry.

#### **9. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

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

Original Collective Agreement signed by the Chairperson, Vice-Chairperson and Acting Secretary of the Eastern Cape Sub-Chamber of the Council, on behalf of the parties to this Agreement, on the 13th day of July 1999.