

TABLE OF CONTENTS

NATIONAL BARGAINING COUNCIL FOR THE ELECTRICAL INDUSTRY OF SOUTH AFRICA

COLLECTIVE AGREEMENT

PART I

<u>CLAUSE</u>		
<u>PAGE</u>		
1.	SCOPE OF APPLICATION	5
2.	PERIOD OF OPERATION	6
3.	EXCLUSIONS	6
	SPECIAL PROVISIONS	6
	GENERAL PROVISIONS	
4.	INDUSTRIAL ACTION	7
5.	DEFINITIONS	7
6.	LEVELS OF BARGAINING	21
7.	DAYS AND HOURS OF WORK	21
8.	REFRESHMENTS BREAK	23
9.	OVERTIME AND PAYMENT FOR WORK ON SUNDAYS AND PUBLIC HOLIDAYS	23
10.	NIGHT WORK	24
11.	KEEPING OF RECORDS	25
12.	SHORT TIME	25
13.	INCLEMENT WEATHER	26
14.	CIVIL DISORDER	26
15.	PAYMENT OF REMUNERATION	27
16.	ANNUAL LEAVE AND ANNUAL SHUTDOWN	29

<u>CLAUSE</u>	<u>PAGE</u>
17. ADDITIONAL PAID LEAVE	32
18. FAMILY RESPONSIBILITY LEAVE	33
19. MATERNITY LEAVE	33
20. TRADE UNION REPRESENTATIVES' LEAVE	34
21. SICK LEAVE	34
22. PROOF OF INCAPACITY	36
23. INJURY-ON-DUTY ALLOWANCE	36
24. EXTENSION OF INSURANCE COVER FOR INJURY ON DUTY	37
25. PAYMENT FOR PUBLIC HOLIDAYS	37
26. GENERAL CONTROL	38
27. TERMINATION OF EMPLOYMENT AND SEVERANCE PAY	38
28. TRANSFER OF CONTRACT OF EMPLOYMENT	39
29. PENALTIES	40
30A. TRADE UNION SUBSCRIPTIONS AND EMPLOYERS' ORGANISATION LEVY	40
31. BENEFIT FUNDS	41
32. CLOSING OF ESTABLISHMENT ON AN ORDINARY WORKING DAY	41
33A. REGISTRATION OF EMPLOYERS	42
33B. LIMITED DURATION CONTRACTS	44
34. REGISTRATION AND TRAINING OF EMPLOYEES	44
35. OUTWORK	45
36. PIECEWORK AND INCENTIVE PAYMENTS	46

<u>CLAUSE</u>	<u>PAGE</u>
37A. EMPLOYMENT OF PERSONS UNDER 15 YEARS OF AGE	46
37B. HIV POLICY	46
38. PROHIBITION OF CONTRACT WORK ON A LABOUR-ONLY BASIS	46
39. TEMPORARY EMPLOYMENT SERVICES	47
40. PROHIBITION OF CESSION AND/OR SET OFF	49
41. FIRST-AID	49
42. CERTIFICATE OF SERVICE	49
43. STORAGE, INSURANCE AND PROVISION OF TOOLS	49
44. ADMINISTRATION OF AGREEMENT	50
45. DESIGNATED AGENTS	50
46. TRADE UNION ACCESS	51
47. EXEMPTIONS	51
48. ESTABLISHMENT OF THE TRUST FUND ADVANCES FUND	53
49. GENERAL	54
50. NEGOTIATING PROCEDURES	54
51. INDUSTRY DISPUTE SETTLEMENT PROCEDURE	55
52. GENERAL DISPUTE SETTLEMENT PROCEDURE	55
53. DISPUTES CONCERNING DISMISSALS	56
54. INTERPRETATION AND/OR APPLICATION DISPUTES	57
54A ENFORCEMENT OF THE MAIN COLLECTIVE AGREEMENT	58
55. CONCILIATION	58
56. ARBITRATION	59

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE ELECTRICAL INDUSTRY OF SOUTH AFRICA

MAIN COLLECTIVE AGREEMENT

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

Electrical Contractors' Association (South Africa)
(hereinafter referred to as the "employers" or the "employers organisation"), of the
one part, and the

South African Electrical Workers' Association,
(hereinafter referred to as the "employees" or the "trade union"), of the other part,
being the parties to the National Bargaining Council for the Electrical Industry of
South Africa.

PART 1

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed –
- (a) by all employers and employees in the Electrical Industry who are members of the employers' organisation and trade union, respectively, who are engaged or employed in the Industry.
 - (b) in the following areas :
 - (i) In the Province of the Transvaal and the Magisterial Districts of Sasolburg and Bloemfontein as they existed at 19 June 1985;
 - (ii) in the Magisterial Districts of Barkly West, Gordonia, Hartswater, Kuruman and Postmasburg as they existed at 18 October 1989;
 - (iii) in the Province of the Free State (excluding the Magisterial Districts of Sasolburg and Bloemfontein), as it existed at 19 June 1985;
 - (iv) in the Magisterial Districts of Aberdeen, Adelaide, Albert, Aliwal North, Barkly East, Bedford, Britstown, Carnarvon, Cathcart, Colesberg, Cradock, De Aar, Elliot, Fort Beaufort, Fraserburg, Graaff-Reinet, Hankey, Hanover, Hofmeyr, Indwe, Jansenville, King William's Town, Kirkwood, Komga, Lady Grey, Maclear, Middelburg (Eastern Cape), Molteno, Murraysburg, Noupoot, Pearston, Philipstown, Prince Albert, Richmond (Northern Cape), Somerset East, Sterkstroom, Steynsburg, Steytleville, Stutterheim, Tarkastad, Venterstad, Victoria West, Williston, Willowmore and Wodehouse, as they existed at 13 April 1995;
 - (v) in the Magisterial Districts of Albany, Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Knysna, Ladismith, Mossel Bay, Oudtshoorn, Port Elizabeth, Queenstown, Riversdale, Uitenhage and Uniondale, as they existed at 24 November 1995;
 - (vi) in the Magisterial Districts of the Cape, Wynberg (including that portion of the Magisterial District of Somerset West which, prior to 9 March 1973, Government Notice No. 173 of 9 February 1973, fell within the Magisterial District of Wynberg), Simonstown, Goodwood and Bellville; in those portions of the Magisterial Districts of Malmesbury and Stellenbosch which, prior to the publication of Government Notices Nos. 171 of 8 February 1957

and 283 of 2 March 1962, respectively, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch but which, prior to 2 March 1962, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville;

(vii) in the Province of KwaZulu-Natal, excluding any portions of that area falling within the former self-governing territory of KwaZulu as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

(viii) in the Magisterial District of East London.

(2) Notwithstanding the provisions of subclause 1.1. the terms of this Agreement shall apply to apprentices and learners only in so far as they are not inconsistent with the provisions of the Manpower Training Act, 1981 or the Skills Development Act, 1998, or any conditions prescribed or any notices served in terms thereof.

(3) For the purposes of this Agreement, the "rate of remuneration" of learners prescribed under the Skills Development Act, 1998, shall be taken to be the weekly wage of such employees, and the "hourly rate" shall be the weekly wage calculated as above, divided by the number of ordinary hours worked in the establishment concerned.

2. PERIOD OF OPERATION

This Agreement shall come into operation on the date fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force up to and including 31st January 2011.

3. EXCLUSIONS

The provisions of this Agreement shall not apply to non-parties in respect of clauses 1(1)(a) of Part 1 of this Agreement.

SPECIAL PROVISIONS.

The provisions of clauses 20, 25(1)(d), 27(3), 30, 30B, 39, (12), 50 and 51 of Part 1 of the Agreement published under Government Notice No. R90 of 26 January 2001, as re-enacted and amended under Government Notice No. R795 of 14 June 2002 and Government Notice No. R1245 of 5 September 2003 and Government Notice No.

R280 of 1 April 2005 (hereinafter referred to as the "former agreement") shall apply to employers and employees.

GENERAL PROVISIONS.

The provisions of clauses 4 to 19, 21 to 25(1)(c), 25(1)(e) to 27(2), 27(4) to 29, 30A, 31 to 39(11), 40 to 49, 52 to 56 of Part 1 and Part II of the Former Agreement (as further extended, amended and re-enacted from time to time), shall apply to employers and employees.

4. INDUSTRIAL ACTION

No person bound by the provisions of this Agreement shall engage in or participate in a strike or a lockout or any conduct in furtherance of a strike or a lockout in respect of any matter regulated by this Agreement for its duration.

5. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference in this Agreement to an Act shall include any amendments to such Act; further, and unless the context otherwise indicates -

"abscond" means the absence from work of an employee for a period in excess of five consecutive working days without the employer being informed or notified of the reasons therefor, or the desertion by an employee of his employment for reasons unknown to the employer;

"Act" means the Labour Relations Act, 1995;

"apprentice" means an employee serving under a written contract of apprenticeship registered with the former Electrical Contracting Industries Training Board;

"Area A" means the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan, Bronkhorstspuit, Carletonville, Cullinan, Delmas, Germiston, Heidelberg, Johannesburg, Kempton Park, Krugersdorp, Nigel, Oberholzer, Pretoria, Randburg, Randfontein, Roodepoort, Sasolburg, Springs, Vanderbijlpark, Vereeniging, Westonaria, Witbank and Wonderboom;

"Area B" means the Magisterial Districts of Amersfoort, Balfour, Bethal, Brits, Ermelo, Highveld Ridge, Klerksdorp, Middelburg (Mpumalanga), Nelspruit, Pietersburg, Piet Retief, Pongola, Potchefstroom, Rustenburg, Standerton, Volksrust and White River;

"Area C" means the Magisterial Districts of Barberton, Belfast, Bloemfontein, Bloemhof, Carolina, Christiana, Coligny, Delareyville, Eerstehoek, Ellisras, Groblersdal, Koster, Letaba, Lichtenburg, Lydenburg, Marico, Messina, Pilgrim's Rest 1 and 2, Phalaborwa, Potgietersrus (only the district north of the Melk River), Schweizer-Reneke, Soutpansberg, Swartruggens, Thabazimbi, Ventersdorp,

Waterberg, Waterval Boven and Wolmaransstad, and the Municipal Area of Warmbaths;

"Area D" means the Magisterial Districts of Bethlehem, Harrismith, Hennenman, Kroonstad, Odendaalsrus, Parys, Ventersburg, Virginia and Welkom;

"Area E" means the Magisterial Districts of Barkly West, Bethulie, Boshof, Bothaville, Brandfort, Britstown, Bultfontein, Carnarvon, Clocolan, Colesberg, De Aar, Dewetsdorp, Edenburg, Excelsior, Fauresmith, Ficksburg, Fouriesburg, Frankfort, Fraserburg, Gordonia, Hanover, Hartswater, Heilbron, Hoopstad, Jacobsdal, Jagersfontein, Koffiefontein, Koppies, Kuruman, Ladybrand, Lindley, Marquard, Noupoot, Petrusburg, Philippolis, Philipstown, Postmasburg, Reddersburg, Reitz, Richmond (Northern Cape), Rouxville, Senekal, Smithfield, Theunissen, Trompsburg, Victoria West, Viljoenskroon, Vrede, Vredefort, Wepener, Wesselsbron, Williston, Winburg and Zastron;

"Area F" means the Magisterial Districts of Port Elizabeth and Uitenhage;

"Area G" means the Magisterial Districts of Albany, Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Knysna, Ladismith, Mossel Bay, Oudtshoorn, Riversdale and Uniondale;

"Area H" means the Magisterial Districts of Aberdeen, Adelaide, Albert, Aliwal North, Barkly East, Bedford, Cathcart, Cradock, Elliot, Fort Beaufort, Graaff-Reinet, Hankey, Hofmeyer, Indwe, Jansenville, King William's Town, Kirkwood, Komga, Lady Grey, Maclear, Middelburg (Eastern Cape), Molteno, Murraysburg, Pearston, Prince Albert, Queenstown, Somerset East, Sterkstroom, Steynsburg, Steytlerville, Stutterheim, Tarkastad, Venterstad, Willowmore and Wodehouse;

"Area I" means the Magisterial Districts of the Cape, Wynberg (including that portion of the Magisterial District of Somerset West which, prior to 9 March 1973, Government Notice No. 173 of 9 February 1973, fell within the Magisterial District of Wynberg), Simonstown, Goodwood and Bellville, in those portions of the Magisterial Districts of Malmesbury and Stellenbosch which, prior to the publication of Government Notices Nos. 171 of 8 February 1957 and 283 of 2 March 1962, respectively, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch but which, prior to 2 March 1962, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville;

"Area J" means the Magisterial Districts of Camperdown, Chatsworth, Durban, Inanda, Lions River, Lower Tugela, New Hanover, Pietermaritzburg and Pinetown;

"Area K" means the Province of KwaZulu-Natal, excluding any portions of that area falling within the former self-governing territory of KwaZulu, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 and

excluding those Magisterial Districts in the Province of KwaZulu Natal which are included in the definition of "Area J";

"Area L" means the Magisterial District of East London;

"artisan" means an employee who has completed his training in terms of the Manpower Training Act, 1981, or is in possession of a certificate issued by the former Electrical Contracting Industries Training Board recognising that he has received training sufficient to entitle such an employee to work as an artisan in the Industry;

"Building Industry" (Areas A to H and L only) without in any way limiting the ordinary meaning of the expression, means the industry in which employers and their employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or making articles for use in erecting, completing or altering buildings and structures, whether the work is performed, the material is prepared, or the necessary articles are made on the sites of the buildings or structures or elsewhere, and includes all work executed or carried out by persons who are engaged in the trades, activities or subdivisions in the Building Industry, including electrical installation, which means electrical fitting and wiring and operations incidental to the activities of an employer in connection with erecting of buildings, including demolishing of buildings;

"certificate" means a certificate of registration issued in terms of regulation 9 (2) of the Electrical Installation Regulations, 1992;

"civil disorder" means the concerted action of a number of people, not employed by the employer, to disrupt, for any purpose whatsoever, the normal activities of the employer at his place of business or any working site, or to prevent employees either from reaching such place of business or working site or from commencing or continuing to work;

"Council" means the National Bargaining Council for the Electrical Industry of South Africa;

"domestic appliance mechanic (DAM)" or **"refrigeration mechanic"** means an employee engaged in one or more of the following classes of work :

diagnosing faults in, or directing or executing repairs or adjustments to, or servicing, assembling, erecting and/or installing ranges, refrigerators, washing machines, ironers, air-conditioning units and all other major electrical appliances, carrying out final tests or supervising of such operations, but does not include an employee engaged in connecting to existing outlets, refrigerators, ranges, or other domestic electrical appliances;

"domestic appliance repairer (DAR)" (Areas J and K only) means an employee engaged in -

- (a) the following operations when performed in the workshops of an establishment in connection with the repair of heating and/or drying and/or personal care

appliances of a load not exceeding five amperes, except in the case of domestic heating appliances where the load does not exceed 15 amperes -

- (i) repairing and/or replacing heating elements on appliances,
 - (ii) repairing and/or replacing ceramic or other insulating spacers, including fixing,
 - (iii) repairing and/or re-assembling heating element containers,
 - (iv) removing and/or replacing motors not exceeding 750 watts at the direction of an artisan, excluding final testing,
- (b) any or all of the following operations carried out in connection with the installation of burglar or other similar alarm systems -
- (i) connecting cables of electromechanical devices,
 - (ii) adjusting vibration contacts to pre-set limits,
 - (iii) soft soldering by hand,
 - (iv) foiling windows ;

“domestic electrical installer (DEI)” (referred to as “emerging electrical installer (EEI)” in Area I only) means

- (a) an employee who is engaged in any or all of the following tasks :

installing, inspecting and testing installations in dwellings not exceeding 80sq metres in an area where such electrical installation is limited to a maximum of a 60 amp single-phase supply, installing a single-phase distribution board or a redi board, lights, excluding low voltage lighting, socket outlets, stove connection and a water heater up to a maximum of 3KW;

- (b) an employee who has been registered as an accredited person in terms of regulation 9 of the Electrical Installation Regulations, 1992, so as to permit him to verify and certify the construction, testing and inspection of the electrical installations listed in (a) above; and
- (c) an employee who has either -

- (1) successfully passed the prescribed test to qualify as Elconop 3 and obtained a minimum of 2 years' post qualification experience as Elconop 3 and successfully passed a practical test accredited by the former Electrical Contracting Industries Training Board, to prove competence at being able to undertake the duties listed in (a) above; and successfully passed a theoretical test accredited by the former Electrical Contracting Industries Training board on those provisions of the Code of Practice for the Wiring of Premises (SABS 0142) relating to single-phase installations

OR

- (2)(i) provided documentary evidence of at least 10 years' relevant practical experience relating to single-phase installations, and
- (ii) successfully passed a practical test accredited by the former Electrical Contracting Industries Training Board to prove competence at undertaking the duties listed in (a) above; and
- (iii) successfully passed a theoretical test accredited by the former Electrical Contracting Industries Training Board on those provisions of the Code of Practice for the Wiring of Premises (SABS 0142) relating to single-phase installations;

"driver" means an employee engaged in driving a mechanical vehicle on a public road who is in possession of a valid driver's licence issued under any Road Traffic Ordinance;

"electrical assistant" means an employee who is engaged in any or all of the following tasks:

- (a) Digging holes and trenches, planting poles and laying cables in trenches,
- (b) chasing and cutting walls and concrete floors for conduit,
- (c) loading or unloading materials,
- (d) stripping redundant installations and equipment incidental thereto from which the supply cables have been removed,
- (e) cleaning office and workshop areas,
- (f) preparing refreshments,
- (g) assisting a master installation electrician, an installation electrician, an electrical tester for single-phase, an electrician, an artisan, a domestic appliance mechanic, a domestic electrical installer, a domestic appliance repairer and an Elconop 1, Elconop 2 or Elconop 3, but not performing any work individually except as set out in (a) to (f) above: Provided that should an employee produce a certificate of service issued in terms of clause 43 of this Agreement, or other evidence acceptable to the Council indicating that he was previously employed in the industry as an Elconop 1, he shall be employed as not less than an Elconop 1, and the terms and conditions of employment of the electrical assistant shall be identical to those of the former "labourer";

"electrical construction operator level 1" (hereinafter referred to as 'Elconop 1') means an employee who has received on-the-job training by the employer and who undertakes any of the following tasks and who may use the tools necessary to perform such tasks -

- (a) bending conduit,
- (b) cutting conduit to marks and threading and reaming such conduit,

- (c) attaching to conduit empty conduit accessories and trays,
- (d) installing and fixing wire ways,
- (e) installing armoured and unarmoured surface cable, excluding the connection thereof,
- (f) fitting glands to PVC cables, but excluding any glands which require epoxy or similar filling,
- (g) operating a trenching machine once trained,
- (h) laying cables in trenches, ducts and racks, including the securing of such cables,
- (i) performing the work of an electrical assistant and general worker,
- (j) assisting a master installation electrician, an installation electrician, an electrical tester for single-phase, an electrician and an Elconop 2 or Elconop 3, but not performing any work individually, except as set out in (a) to (i) above;

“electrical construction operator, level 2” (hereinafter referred to as ‘Elconop 2’) means an employee who is in possession of proof of proficiency as Elconop 1 issued by his employer, who has undergone on-the-job training and has successfully passed the examination for Elconop 2 at an institutionalised training centre accredited by the former Electrical Contracting Industries Training Board, and who may be engaged in any or all of the following tasks, and may use the tools necessary to perform such tasks : Provided such tasks are carried out only on new installations or on major renovations to structures or buildings from which the power has been disconnected from the main supply, and are carried out under the supervision of a master installation electrician, installation electrician, electrician, electrical tester for single-phase, a domestic electrical installer, emerging electrical installer or artisan -

- (a) cleating, including placing wires in cleats, but excluding tensioning,
- (b) placing or drawing conductors into wire ways,
- (c) erecting and fixing luminaries, including connecting such luminaries,
- (d) installing light switches, socket outlets, cooker and water heater switch disconnectors, including the connection thereof,
- (e) installing systemised and/or innovative electrical installations, including a pre-designed wiring system entailing work of a repetitive nature of which the components have been prepared off site to the lengths and sizes required, and including connecting accessories thereto, but excluding the connection of the distribution board,

- (f) installing and fixing surface installations,
- (g) simple arc gas welding,
- (h) performing the work of an electrical assistant, general worker or Elconop 1;

“electrical construction operator level 3” (hereinafter referred to as ‘Elconop 3’) (Areas A to H and J to L only) means an employee who has been employed in the Industry as Elconop 2 for a continuous period of at least 12 months and has undergone the specified formal training and has successfully passed the examination for Elconop 3 at an institutionalised training centre accredited by the former Electrical Contracting Industries Training Board, and who may be engaged in any or all of the following tasks, and may use the tools necessary to perform such tasks: Provided such tasks are carried out only on new installations or on major renovations to structures or buildings from which the power has been disconnected from the main supply, and are carried out under the supervision of a master installation electrician, installation electrician, electrician, electrical tester for single-phase, a domestic electrical installer, emerging electrical installer or artisan -

- (a) wiring and assembling distribution boards,
- (b) installing and connecting distribution boards,
- (c) tensioning cleat wiring,
- (d) complete tubing and wiring of houses, duplexes, simplexes and repetitive work of a similar nature on floors of office blocks, hotels and flats,
- (e) where necessary, performing the work of an Elconop 1 or Elconop 2;

“electrical construction operator level 3” (hereinafter referred to as ‘Elconop 3’) (Area I Only) means an employee who has been employed in the Industry as Elconop 2 for a continuous period of at least 12 months and has received training recognised by the Council and has successfully passed the appropriate examination to entitle such employee to be employed as Elconop 3 in the Industry, or who is in possession of a certificate issued by the Council recognising him as an Elconop 3 employee;

“electrical contractor” means a person who is currently registered with the Electrical Contracting Board of South Africa as an electrical contractor and who undertakes to perform electrical installation work and/or the verification and certification of the construction, the testing and the inspection of electrical installations on behalf of any other person, but excluding an employee of such first-mentioned person;

"Electrical Contracting Board of South Africa" means the Board established by organisations involved in the Electrical Industry, with the address P.O. Box 9683, Edenglen, 1613;

"Electrical Contracting Industries Training Board" means the Board established to administer and co-ordinate training in the Industry.

"Electrical Engineering Industry" (Areas A to H and L only) means the industry concerned with -

- (a) the manufacture and/or assembly from component parts of electrical equipment, namely generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signalling equipment, radio or electronic equipment, including monitors and other equipment utilising the principles used in the operation of radio and electronic equipment, the latter equipment includes, but is not limited to, television and incandescent lamps, and electric cables and domestic electrical appliances, and further includes the manufacture of component parts of the aforementioned equipment,
- (b) subject to paragraph (c) below, the installation, maintenance, repair and servicing of the equipment referred to in paragraph (a) above, but does not include the activities of the Electrical Industry,
- (c) the installation, maintenance, repair and servicing of television sets and monitors, excluding the installation, maintenance, repair and servicing of monitors primarily intended for use in accounting and/or data processing and/or business procedures;

"Electrical Industry" or "Industry" means the industry in which employers and their employees are associated for any or all of the following -

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

and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere,

- (d) the design, preparation, erection, installation, repair and maintenance of all electrical equipment not covered by (a), (b) or (c) above, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere,
- (e) (Areas J and K only) the installation and/or maintenance and/or repair and/or servicing of domestic television sets and/or domestic electronic appliances and/or equipment, including the erection and/or repair of television antennas,
- (f) the installation and/or maintenance and/or repair and/or servicing of overhead lines and underground cables associated with domestic and/or industrial and/or commercial installations and/or street lighting, and for the purposes of this definition-
 - (i) electrical equipment includes:
 - (aa) electrical cables and overhead lines, and
 - (ab) generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, primary and secondary cells and batteries, transformers, furnace equipment, radio sets and allied electrical apparatus, signalling equipment and other equipment utilising the principles used in the operation of radio or electronic equipment,
 - (ii) design, preparation, erection, installation, repair and maintenance does not include -
 - (aa) the manufacture, installation, repair and/or maintenance of lifts and escalators,
 - (ab) the manufacture and/or assembly by the manufacturer of the aforementioned electrical equipment and/or components thereof,
 - (ac) the wiring of or installation in motor vehicles of lighting, heating or other equipment or fixtures, whether permanent or otherwise,
 - (ad) the manufacture, repair and servicing of motor vehicle batteries, the manufacture of lead-acid batteries and the repair, maintenance and installation of such batteries when performed by the manufacturers thereof, and

- (ae) the sale, and/or repair and/or servicing of manual and/or electrical typewriters and/or electro-mechanical office machines and equipment:

Provided that -

the Electrical Industry, as defined above, shall not include the Iron, Steel, Engineering and Metallurgical Industry, the Local Authority Undertaking and the Building Industry (Areas A to H and L only);

“electrical installation” means any machinery, in or on any premises, used for the transmission of electricity from a point of control to a point of consumption anywhere on the premises, including any article forming part of such an installation irrespective of whether or not it is part of the electrical circuit, but excluding -

- (a) any machinery of the supplier related to the supply of electricity on the premises,
- (b) any machinery used for the transmission of electricity of which the voltage shall not exceed 50 V where such electricity is not derived from the main supply of a supplier,
- (c) any machinery which transmits electrical energy in telecommunication, television or radio circuits,
- (d) an electrical installation on a vehicle, vessel, train or aircraft;

“electrical tester for single-phase” means a person who has been registered as an electrical tester for single-phase in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993 and who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of electrical installations supplied by a single-phase electricity supply;

“electrician” means an employee who has completed an apprenticeship in terms of the Manpower Training Act, 1981, in a trade relevant to the Industry, or who has received training recognised by the Council as being sufficient to entitle him to work as an electrician in the Industry;

“employee” means any person employed on any of the classes of work defined in this Agreement and includes a person employed under a contract of apprenticeship or learnership agreement recognised by the Council;

“employer” means any person who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person in any manner to assist him in the carrying on or conducting of his business, and includes temporary employment services as defined in the Act;

“electrical wiring” means the design, installation, alteration, repair or testing of any cable, conductor, fitting, apparatus or conduit used or intended to be used for purposes integral or incidental to the supply and/or consumption of electricity;

“establishment” means the place where the employer normally carries on his business and where his wage records are kept;

“foreman” means an electrician or artisan who has been appointed by his employer to supervise work defined in this Agreement : Provided that such employee may also be required to undertake electrical installation work himself if so required by his employer;

“Freedom of Association” means the right of an employee to join or not to join a trade union of his choice, and the right of an employer to join or not to join an employers’ organisation of his choice”.

“general worker” means an employee who ;

(a) is engaged in any or all of the following tasks -

- (i) loading or unloading materials,
- (ii) digging holes and trenches, planting poles and laying cables in trenches,
- (iii) cleaning office and workshop areas,
- (iv) preparing refreshments,
- (v) chasing and cutting walls and concrete floors for conduit,
- (vi) stripping redundant installations and equipment incidental thereto from which the supply cables have been removed; and

(b) is employed on the following terms and conditions-

- (i) an employer shall have at least one electrical assistant in his employ before he may employ a general worker,
- (ii) a general worker may be employed only to perform the work described in the definition of “general worker” above,
- (iii) the minimum rate of wages shall be not less than 70% (seventy per cent) of the prescribed rate of wages specified in this Agreement for an electrical assistant in the area where the general worker is employed,
- (aa) the minimum rate of wages from 1 February 2008 shall be increased to not less than 80% of the prescribed minimum

rate of wages specified in this agreement of an electrical assistant in the area where the general worker is employed ; and

- (ab) on 1 February 2008 the general worker minimum rate of wages shall be increased to not less than 90% of the prescribed minimum rate of wages specified in this Agreement of an electrical assistant in the area where the general worker is employed. Thereafter, from 1 February 2011 the category of general worker will be abolished.
- (iv) the working hours shall be the normal working hours of the establishment,
- (v) any overtime worked by a general worker on a normal working day or a Saturday, Sunday or public holiday shall be paid in accordance with the provisions of this Agreement,
- (vi) a general worker who is employed for more than 12 months, must thereafter be employed as an electrical assistant on the terms and conditions specified in this Agreement.
- (vii) from the commencement of employment of the general worker he shall be reflected in the wage register and Unemployment Insurance Fund returns of the employer, and the employer shall at all times ensure that the general worker is covered by the Compensation for Occupational Injuries and Diseases Act, 1993,
- (viii) all applicable contributions and subscriptions in terms of the Collective Agreements of the Council shall be payable in respect of all general workers and all such employees shall be included in the Council's monthly return forms,
- (ix) the employer shall pay wages due to a general worker weekly and where the services of a general worker are terminated before the normal pay day as set out herein, he shall be paid all remuneration due to him on termination of employment;

"installation electrician" means a person who has been registered as an installation electrician in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993, and who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of any electrical installation excluding specialised electrical installations;

"Iron, Steel, Engineering and Metallurgical Industry" (Areas A to H and L only) means (subject to the provisions of any Demarcation Determinations made in terms of section 76 of the Labour Relations Act, 1956, and section 62 of the Labour Relations Act, 1995), the industry concerned with the production of iron and/or steel

and/or the processing and/or recovery and/or refining of metals (other than precious metals) and/or alloys from dross and/or scrap and/or residues; the maintenance, fabrication, erection or assembly, construction, alteration, replacement or repair of any machine, vehicle (other than a motor vehicle) or article consisting mainly of metal (other than precious metals) or parts or components thereof and structural metal work, including steel reinforcement work; the manufacture of metal goods principally from such iron and/or steel and/or other metals (other than precious metals) and/or alloys and/or the finishing of metal goods; the building and/or alteration and/or repair of boats and/or ships, including the scraping, chipping and/or scaling and/or painting of the hulls of boats and/or ships; and general woodwork undertaken in connection with ship repairs, and includes the Electrical Engineering Industry;

“learner” means the person who is party to a learnership agreement with an employer or group of employers, and a training provider or a group of training providers;

“Local Authority Undertaking” (Areas A to H and L only) means the undertaking in which employers and their employees are associated for the introduction, continuation, or completion of any action, scheme or activity undertaken by a local authority: Provided that for the purposes hereof the Electrical Industry as defined above shall not include work performed by a local authority exclusively for local authority purposes, but shall include all work performed on the property of a local authority by a registered electrical contractor or his employees or any other person who is not an employee of a local authority: Provided further that the Local Authority Undertaking shall not include the activities of the Electrical Industry;

“lock-up” means any vehicle shed, room, workshop, factory, or similar place, constructed of four walls and a roof, composed of concrete, brickwork, wood, iron or any combination thereof, which can be securely locked, the whole to be so constructed as to provide a place of safe-keeping at any time of employees' tools and clothes and all other tools issued to them by the employer;

“master installation electrician” means a person who has been registered as a master installation electrician in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993, and who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of any electrical installation;

“piece work” means any system under which the minimum wage to which an employee is entitled is calculated solely on the quantity or output of work done, irrespective of the time spent on such work;

“premises” means any land and any building or structure, or part thereof, above or below the surface of any land and includes any vehicle, aircraft or vessel;

“public holiday” means any public holiday as determined in the Public Holidays Act, 1994;

“region A” means the Provinces of Gauteng, Mpumalanga, Northern Province, North West Province, the Free State (excluding the Magisterial Districts of Sasolburg and Bloemfontein) as it existed at 19 June 1985, the Eastern Cape (excluding East London) and the Northern Cape;

“region A1” means the Magisterial district of Bloemfontein in the Province of the Free State;

“region A2” means the Magisterial district of Port Elizabeth in the Province of the Eastern Cape;

“region B” means the Magisterial district of East London in the Province of the Eastern Cape;

“region C” means the Province of KwaZulu-Natal excluding any portions of that area falling within the former selfgoverning territory of KwaZulu, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993;

“region D” means the Province of the Western Cape;

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person’s working for any other person, and “remunerate” has a corresponding meaning and for the purposes of calculating an employee’s annual leave pay, notice pay or severance pay, an employee’s remuneration-

(a) includes the cash value of any payment in kind that forms part of the employee’s remuneration unless the employee receives that payment in kind but

(b) excludes-

(i) gratuities,

(ii) allowances paid to an employee for the purposes of enabling an employee to work, and

(iii) any discretionary payments not related to the employee’s hours of work or work performance;

“retrenchment” means a termination of employment as a result of a shortage of work or the closure of the business;

“SAQA” means the South African Qualifications Authority established by section 3 of the SAQA Act.

“SETA” means the Energy Sector Education and Training Authority established in terms of section (a)(i) of the Skills Development Act, 1998;

“shift” means a working day;

“specialised electrical installations” means electrical installations in -

- (a) hazardous locations as contemplated in SABS 0108,
- (b) anaesthetising and similar locations as contemplated in SABS 051,
- (c) explosive atmospheres as contemplated in SABS 086, or
- (d) the petroleum industry as contemplated in SABS 089;

“specified formal training” means a structured learning component and practical work experience of a specified nature and duration, and culminates in a qualification registered with SAQA;

“Storeman” means an employee who is engaged in any or all of the following tasks ;

- i) Stacking and storage of materials, tools and equipment ;
- ii) Issuing and recording of materials ;
- iii) Receiving and recording regular stock counts ;
- iv) Recording of materials on site ;
- v) Control of materials in the store ;
- vi) Checking and ascertaining the correctness of materials received : and,
- vii) Issuing of such materials.

“suitable accommodation” means a hotel, boarding house, caravan or other suitable accommodation and in the event of a dispute in regard to what is suitable accommodation the Council shall give a ruling;

“temporary employment service” means any person who, for reward, procures for or provides to a client other persons who render services to, or perform work for, the client and who are remunerated by the temporary employment service;

“wage” means the hourly rate prescribed in clause 4 of Part II of this Agreement: Provided that where an employer regularly pays an employee an amount higher than that prescribed in the said clause, it shall mean such higher amount;

“wireways” means cable trays or any enclosed casing for containing wires, cables or busbars;

“working day” means any day, other than a Saturday, a Sunday or a public holiday;

“working employer” means an employer or any partner in a partnership who does manual work in the Industry, a sole proprietor, a working director or an employer who is engaged in any work defined in this Agreement, and who is deemed to be an employee in respect of whom contributions are required to be made in terms of this

Agreement and if he is a partner, a certified copy of the deed of partnership shall be lodged with the Council.

6. LEVELS OF BARGAINING

The Council shall be the forum for negotiating all matters pertaining to this Agreement.

7. DAYS AND HOURS OF WORK

(1)(a) Subject to the provisions of clause 9 of this Agreement, no employer shall require or permit any employee to work-

(i) for more than eight hours in any one day, Mondays to Fridays,

(ii) for more than five days in any one week, Mondays to Fridays,

(iii) on a Saturday, a Sunday or a public holiday,

(iv) before 07:00 or after 17:00,

(v)(aa) for more than five hours continuously without an uninterrupted interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work: Provided that an employer may agree with a majority of his employees to reduce the length of the interval to not less than half an hour,

(ab) except as provided for in subparagraph (v)(aa) or (ac) hereof, periods of work interrupted by intervals of less than one hour shall be deemed to be continuous,

(ac) when, by reason of any overtime worked, an employer is required to give an employee a second interval, such interval may be reduced to not less than 15 minutes;

(b) Notwithstanding the provisions of paragraph (a), an employer may, by declaration to the Council, within one month of the date of coming into operation of this Agreement, elect to change the hours of work, and thereafter such employer shall not require or permit any employee to work :-

(i) for more than forty four (44) hours in any one week,

(ii) for more than nine (9) in any one day,

(iii) for more than five (5) days in any one week, Mondays to Fridays;

(iv) on a Saturday, Sunday or a public holiday;

(v) before 07:00 or after 17:00,

(vi) (aa) for more than five hours continuously without an uninterrupted

interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work : Provided that an employer may agree with a majority of his employees to reduce the length of the interval to not less than half an hour;

(ab) except as provided for in subparagraph (aa) or(ac) hereof, periods of work interrupted by intervals of less than one hour shall be deemed to be continuous,

(ac) when, by reason of any overtime worked, an employer is required to give an employee a second interval, such interval may be reduced to not less than 15 minutes.

- (2) An employer may, to facilitate the keeping of a record of the starting and stopping time and hours of work of his employees, require them to clock in and out of work and may, before paying any employee any wages and/or remuneration for any period not recorded by the clock, require the employee to show satisfactory proof of having been at work: Provided that an employee shall be paid in terms of this Agreement for any time recorded by the clock which falls within the starting and finishing time of the shift for that day of the week, excluding meal intervals as notified by the employer to his employees in terms of clause 45(3) of this Agreement and for all time which he is required by the employer to work which does not fall within such starting and finishing times.

8. REFRESHMENTS BREAK

Every employer shall allow employees a period not exceeding 10 minutes in the morning and again in the afternoon to partake of refreshments, the times for such intervals to be agreed upon between the employer and the employees. No employee may leave the position where he is working to partake of refreshments. Such rest interval shall be deemed to be part of the ordinary hours of work of the employee concerned.

9. OVERTIME AND PAYMENT FOR WORK ON SUNDAYS AND PUBLIC HOLIDAYS

- (1) Unless otherwise authorised by the Council, the maximum overtime that may be worked, including work on Sundays, shall not exceed 10 hours per week.
- (2) Overtime shall be voluntary, and any employee who works any time in excess of or outside the hours prescribed in clause 7 of this Agreement shall be paid at the rate of -
- (a) one and a half times his hourly rate of wages for every hour or part of an hour worked after ordinary hours of work on any day from Monday to

Friday or for every hour or part of an hour for all hours worked on a Saturday.

- (b) double his hourly rate of wages for every hour or part of an hour for all hours worked on a Sunday,
 - (c) for paid public holidays which fall on a day on which the employee would ordinarily work in terms of clause 25(1)(b) of this Agreement, his full day's wages plus his normal hourly rate of wages for every hour or part of an hour for the actual time worked on that day,
 - (d) for paid public holidays which fall on a day on which the employee would not ordinarily work, double his hourly rate of wages for every hour or part of an hour for all hours worked.
- (3) Notwithstanding the provisions of subclause (1) of this clause, where in any one week an employee absents himself from work during any or all of the ordinary hours of work as prescribed in clause 7 hereof, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked and the hours so deducted shall be paid for at the employee's ordinary rate: Provided that -
- (i) if the number of ordinary hours of work on which the employee is absent in any one week is in excess of the number of overtime hours worked, all such overtime hours shall be paid for at the employee's ordinary hourly rate,
 - (ii) any overtime worked on a Saturday shall be deemed to be included for the purposes of this subclause,
 - (iii) where an employee is absent from work with the permission of his employer or absent on account of sickness or circumstances beyond his control, the provisions of this subclause shall not apply, and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked : Provided that any employer may call on an employee for a medical certificate in proof of cause of absence.
- (4) Any employee who is aggrieved by the application to him of any of the provisions of subclause (2) hereof may appeal to the Council against the decision applied to him, and the Council may, after considering any reasons which may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

10. NIGHT WORK

- (1) In this clause, "night work" means work performed after 18:00 and before 06:00 the next day.

- (2) An employer may require or permit an employee to perform night work only if so agreed by the Council and the employee, and if-
 - (a) the employee is compensated by the payment of an allowance, equal to 12% of such employees' ordinary hourly rate of pay, in addition to the wages he is to receive for the hours worked, which may be a shift allowance, or by a reduction of working hours.
and
 - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- (3) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day shall-
 - (a) inform the employee of any health and safety hazards associated with the work that the employee is required to perform,
 - (b) at the request of the employee, enable the employee to undergo a medical examination concerning those hazards-
 - (i) before the employee starts, or within a reasonable period of the employee starting, such work, and
 - (ii) at appropriate intervals while the employee continues to perform such work, and
 - (c) transfer the employee to suitable day work within a reasonable time if-
 - (i) the employee suffers from a health condition associated with the performance of night work, and
 - (ii) it is practicable for the employer to do so.
- (4) For the purposes of subclause (3) hereof an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or fifty times per year.

11. KEEPING OF RECORDS

- (1) Every employer shall keep a record containing at least the following information:
 - (a) The employee's name and occupation,
 - (b) the time worked by each employee,
 - (c) the remuneration paid to each employee,

- (d) the date of birth of each employee,
 - (e) any other prescribed information.
- (2) A record in terms of subclause (1) shall be kept by the employer for a period of three years from the date of the last entry in the record.
- (3) No person shall make a false entry in a record maintained in terms of subclause (1).
- (4) An employer who keeps a record in terms of this clause shall not be required to keep any other record of time worked and remuneration paid in terms of any other employment law.

12. SHORT TIME

- (1)(a) (i) An employer may require his employees to work for a lesser number of hours than the ordinary hours of work of his establishment owing to a shortage of work and/or material, in which case the employer shall give his employees two clear working days' notice of his intention to work short time, and shall, so far as is practicable, spread the work available among the employees affected.
 - (ii) Where the employee is expressly required by the employer to report at the establishment on any one day for the purpose of ascertaining if work will be available, he shall receive not less than four hours' work or pay in lieu thereof, in respect of such day.
 - (b) (i) If the employer advises the employee on the working day immediately preceding the day on which he is not required to attend or if unforeseen contingencies and/or circumstances beyond the control of the employer in the event of the foregoing circumstances arise, the employer shall not be required to pay wages to his employees, except for the periods actually worked: Provided that where the employer believes that resumption of work can be effected and expressly instructs his 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. Unforeseen contingencies and/or circumstances beyond the control of the employer referred to in this paragraph shall not include inclement weather, except as provided for in clause 13 of this Agreement.
 - (ii) The employer shall within seven days of commencement of working short time notify the Council thereof in writing.
- (2) Short shifts worked while working short time shall count as shifts actually worked in order to qualify for the paid leave referred to in this Agreement.

- (3) No employee will work short time for a period exceeding three months. In the event of an employer requiring an employee to work short time for a period exceeding three months he/she will be required to first enter into consultation with the employee and/or the employee's trade union. The purpose of the consultation will be to seek alternatives to the continuation of short time. Such alternative shall include, but may not be limited, to retrenchment of the employee.

13. INCLEMENT WEATHER

If as a result of inclement weather conditions it is not possible to commence or continue with normal work, the employer may decide to discontinue work for that day. In the event of a decision being made to discontinue work on any day owing to inclement weather, an employee shall be paid as follows:

- (a) If work has been stopped within four hours of the start of the normal working day, he shall be paid a minimum of four hours' pay at his normal rate of pay and allowances.
- (b) Subject to the provisions of (a) above, if less than five and a half hours have elapsed since the normal starting time in the establishment and work is then stopped, the employee shall be paid the full pay and allowances for time worked.
- (c) If more than five and a half hours have elapsed since the normal starting time and work is then stopped the employee shall be paid the full pay and allowances paid on a normal working day.

14. CIVIL DISORDER

If, as a result of civil disorder, it is not possible to commence or continue with normal work, the employer may decide to discontinue work for that day. In the event of a decision being made to discontinue work on any day owing to such circumstances, an employee shall be paid as follows:

- (a) If work has been stopped within two hours of the start of the normal working day, the employee shall be paid a minimum of two hours' pay at his normal rate of pay and allowances.
- (b) Subject to the provisions of (a) above, if more than two hours but less than five and a half hours have elapsed since the normal starting time in the establishment and the work is then stopped, the employee shall be paid the full pay and allowances for time worked.
- (c) If more than five and a half hours have elapsed since the normal starting time and work is then stopped, the employee shall be paid the full pay and allowances paid for a normal working day.

15. PAYMENT OF REMUNERATION

- (1)(a) Remuneration shall be paid weekly, fortnightly or monthly as mutually agreed upon by the employer and at least 66 per cent of his employees. The employer shall notify the Council of the arrangement made for the payment of remuneration within 30 days of agreement being reached.
- (b) Where the services of an employee are terminated after the closure of the pay week, all remuneration due to him after that closure shall be payable not later than the pay day on which the remuneration would normally have been paid or not later than seven days after the termination of employment, whichever is the earlier: Provided that, at the request of the employee, such remuneration shall be forwarded to him, either in the form of a money order or a cheque, at an address provided by him.
- (c) Every employee shall be given a statement of payment showing at least the information referred to in clause 11 of this Agreement.
- (2)(a) Except as otherwise provided in this Agreement, only the following deductions may be made from the wages or earnings payable to any employee in terms of this Agreement:
 - (i) For canteen services, where the deduction is authorised by stop-order terminable by the employee by giving not more than 28 days' notice of the termination of his agreement to such deduction being made,
 - (ii) where an employee is absent from work, including absence during any unpaid holiday granted in extension of the paid holidays provided for in this Agreement, a pro rata amount for the period of such absence,
 - (iii) with the written consent of the employee, deductions for insurance or any other funds approved by the Council,
 - (iv) contributions to the funds of the Council in terms of clause 32 and clause 2 of Part II of this Agreement,
 - (v) deduction of any amount which an employer is legally or by order of any competent court required or permitted to make,
 - (vi) where an employer, owing to a clerical, accounting or administrative error or miscalculation, pays an employee remuneration in excess of the amount legally payable, the employer shall be entitled to recover the amount of the overpayment by deduction from subsequent wages or earnings, but no one deduction may exceed 15 per cent of the employee's remuneration,
 - (vii) deductions for subscriptions to the trade union,

- (viii) recovery of advances or loans as provided for in clause 3(3) of Part II of this Agreement.
- (b) Notwithstanding the provisions of this clause relating to payment of remuneration an employer may, by mutual arrangement with his employees, pay any amount due to an employee in terms of this Agreement by cheque or to the credit of such employee with a bank, or registered deposit-receiving institution nominated by the employee, such payment into a bank, or institution to include all payments due to the employee.
- (c) In the event of the employment of an employee terminating before the ordinary pay-day applicable in his case, all payments due to the employee in terms of this Agreement shall be paid in accordance with the relative requirements of this Agreement.
- (d) Notwithstanding the provisions of clause 16 of this Agreement relating to payment of leave pay, payment of leave pay shall be made in accordance with the provisions of this clause in the same manner as that in which the employee is paid his earnings.
- (e) Monthly-paid employees
 - (i) Foremen whose duties require them to supervise other artisans and employees may, upon notification to the Council, be remunerated on the basis of a monthly salary, which shall be not less than the remuneration prescribed for an installation electrician in this Agreement for the number of hours per week, including overtime hours, permitted in terms of this Agreement.
 - (ii) All the provisions of this Agreement shall be applicable to a monthly-paid employee, including payment at overtime rates for all time worked in excess of the hours specified in the letter of appointment, which shall be lodged with the Council.
 - (iii) A monthly-paid employee who has time off work with the permission of his employer shall be paid for such time off.
- (3) Nothing in this Agreement shall operate to reduce the wage which was being paid to an employee immediately prior to, or to which any employee was entitled at, the date of the commencement of this Agreement while such employee is employed by the same employer.

The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this Agreement and who is re-engaged by such employer within a period of 30 calendar days.

16. ANNUAL LEAVE AND ANNUAL SHUTDOWN

(1)(a) (i) Every employee shall be entitled to three consecutive weeks' (15 consecutive working days') leave, payable at his ordinary rate of wages, after each completed cycle of 235 completed working days with any employer in the Industry, exclusive of overtime.

(ii) The leave prescribed in this subclause shall become due immediately after the completion of the 235th completed working day with an employer, and leave pay shall be paid before the employee proceeds on leave.

(iii) Where the employment of an employee is terminated before the completion of 235 completed working days with an employer, such employer shall pay him a pro rata amount in accordance with the following formula:

$$\frac{\text{Number of completed working days with employer in present cycle} \times 15 \times \text{ordinary daily remuneration}}{235}$$

(iv) Where the employment of an employee is terminated after the completion of 235 completed working days with an employer, but before the annual leave has been granted to him, his employer shall-

(aa) pay him the amount due in terms of subparagraph (i) hereof in respect of the period of leave which had accrued but was not granted before the date of termination of his employment, and

(ab) pay him an amount calculated in accordance with the formula in subparagraph (iii) in respect of the period of employment completed after the date on which he became entitled to leave in terms of subparagraph (i).

(v) Notwithstanding the provisions of this clause no employee shall be entitled to leave pay, unless he has completed 25 working days with the same employer.

(b) (i) Every employee shall be entitled to and shall take his leave so as to commence within a period of four months from the due date, unless exemption is granted by the Council.

(ii) The leave shall be granted by the employer so as to commence within a period of four months of the due date.

- (iii) The leave prescribed by this subclause shall include four weekends and shall be for one unbroken period: Provided that the employee may, with the mutual agreement of the employer, be permitted to take his leave in two periods, one of which is not less than 10 days.
 - (iv) Where a public holiday falls on what would otherwise be a normal working day, the leave period shall be extended by one day for each public holiday falling within such leave period.
 - (v) No employee shall engage in employment, whether for remuneration or not, during the leave period.
 - (vi) Any period during which an employee is off sick in excess of two working days up to a maximum of 43 working days per annum shall count as a qualifying period for leave: Provided that where it is required by the employer, a medical certificate shall be produced. Periods of absence on account of an accident arising out of and in the course of an employee's employment shall count for leave purposes if such accident has been admitted as falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993, and the periods of absence counting for purposes of the paid leave shall be the periods of disablement admitted by the said Act.
 - (vii) Except as otherwise provided herein, employment for the purposes of this clause shall be deemed to commence from the date on which an employee enters the employer's service, or the date he last became entitled to the paid leave, whichever is the later, and shall include shifts which would normally have been worked during periods of absence on the additional week's paid leave or accumulation thereof in terms of clause 17(1)(a) of this Agreement.
- (2) Notwithstanding the provisions of subclause (1) an employer may elect to observe an annual shutdown commencing in December of each year: Provided that the following provisions shall be observed:
- (a) He shall pay his employees, prior to the date of the annual shutdown, the full amount of leave pay and leave bonus due to such employees who have qualified for paid leave in terms of this Agreement, and to employees who are not entitled to the full period of paid leave pay, leave pay and a leave bonus proportionate to the qualification for the paid leave completed as at the date of the shutdown.
 - (b) Nothing contained herein shall operate to preclude an employer from cancelling the annual shutdown: Provided that -
 - (i) such cancellation has resulted from a change in the work schedule of the establishment, and

- (ii) notice of such cancellation is given prior to 1 October of the year concerned.
- (c) Notwithstanding any other provision of this Agreement, an employee who has not qualified for leave pay or a leave bonus at the date of the shutdown shall be paid a proportionate leave pay and leave bonus as set out in paragraph (a) above, irrespective of any qualifying period specified in this Agreement.

17. ADDITIONAL PAID LEAVE

- *1(a) Every employee for whom wages are prescribed in this Agreement shall be entitled to an additional one week's leave, payable at his ordinary rate of wages, on qualifying for his fifth and subsequent leave with the same employer: Provided that the additional leave prescribed in this subclause shall be taken at a time mutually agreed on between the employer and employee and shall also count as part of the qualifying period for his next leave.
- (b) The leave prescribed by paragraph (a) hereof may be accumulated up to a maximum of five weeks.
- (c) The employee may, by mutual agreement with the employer, take payment in lieu of the leave prescribed by paragraph (a). In the event of the employer and employee failing to agree, the matter shall be referred to the Council for a decision, which shall be final.
- (d) Where the services of an employee are terminated and such employee has accumulated leave in terms of paragraph (b) standing to his credit, the employer shall pay the employee in lieu of such accumulated leave.
- (e) Any period of employment in the categories referred to in paragraph (a) prior to the date of commencement of this Agreement shall count towards the qualifying period in terms of paragraph (a).
- (f) An employee, as a result of mergers or take-overs, shall not lose his qualification for the additional leave prescribed in paragraph (a). The provisions of clause 28 of this Agreement shall apply.
- (2) Save as is otherwise provided herein, employment for the purposes of this clause shall be deemed to commence from the date on which an employee enters the employer's service or on the date on which he last became entitled to leave, whichever is the later.

18. FAMILY RESPONSIBILITY LEAVE

- (1) During each leave cycle, an employee shall be entitled to a period of three days' paid leave which may be taken-
 - (a) when the employee's child is born;
 - (b) in the event of the death of a member of the employee's immediate family.
- (2) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (1) hereof for which the leave was taken.
- (3) An employee's unused entitlement to leave in terms of this clause may be accumulated up to a maximum of six days.
- (4) For the purposes of this clause, an employee's "immediate family" means-
 - (a) the employee's spouse or any other person who cohabits with the employee; and
 - (b) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

19. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive months' maternity leave.
- (2) An employee may commence maternity leave -
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or still birth.
- (5) An employee shall notify an employer of the date on which the employee intends to -

- (a) commence maternity leave; and
 - (b) return to work after maternity leave.
- (6) Notification in terms of subclause (5) shall be given in writing, unless the employee is unable to do so -
- (a) at least four weeks before the employee intends to commence maternity leave; or
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) The payment of maternity benefits shall be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966.

20. TRADE UNION REPRESENTATIVES' LEAVE

- (1) An employee who is an elected representative of one of the party trade unions shall be entitled to take five days' special leave per year during working hours on full pay for the purpose of performing the functions of that office.
- (2) Subject to the provisions of subclause (1) the trade union representative shall be entitled to take an additional 10 days special leave per year during working hours on full pay to attend meetings of this Bargaining Council, provided -
- (a) the trade union representative is appointed as an official delegate to this Bargaining Council;
 - (b) no more than one such trade union representative shall be appointed from any particular employer for these purposes;
 - (c) that the trade union representative is appointed in terms of the provisions of the Act; and
 - (d) that such leave days may not be accumulated.

21. SICK LEAVE

- (1) For the purposes of this clause, "sick leave cycle" means the period of 36 months' employment with the same employer immediately following -
- (a) an employee's commencement of employment, or
 - (b) the completion of that employee's prior sick leave cycle.

- (2) During every sick leave cycle, an employee shall be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- (3) Notwithstanding subclause (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.
- (4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subclause (2) hereof by the number of days' sick leave taken in terms of subclause (3).
- (5) Subject to clause 22 of this Agreement, an employer shall pay an employee for a day's sick leave -
 - (a) the wage the employee would ordinarily have received for work on that day, and
 - (b) on the employee's usual pay day.
- (6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this clause if -
 - (a) the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay, and
 - (b) the employee's entitlement to pay -
 - (i) for any day's sick leave, is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and
 - (ii) for sick leave, over the sick leave cycle, is at least equivalent to the employee's entitlement in terms of subclause (2).
- (7) The provisions of this clause shall not apply to employers and their employees who are required to contribute to a sick pay fund prescribed in an agreement for the Industry, or to employers and their employees who are participants in and members of a fund, organisation or scheme providing for paid sick leave on a basis which is not less favourable to the employee than that set out in the aforesaid agreement and in respect of which exemption has been granted or is granted by the Council from the provisions of the aforesaid agreement, while such fund, organisation or scheme continues to operate and both the employer and the employee are participants therein.
- (8) Notwithstanding any other provision of this clause, no employee shall be entitled to paid sick leave-

- (a) in respect of such periods of absence from work for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993;
 - (b) in respect of paid public holidays as specified in this Agreement, or in respect of any part of the paid leave referred to in this Agreement.
- (9) For the purposes of this clause, "employment" includes any period during which an employee-
- (a) is on paid leave or additional paid leave in terms of this Agreement,
 - (b) is on sick leave in terms of this clause,
 - (c) is absent from work on the instructions or at the request of the employer.

22. PROOF OF INCAPACITY

- (1) An employer shall not be required to pay an employee in terms of clause 21 of this Agreement if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
- (2) The medical certificate shall be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
- (3) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (1) hereof unless the employer provides reasonable assistance to the employee to obtain the certificate.

23. INJURY-ON-DUTY ALLOWANCE

Where an employer in terms of section 47(3) of the Compensation for Occupational Injuries and Diseases Act, 1993, is of a reasonable belief that an employee absent from work resulting from an injury on duty will be compensated under the said Act and in respect of which a claim has been made under the Act, the employer shall pay an amount to the employee equivalent to 75 per cent of the employees' ordinary hourly rate for such absence up to a maximum period of three months from the date of the accident. The employer shall recover this payment from the Compensation Commissioner.

24. EXTENSION OF INSURANCE COVER FOR INJURY ON DUTY

Every employer shall either arrange with the Compensation Commissioner to extend and maintain the cover provided by the Compensation for Occupational Injuries and Diseases Act, 1993, to all his employees who fall within the provisions of this Agreement or, alternatively, take out and maintain an insurance policy to provide fixed benefits basically at least equivalent to those provided by the Compensation for Occupational Injuries and Diseases Act, 1993, in respect of his employees who fall within the provisions of this Agreement and whose earnings exceed the earnings ceiling specified in the said Act.

25. PAYMENT FOR PUBLIC HOLIDAYS

- (1) (a) An employee may agree with the employer to exchange a public holiday for any other day, and if so agreed shall not be entitled to any additional payment on such a public holiday.
 - (b) Every employee shall, in respect of a public holiday, be paid at his ordinary rate of wages and allowances for the number of hours he would have worked on a normal working day (excluding overtime).
 - (c) The payment prescribed in paragraph (b) hereof shall be deemed to be full payment in respect of such public holiday, and subject to the provisions of clause 9 of this Agreement no employee shall be entitled to further compensation in respect of such public holiday.
 - (d) Notwithstanding the provisions of paragraphs (b) and (c) hereof, an employee who is required by his employer to work on the working day immediately prior to and/or succeeding a public holiday and who absents himself on such working day(s) shall not be entitled to payment for such public holiday: Provided that an employee shall be entitled to payment for such public holiday where the employer has given permission for such absence, or has condoned such absence, or where the employee was sick and can produce a medical certificate as proof if so required by the employer, or where the public holiday falls during the period of the annual leave of the employee.
 - (e) Where an employer dismisses an employee and the employment is terminated within a period of five working days prior to a public holiday, such employer shall pay the employee in respect of the public holiday.
- (2) Any employee who is aggrieved by the application to him of any of the provisions of subclause (1)(d) hereof may appeal to the Council against the decision applied to him, and the Council may, after considering any reasons which may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

26. GENERAL CONTROL

A master installation electrician, an installation electrician or an electrical tester for single phase, shall exercise general control over all electrical installation work being carried out, and no person shall allow such work without such control.

27. TERMINATION OF EMPLOYMENT AND SEVERANCE PAY

- (1) A contract of employment terminable at the instance of a party may be terminated on notice of not less than –
 - (a) one week, if the employee has been employed for six months or less;
 - (b) two weeks, if the employee has been employed for more than six months.
- (2) Sub-clause (1) shall not affect-
 - (a) the right of an employer or an employee to terminate a contract of service without notice for any good cause recognised by law as sufficient,
 - (b) any agreement between an employer and an employee providing for a longer period of notice than that contemplated by sub-clause (1).
- (3) Instead of giving an employee notice in terms of sub-clause (1) or any agreement, an employer may pay an employee the wages the employee would have earned if the employee had worked during the prescribed or agreed period of notice.
- (4) Whenever a contract of service is terminable by notice in terms of sub-clause (1) -
 - (a) if the employee fails to give the notice or to work such notice period, the employer may deduct the wages for the notice period ;
 - (b) if the employer fails to give the notice or to allow the employee to work during the notice period, the employer must pay the employee the wages the employee would have earned if the employee had worked during the period of notice.
- (5) In the case of a termination as a result of retrenchment, the employer-
 - (a) must inform the employees affected, the Council and any trade union or unions which may represent such employees at least 14 days prior to notice of retrenchment being given;
 - (b) notwithstanding any other provision in this clause, the employer must give notice to the employee in accordance with sub-clause (1);

- (c) must pay any employee who is retrenched, in addition to any other moneys due to him, severance pay of one week's wages for each completed year of service."

28. TRANSFER OF CONTRACT OF EMPLOYMENT

- (1) A contract of employment may not be transferred from one employer (referred to as "the old employer") to another employer (referred to as "the new employer") without the employee's consent, unless -
 - (a) the whole or any part of a business, trade or undertaking is transferred by the old employer as a going concern, or
 - (b) the whole or any part of a business, trade or undertaking is transferred as a going concern -
 - (i) if the old employer is insolvent and being wound up or is being sequestered, or
 - (ii) because a scheme of arrangement or compromise is being entered into to avoid winding-up or sequestration for reasons of insolvency.
- (2)
 - (a) If a business, trade or undertaking is transferred in the circumstances referred to in subclause (1)(a) above unless otherwise agreed, all the rights and obligations between the old employer and each employee at the time of the transfer shall continue to be in force as if they had been rights and obligations between the new employer and each employee and anything done before the transfer by or in relation to the old employer shall be considered to have been done by or in relation to the new employer.
 - (b) If a business is transferred in the circumstances envisaged by subclause (1)(b) above, unless otherwise agreed, the contracts of all employees that were in existence immediately before the old employer's winding-up or sequestration shall transfer automatically to the new employer, but all the rights and obligations between the old employer and each employee at the time of the transfer shall remain rights and obligations between the old employer and each employee, and anything done before the transfer by the old employer in respect of each employee shall be considered to have been done by the old employer.
- (3) An agreement contemplated in subclause (2) above shall be concluded with the appropriate person or body referred to in section 189 (1) of the Act.
- (4) A transfer referred to in subclause (1) shall not interrupt the employee's continuity of employment, which shall continue with the new employer as if with the old employer.

- (5) The provisions of this clause shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of, and sentenced for any offence.

29. PENALTIES

If any amount that falls due in terms of clauses 30, 30B, 31 of Part I and clause 2(1) of Part II of this Agreement is not received in full by the Council by the 15th day of the month following the month for which the amount is payable, then the employer shall be liable to pay interest in accordance with the following provisions:

- (i) The interest payable shall accrue on the balance of the amount outstanding from time to time from the said 15th day until the full amount is received by the Council.
- (ii) An employer who does not pay to the Council the levies and contributions payable by him/her and his/her employees each month on the due date as specified in this Agreement shall pay interest to the Council as provided for in section 2(2) of the Usury Act, 1968, calculated from the due date to the date of payment.
- (iii) The Council shall, in its absolute discretion, be entitled to waive payment by the employer of any interest which accrues in terms of this subclause.

30. TRADE UNION SUBSCRIPTIONS AND EMPLOYERS' ORGANISATION LEVY

- (1) In all areas except Area I every employer shall deduct the amount of the subscriptions payable to the party trade union, in respect of each week or part of a week of employment, including the period an employee is on leave in terms of clause 16 of this Agreement, from the earnings of every employee who is a member of a party trade union and shall forward the amount thus deducted, together with the form specified by the Council, to the Secretary of the Council, not later than the 15th day of each month following that in respect of which the deductions were made: Provided that a signed stop-order is received from the employee indicating the party union of which he is a member.
- (2) In Area I every employer shall deduct the amount of the subscriptions payable to the trade union after receipt of a signed stop-order in respect of each week or part of a week of employment, including the period an employee is on leave in terms of clause 16, of this Agreement from the earnings of every employee who is a member of a trade union and shall forward the amount thus deducted to the trade union, not later than the 15th day of each month following that in respect of which the deductions were made. The employer may by agreement with the trade union, forward the contributions to the Secretary of the Council.
- (3) Every employer who is a member of the employers' organisation shall forward the levy payable to the Association, in respect of each week or part of a week

of employment of each employee for whom wages are prescribed in this Agreement, including the period an employee is on leave in terms of clause 16 of this Agreement, to the Secretary of the Council, not later than the 15th day of each month following that in respect of which the payments are made.

- (4) The appropriate party trade union and the employers' organisation shall indemnify the Council against any claim that may arise in respect of this clause, and when a deduction for subscriptions or the payment of the levy in terms of this clause has been made, irrespective of whether, this amount has been paid over to the said trade union or employers' organisation, the employee or employer concerned shall be deemed to, have paid his subscriptions or levy to the said trade union or employers' organisation.
- (5) The Secretary of the Council shall pay all amounts paid in terms of subclauses (1), (2) and (3) hereof to the parties concerned within 30 days of the month in which the amounts were received by the Council.
- (6) The Council shall undertake to render all reasonable services to give effect to this clause for which a maximum amount of three per cent of all contributions and levies in terms of subclauses (1), (2) and (3) hereof shall be paid to the Council.
- (7) A sole proprietor, partner, working director or employer engaged in work specified in this Agreement shall be deemed to be an employee in respect of whom contributions are required to be made in terms of subclause (3) hereof.

31. BENEFIT FUNDS

For the purposes of this Agreement, the following Benefit Funds, which were originally established on the dates listed below, are hereby continued :

- (a) The Electrical Industry Sick Pay Fund - 05/08/ 1955
- (b) The Electrical Industry Pension Fund - 15/02/1963
- (c) The Electrical Industry Medical Aid Fund - 15/02/1963
- (d) The Electrical Industry Sick Pay Fund (Cape) - 25/05/1973
- (e) The Electrical Contracting Section (Cape) Provident Fund - 20/03/1997
- (f) The Electrical Contracting Section (Cape) Pension Fund - 03/12/1971
- (g) The Electrical Industry (Cape) Health Fund - 25/05/1973
- (h) The Electrical Industry (KwaZulu-Natal) Sick Pay Fund - 30/12/1983
- (i) The Electrical Industry (KwaZulu-Natal) Pension Fund - 24/12/1980
- (j) The Electrical Industry (KwaZulu-Natal) Medical Aid Fund - 02/12/1983

32. CLOSING OF ESTABLISHMENT ON AN ORDINARY WORKING DAY

Notwithstanding anything to the contrary in this Agreement, an establishment may, by mutual arrangement between the employer and not less than 66 per cent of his employees, be closed during any period of work specified for that establishment in terms of clause 7 of this Agreement.

Where such an arrangement has been arrived at for each specific closing of the establishment, the Council shall be advised of such arrangements made.

33A. REGISTRATION OF EMPLOYERS

(1)(a) Every employer in the Electrical Industry shall, within 30 days of the date of coming into operation of this Agreement, register with the Council by forwarding to the Secretary of the Council the following particulars, on the form prescribed by the Council, together with the registration fee prescribed:

- (i) Full name of business,
- (ii) business address,
- (iii) full names of owners/partners/directors/members,
- (iv) residential address of owners/partners/directors/members,
- (v) the registration fee determined by the Council from time to time,
- (vi) the name of the accredited person who is employed on a full-time basis, in terms of the Occupational Health and Safety Act, 1993,
- (vii) the names of all other employees employed by him and, in respect of each individual employee or employer, such personal particulars as may be required by the Council,
- (viii) an electrical contractor's certificate of registration issued by the Electrical Contracting Board of South Africa, in terms of regulation 5 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993,
- (ix) satisfactory proof of registration with the Unemployment Insurance Fund, the Compensation Fund Commissioner, the relevant local authority and the South African Revenue Service.

The requirements prescribed by this paragraph shall be maintained during the period of registration, and evidence of the continued validity thereof shall be produced at the request of the Council. If there is any change to the above requirements, the Council shall be notified within 30 days.

(b) An employer who has already, prior to the date of coming into operation of this Agreement, furnished the particulars required under this clause shall be deemed to have complied with the provisions thereof and to be registered with the Council.

- (c) Employers entering the Industry after the date of coming into operation of this Agreement shall register with the Council and shall furnish the particulars required under paragraph (a) above within 30 days of commencing operations.
- (d) Should the business cease to exist, the Council shall be notified within 30 days and all certificates issued by the Council or the Electrical Contracting Board of South Africa shall be returned to the Council within the same period.
- (2) Every employer to whom this Agreement applies, but who is not registered in terms of the provisions of subclause (1)(a) of this clause, shall be deemed to be registered from the date of commencement of his business and shall observe the provisions of this Agreement.
- (3) All applications for registration shall be made directly to the Secretary of the Council in the area in which the employer is operating or intends to operate his business.

The addresses of the Regional Councils are -

Bloemfontein	: PO Box 1379, Bloemfontein, 9300
Cape	: P.O. Box 1220, Parow, 7499
East London	: P.O. Box 19852, Tecoma, East London 5214
Gauteng	: PO Box 31402, Braamfontein, 2017
KwaZulu-Natal	: PO Box 722, Durban, 4000
Port Elizabeth	: PO Box 27287, Greenacres, 6057.

- (4) (a) Every employer who is not a member of the employers' organisation who has in his employ the categories of employees for whom basic minimum waged are prescribed in terms of clause 4 of Part II of this Agreement, shall be required to pay to the Council a levy amounting to R2.00 per such employee per week.
- (b) The amounts paid to the Council in terms of paragraph (a) above shall be deposited in a separate account and may be invested by the Council in paid-up shares, fixed deposits or savings accounts with any bank.
- (c) In the event of the insolvency of any employer who is registered with the Council and who is not a member of the employers' organisation, the Council shall pay leave pay which has accrued to the employees of the employer: Provided that the liability of the Council shall be limited to the total monies collected and deposited in terms of paragraph (b) above: Provided further that the employees so compensated cede their claims to the Council and that the Council have the right to claim any amount so paid out from the insolvent estate.

- (d) Employers who are members of the employers' organisation shall be exempted from paying the levy referred to in paragraph (a) above.
- (e) The employers' organisation shall establish and maintain a fund for the purpose of paying leave pay which has accrued to the employees of its members registered with the Council in the event of the insolvency of such members: Provided that the opening balance of such fund at the commencement of each year shall be maintained at R500 000.00.
- (f) In the event of the insolvency of any employer who is registered with the Council and who is a member of the employers' organisation, the employers' organisation shall pay leave pay which has accrued to the employees of that employer: Provided that the liability of the employers' organisation be limited to the total monies available in the fund in the year in which the insolvency occurred: Provided further that the employees so compensated shall cede their claims to the employers' organisation and that the employers' organisation have the right to claim any amount so paid out from the insolvent estate.

CLAUSE 33(B) LIMITED DURATION CONTRACTS

In cases where an employee is engaged on a limited duration contract, and such employee has not previously contributed to the Electrical Industry Pension/Provident Fund, the employer will cover such employee only for the purposes of risk benefits, that is death, disability, funeral and sick pay, whilst employed on such limited duration contract: Provided this will not apply to an employee who was previously a member of the Pension/Provident Fund and has not withdrawn from such Fund. Provided that should such employee be employed on a further limited duration contract with the same employer within 90 days of the termination of his original limited duration contract, the employer and employee shall contribute towards the employee's Pension/Provident Fund.

34. REGISTRATION AND TRAINING OF EMPLOYEES

- (1) All Elconops 1, Elconops 2, and Elconops 3 shall be issued with a registration card in the manner and form prescribed by the Council.
Such registration card, for which a fee not exceeding R20,00 shall be payable, shall contain a photograph of the employee and his category of employment. Such card shall at all times during working hours be carried on the person of the employee.
- (2) When an employer upgrades an employee from electrical assistant to Elconop 1, he shall inform the Council within seven days from the date thereof, and apply to the Council for a new registration card to be issued to the employee.

- (3) When an employer makes a written application to the Council to upgrade an Elconop 1, who is in his employ, to Elconop 2 he shall provide a Certificate of Proficiency as an Elconop 1 in respect of such employee.
The Council shall thereafter arrange for the completion of the necessary formalities for the Elconop 1 to attend the prescribed formal training course at an institutionalised training centre accredited by the Energy Sector Education Training Authority (ESETA). Should the Elconop 1 be successful in the examination, he shall from the date of undertaking such examination be promoted to Elconop 2 and the employer shall apply to the Council for a new registration card to be issued to such employee. Should the Elconop 1 not be successful in the examination, he shall, notwithstanding the provisions of subclause (4) below immediately revert to employment on the previous terms and conditions applicable to him as an Elconop 1.
- (4) Elconop Training :
- i) The training period will not exceed 20 weeks ;
 - ii) The employee on training must be registered with the Council as a Trainee Elconop 2 ;
 - iii) The employee will be remunerated as an Elconop 1 whilst undertaking training ;
 - iv) Upon the completion of the training period, the employee must either be promoted to an Elconop 2, or remain as an Elconop 1 with his duties being limited to those of an Elconop 1.
- (5) For a period not exceeding three months prior to undertaking the prescribed formal training and with the written authority of the Council, which may include a temporary registration card from the Council or other form of identification, an employer shall be permitted to provide on-site training for the Elconop 1 and allow him to perform the duties of an Elconop 2: Provided that the employer shall not be required to pay the wages or to observe the conditions of employment of an Elconop 2 during the period the Elconop 1 is receiving on-site training.
- (6) The provisions of subclauses (3) and (5) above shall, *mutatis mutandis*, apply in upgrading an Elconop 2 to Elconop 3.

35. OUTWORK

- (1) No employer shall require or allow any of his employees to undertake work in connection with the Electrical Industry other than to execute work in completion of an order placed with such employer.
- (2) No employee whilst in the employ of an employer shall solicit, undertake or perform any work other than on behalf of his own employer in the Electrical

Industry, whether for remuneration or not, during or outside of the ordinary hours of work or working days prescribed in clause 7 of this Agreement, save that such employee may carry out work on his own premises outside of normal working hours.

36. PIECEWORK AND INCENTIVE PAYMENTS

- (1) The giving out by employers or the performance by employees of work on a piecework basis is prohibited.
- (2) Notwithstanding the provisions of subclause (1) of this clause, it shall be permissible, by mutual agreement between any individual employer and his employee, to introduce and to operate a system of incentive payments: Provided that as a result of the introduction and operation of such system the remuneration and other monetary benefits accruing to employees shall not be less than those prescribed in this Agreement: Provided further that the other provisions of this Agreement are adhered to in every respect: Provided further that apprentices shall not be allowed to participate in such a system.

37(A). EMPLOYMENT OF PERSONS UNDER 15 YEARS OF AGE

No employer shall employ any person under the age of 15 years.

37 (B). HIV POLICY.

Both employers and employees shall observe the Code of Good Practice: Key Aspects of HIV/AIDS and Employment published under Government Notice No. R. 1298 of 1 December 2000."

38. PROHIBITION OF CONTRACT WORK ON A LABOUR-ONLY BASIS

- (1) No employer shall -
 - (a) avail himself of the services of another person for the supply of labour to perform work covered by this Agreement on any basis which provides for remuneration, benefits and allowances to be paid to a person other than the person performing such work,
 - (b) in respect of work covered by this Agreement, pay remuneration, benefits and allowances to a person other than the person who, in terms of this Agreement, is entitled to such remuneration, benefits and allowances.
- (2) No employee or any other person shall make his labour available to an employer on the basis of any contract or arrangement which precludes such employee or other person from exercising his rights under this Agreement to

secure from the employer for whom he performs work the remuneration, benefits and allowances prescribed by this Agreement.

- (3) No employer shall employ any employee of another employer in the Electrical Industry, whether for remuneration or not, during or outside of normal working hours or during any leave period of such employee.
- (4) No employer shall hire any person, other than under the terms of this Agreement, or hire the services of any employee to or from any person unless such person is an employer who is engaged in the Electrical Industry and who is engaged in any activity or activities falling within the Electrical Industry as defined in this Agreement and who is registered with the Council.

39. TEMPORARY EMPLOYMENT SERVICES

- (1) All temporary employment services (formerly labour brokers), as referred to in section 198 of the Act, shall register with the Council if they provide to a client employees to perform any work falling within the definition of "Electrical Industry".
- (2) No employer may use the services of employees procured from a temporary employment service, unless such service provides sufficient proof of -
 - (a) registration in terms of the Unemployment Insurance Act, 1966;
 - (b) registration in terms of the Compensation for Occupational Injuries and Diseases Act, 1993;
 - (c) registration with this Council; and
 - (d) compliance with the provisions of this Agreement.
- (3) An employer who procures the services of an employee or employees from a temporary employment service shall complete a form in the format specified by the Council in respect of each such employee, and such form shall be signed by both the employer and the employee concerned declaring that the particulars are correct.
- (4) The form referred to in subclause (3) shall contain the following particulars:
 - (a) The name, telephone number, residential address and identity number of the employee,
 - (b) the business name, business telephone number and physical business address of the temporary employment service concerned,
 - (c) the date from which the employer uses the services of the employee and the expected termination date,
 - (d) the site address where the services of the employee are to be used,

- (e) the anticipated normal working hours and overtime to be worked by the employee, and
 - (f) the occupation applicable to the employee in terms of this Agreement.
- (5) The employer shall submit the form referred to in subclause (3) above to the Council within five working days after he has commenced using the services of the employee or employees.
 - (6) In terms of section 198(4) of the Act, the temporary employment service and the employer shall jointly and severally be liable if the temporary employment service, in respect of its employees, contravenes any of the conditions of this Agreement.
 - (7) The temporary employment service shall be required to comply with all the terms and conditions of this Agreement and the relevant Pension/Provident Fund Agreements referred to in clause 32 of this Agreement. However, upon application to the Council an exemption from the requirements relating to leave pay, leave bonus and pension / provident fund contributions may be granted if the duration of employment of an employee in the Electrical Industry is to be less than 13 consecutive weeks.
 - (8) In the event of the employment of an employee, for whom an exemption has been granted, being extended beyond 13 consecutive weeks, the exemption shall be cancelled and the conditions of employment of such employee shall thereafter be in accordance with the provisions of this Agreement.
 - (9) A period of at least 20 working days shall lapse between an employee, for whom an exemption has been granted, terminating one contract and commencing another before a further exemption is granted. Should such employee be employed by the temporary employment service within such period, the normal conditions of employment as laid down in this Agreement shall apply.
 - (10) An employee of a temporary employment service, for whom an exemption has been granted in terms of subclause (7) above shall, in addition to the wages prescribed in clause 4 of Part II of this Agreement, be paid an allowance of no less than 40 per cent of such wage to compensate for the loss of leave pay, leave bonus and pension/provident benefits.
 - (11) The exemption referred to in subclause (7) above shall not exempt the temporary employment service from the payment of the Council levy as specified in this Agreement, or from the payment of Unemployment Insurance contributions or other payments specified by law.
 - (12) Should the temporary employment service be a member of an employer's organisation that is a party to the Council, the provisions relating to trade union membership and subscriptions and payment of employer's organisation levies shall apply. However, exemption may be granted, on application, from the

requirements of contributing to the Council's medical aid and sick pay funds during the first 13 weeks of employment.

40. PROHIBITION OF CESSION AND/OR SET-OFF

- (1) No claim whatsoever by any employee against the Council shall be capable of being ceded and no purported cession thereof shall be binding upon the Council.
- (2) Set-off between any amounts payable to an employee referred to in clause 15 of this Agreement and any amounts payable by such employee, the deduction of which is prohibited by that clause, shall not operate and is expressly excluded, and this provision shall be deemed to be a term of every contract of employment between employer and employee.

41. FIRST-AID

Every employer shall provide and maintain in good order suitable first-aid equipment as prescribed in regulation 3 of the General Safety Regulations, 1986, made under the Occupational, Health and Safety Act, 1993, on any premises where employees are employed by him.

42. CERTIFICATE OF SERVICE

Every employer shall provide each employee, on the termination of his employment, with a certificate of service showing the full names of the employer and the employee, the nature of the employment, the date of commencement and the date of termination of employment.

43. STORAGE, INSURANCE AND PROVISION OF TOOLS

- (1) Lockup facilities shall be provided by the employer on all sites and workshops for locking up tools.
- (2) Every employer shall take out an insurance policy with a registered insurance company, insuring tools which are the private property of skilled employees in his employ against the loss or destruction or damage of the tools through fire or theft whilst on the employer's premises.

The maximum cover under this clause shall be R1 500,00 per employee: Provided that 10 per cent of any loss or damages for which payment is claimed shall be borne by the employee: Provided further that an employer shall require a skilled employee, within seven days of the commencement of his employment, to submit to him an inventory of the tools in his possession, which shall comprise a minimum as detailed hereunder, and the skilled employee shall comply with such requirements to enable the employer to effect the

insurance prescribed above. The employer may verify such inventory from time to time.

- (3) The tool kit of the skilled employee shall comprise- electrician's pliers, long-nose pliers, tape measure (6m), hacksaw (junior and ordinary), cable knife, wire strippers, one 15cm and one 30cm shifting spanner, ballpein hammer, spirit level, set square (15cm), soldering iron, crimping pliers, side cutters (diagonal type), six assorted screwdrivers, carpenter's hammer, tin snips, six assorted standard flat and/or ring spanners, one small and one large wood chisel, set of allen keys and water pump-pliers.
- (4) The employer shall, where such tools are necessary, provide- flat and round files with handles, stocks-and-dies, chasing chisels, masonry drills, electrical testing instruments, geyser spanners, hole saws, benders, reamers, fish tapes, twist drills, die nuts, chassis punches and electric power tools: Provided that such tools shall remain the property of the employer. The employee shall exercise due care in the use of/and storage of tools provided by his employer.
The employer shall be entitled to make a deduction from the remuneration payable to any employee for the loss of the employer's equipment signed for by such employee or the insurance excess payable on the loss of any such equipment.
- (5) For the purposes of this clause, "skilled employee" shall mean a master installation electrician, an installation electrician, an electrical tester for single-phase, an electrician, an artisan, a domestic electrical installer, an apprentice and an Elconop 3.

44. ADMINISTRATION OF AGREEMENT

- (1) The Council shall be the body responsible for the administration of this Agreement.
- (2) Every employer shall keep in his establishment, in a place readily available, a legible copy of this Agreement.
- (3) Every employer shall display in his establishment, in a place readily accessible to his employees, a notice stating the starting and finishing time of work.

45. DESIGNATED AGENTS

The Council shall request the Minister, in terms of section 33 of the Act, to appoint persons to be designated agents to assist in giving effect to this Agreement. A designated agent shall have the powers conferred upon him in terms of section 142 of the Act, except the powers conferred by section 142(1)(c) and (d) of the Act.

46. TRADE UNION ACCESS

- (1) Any office-bearer or official of the representative trade unions shall be entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve their interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated by the trade union's constitution.
- (4) The rights conferred by this section shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

47. EXEMPTIONS

- (1) In terms of section 32 of the Act the Council shall consider all applications for exemption from any of the provisions of this Agreement for any good and sufficient reason.
- (2) All applications for exemption shall be in writing (on an application form provided by the Council) and shall be addressed to the Secretary of the Council for consideration by the Council.
- (3) All applications for exemptions shall be substantiated, and such substantiation shall include the following details:
 - (a) The period for which the exemption is required,
 - (b) the Agreement and clauses or subclauses of the Agreement from which the exemption is required,
 - (c) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives. The responses resulting from such consultation, either in support of or against the application, shall be included with the application.
- (4) The Secretary of the Council shall place the applications for exemption on the agenda of the next Council meeting for consideration.
- (5) The Secretary of the Council shall provide the Council with details of all the applications for exemption.
- (6) The Council shall consider and decide on all written applications and, when requested by the applicants or objectors to do so, may interview applicants or objectors at its following meeting: Provided that the Council may defer a

decision to a following meeting if additional substantiation, information or verbal representations are considered necessary to decide on the application for exemption.

- (7) Once the Council has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.
- (8) When the Council decides against granting an exemption or part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason or reasons for not granting an exemption.

(9) Exemption criteria -

The Council shall consider all applications for exemption with reference to the following criteria:

- (a) The written and verbal substantiation provided by the applicant,
 - (b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted,
 - (c) the terms of the exemption,
 - (d) the infringement of basic conditions of employment rights,
 - (e) the fact that a competitive advantage may not be created by the exemption,
 - (f) the effect of the exemption on any employee benefit fund or training provision in relation to the alternative comparative bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability,
 - (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Electrical industry,
 - (h) any existing special economic or other circumstances which warrant the granting of the exemption,
 - (i) reporting requirements by the applicant and monitoring and re-evaluation processes, and
 - (j) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.
- (10) In terms of section 32 of the Act, the Council hereby establishes an Independent Appeal body to hear and decide as soon as possible, any appeal brought against -

- (a) the Council's refusal of an application for exemption from the provisions contained in this Agreement,
 - (b) the withdrawal of such exemption by the Council.
- (11) The Secretary shall, upon receipt of a written application for an appeal, forward the application together with the original application for exemption and all supporting documents to the Independent Appeal body for a decision.
- (12) The Independent Appeal body shall consider all applications with reference to the criteria set out in subclause (9) above and shall ensure that the applications are not in conflict with the primary objects of the Act.

48. ESTABLISHMENT OF THE TRUST FUND ADVANCES FUND (AREAS J AND K ONLY)

Any leave pay or leave bonus vouchers issued to an employee in terms of any previous agreements shall be valid for a period of two years from the date of the last shift worked by such employee, and amounts standing to the credit of an employee in the books of the Council shall, on the expiration of such period, accrue to the Council. Amounts so accruing to the Council shall be credited to a fund designated the "Trust Fund Advances Fund" from which the Council in its absolute discretion may-

- (a)(i) advance to employees money equivalent to the paid leave entitlement forwardable to the Council in terms of Part I of any previous agreements, money equivalent to the leave bonus entitlement forwardable to the Council in terms of Part II of any previous agreements, or
 - (a)(ii) credit the Council Funds with any amount which the Council may regard as being in excess of a sufficient reserve in the Trust Fund Advances Fund,
 - (a)(iii) consider any claim that may be made by an employee and may in its discretion make payment from the Trust Fund Advances Fund (or from such amounts accrued to the Council Funds in the event of the depletion of the Trust Fund Advances Fund) to such employees.
- (b) pay to the employees in whole or in part money equivalent to any paid leave and/or leave bonus entitlement in cases where such moneys or part thereof would otherwise be lost to employees by reason of the insolvency or liquidation of any employer: Provided that-
 - (i) any amounts accruing to the Council in terms of this subclause as the Council may regard as being in excess of a sufficient reserve in the Trust Fund Advances Fund may be accrued to the Council funds, but shall not be accrued to the Trust Fund Advances Fund or the Council fund until a further period of six months has elapsed after the expiration of the two-

year period, and any claims presented during such six-month period shall be paid by the Council,

- (ii) the Council shall consider any claim that may be made by any employee after the expiration of such six-month period, and may in its discretion make ex gratia payment from the Trust Fund Advances Fund (or from such amounts accrued to the Council funds in the event of the depletion of the Trust Fund Advances Fund) to such employees as are referred to herein.

49. GENERAL

No employer or employee may waive the provisions of this Agreement, whether or not the said provisions create a benefit or obligation upon the employer or employee concerned. Every provision, subclause or clause shall create a right or obligation, as the case may be, independently of the existence of other provisions.

50. NEGOTIATING PROCEDURES

- (1) Where any party to the Council wishes to initiate negotiations for the amendment of any existing Agreement or the introduction of a new Agreement, the party shall submit its proposals in writing to the Secretary.
- (2) The Secretary shall immediately arrange for the proposals to be circulated to all interested parties and shall take steps to arrange a negotiating meeting within 45 days of receipt of the proposal. Where the Secretary, in consultation with the Chairperson of the Council, decides that the proposal relates to the negotiation of an Industry matter, the date of the first negotiating meeting shall be decided at the next meeting of the Council and such negotiating meeting shall be held within 30 (thirty) days of the Council meeting.
- (3) Further negotiating meetings may be held by agreement between the parties, who may also agree on any procedures, documentation, or any other matters for the purposes of assisting the negotiations.
- (4) If the negotiations have not been concluded within the 30 (thirty) days of the first negotiating meeting held, or as otherwise agreed between the parties, any party to those negotiations may declare a dispute by notice in writing to the Council and shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service shall be effected by means of telefax, hand delivery or registered post.
- (5) Industry disputes shall be processed in accordance with clause 52, and other disputes shall be processed in accordance with clause 53 of this Agreement.

51. INDUSTRY DISPUTE SETTLEMENT PROCEDURE

- (1) Should the Secretary, in consultation with the Chairperson of the Council, decide that a dispute declared in terms of clause 50 hereof is an Industry matter he shall arrange for the Council to meet within 14 (fourteen) days of the declaration of such dispute, for the purposes of considering the matter.
- (2) The Council shall use its best endeavours to settle the dispute and shall meet as often as it deems necessary for this purpose. In the course of its deliberations the Council shall give consideration to the following :
 - (a) Appointing a subcommittee to meet within a specified number of days, for the purpose of attempting to resolve the dispute or to recommend to the Council a process by which the dispute may be resolved, or
 - (b) referring the dispute to conciliation in terms of clause 55, or
 - (c) referring the dispute to arbitration in terms of clause 56 hereof, or
 - (d) instructing the Secretary of the Council to issue a certificate stating that the dispute remains unresolved.
- (3) If the dispute has not been settled within 30 (thirty) days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute shall be entitled to pursue whatever means are available under the Act to process that dispute.

52. GENERAL DISPUTE SETTLEMENT PROCEDURE

- (1) Any dispute arising within the Council's jurisdiction which does not fall within the scope of clause 51 of this Agreement, shall be dealt with in terms of this clause: Provided that -
 - (a) disputes concerning dismissals shall be dealt with in terms of clause 53,
 - (b) disputes concerning the interpretation and/or application of the Council's Constitution, and/or its agreements shall be processed in terms of clause 54, hereof and
 - (c) disputes referred to in terms of section 127(2) of the Act shall, once declared by a party, be referred by the Secretary to the Commission for Conciliation, Mediation and Arbitration (CCMA) for processing.
- (2) A party which refers a dispute to the Council in terms of this procedure, shall satisfy the Council that a copy of the referral has been served on all other

parties to the dispute. This service may be effected by means of telefax, hand delivery or registered post.

- (3) The Council shall arrange a meeting of the parties to the dispute within 10 (ten) working days of having received the declaration of the dispute. The parties shall use their best endeavours to resolve the dispute between themselves, and shall meet as often as they deem it necessary for the purposes of resolving the dispute.
- (4) If the dispute remains unresolved, the parties shall give consideration to the following :
 - (a) Appointing a subcommittee to meet within 10 (ten) working days, for the purpose of attempting to resolve the dispute or to recommend to the parties a process by which the dispute may be resolved,
 - (b) referring the dispute to conciliation in terms of clause 55,
 - (c) referring the dispute to arbitration in terms of clause 56 hereof, or
 - (d) instructing the Secretary of the Council to issue a certificate stating that the dispute remains unresolved.
- (5) If the dispute has not been resolved within 30 (thirty) days of the dispute having been declared, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute shall be entitled to use whatever means are available under the Act to process that dispute.

53. DISPUTES CONCERNING DISMISSALS

- (1) Any dispute that relates to the dismissal of one or more employees and that is referred to the Council shall be dealt with in terms of this clause. Any such dispute shall be referred to the Council in writing within 30 (thirty) days of the date of dismissal: Provided that the Council may condone the late referral of such a dispute on good cause shown.
- (2) The party referring the dispute shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service shall be effected by means of telefax, hand delivery or registered post.
- (3) The Council shall arrange a meeting for the parties to the dispute within 15 (fifteen) working days of receipt of notification of the dispute for the purpose of attempting to resolve the dispute. In attempting to resolve the dispute, the parties may give consideration to privately appointing a mediator, or an arbitrator or referring the dispute to any other agreed process, and may agree to meet as often as they deem it necessary in order to resolve the dispute. The cost of any process agreed between the parties shall be paid by them in a manner agreed between themselves.

- (4) If the dispute is not resolved at the meeting referred to in subclause (3) or any further meetings agreed to by the parties, the Council shall appoint a conciliator in terms of clause 55 of this Agreement for the purposes of attempting to resolve the dispute: Provided that this shall not be necessary if the parties have agreed between them to appoint their own mediator.
- (5) If the dispute has not been resolved within 20 (twenty) working days from the date the dispute was referred to the Council, any party to the dispute may instruct the Council to refer the dispute to adjudication in terms of the Act. In terms thereof, disputes shall be processed as follows :
- (a) Through arbitration, either by consent between the parties to the dispute, or if the dismissed employee -
 - i) has alleged that the reason for dismissal is related to his conduct or capacity, unless subclause (b)(iii) below applies, or
 - ii) has alleged that the reason for dismissal is that the employer made continued employment intolerable, or
 - iii) does not know the reason for dismissal.
 - (b) By the Labour Court, if the employee has alleged that the reason for dismissal is-
 - i) automatically unfair, or
 - ii) based on the employer's operational requirements, or
 - iii) the employee's participation in a strike that does not comply with the provisions of the Act, or
 - iv) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.
- (6) Any arbitration in terms of subclause (5) shall be conducted in accordance with clause 56 of this Agreement. In any such arbitration proceedings, the employee shall establish the existence of the dismissal, and the employer shall then prove that the dismissal is fair.

54. INTERPRETATION AND/OR APPLICATION DISPUTES

- (1) If any dispute arises in relation to the interpretation and/or application of the Council's Constitution or its agreements it shall be processed in terms of this clause.

- (2) A party wishing to lodge such a dispute shall notify the Council in writing setting out the details of the dispute. A copy of such notification shall be served on all other parties to the dispute. Proof of such service shall be provided to the Council, and may include service by means of telefax, hand delivery or registered post. The Council shall arrange a meeting of the parties to the dispute within 10(ten) working days of the dispute having been referred in terms of this clause, unless otherwise agreed between the parties.
- (3) If the dispute is not resolved at the meeting referred to in subclause (2) above, it shall be referred to arbitration in terms of this clause, unless otherwise agreed between the parties. Arbitration in terms of this clause shall be expedited and the Council shall appoint an arbitrator who is available to commence the arbitration within 10 (ten) working days, and the arbitration shall take place accordingly. The arbitrator shall be granted the power to determine the procedure to be followed at the arbitration and to regulate any other matter incidental thereto. The arbitrator shall normally be required to make a determination within 5 (five) working days of the completion of the hearing.
- (4) Subject to subclause (3) any arbitration in terms of that clause shall be in accordance with clause 56 of this Agreement.

54A. ENFORCEMENT OF THE MAIN COLLECTIVE AGREEMENT.

- (1) In addition to the provisions of any other dispute procedure in terms of this Agreement or in terms of the Labour Relations Act, 1995, the Council authorises a designated agent to issue a compliance order requiring any person bound by that collective agreement to comply with the collective agreement within a specified period.
- (2) The Council may refer any unresolved dispute with and or alleged breach of any of the provisions of the main collective agreement to arbitration by an arbitrator appointed by the Council.

55. CONCILIATION

- (1) Any referral to conciliation in terms of this dispute procedure shall be referred in terms of this clause. Subject thereto, any conciliation proceedings shall be regulated by the Act.
- (2) The Council hereby establishes a panel of conciliators, to whom matters shall be allocated at the discretion of the Secretary of the Council: Provided that-
 - (a) in the event of the Council having a direct interest in any dispute being processed, it shall be conciliated by a member of the panel who is independent of the Council, and

- (b) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.
- (3) Any conciliator appointed in terms of this clause shall have the powers granted to a commissioner who is empowered to conciliate in terms of the Act. Any conciliator so appointed shall determine a process to attempt to resolve the dispute which may include-
 - (a) mediating the dispute, or
 - (b) conducting a fact-finding exercise, or
 - (c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.
- (4) In any conciliation proceedings, a party to the dispute may appear in person or be represented in accordance with section 135(4) of the Act.
- (5) By no later than the end of the 30 (thirty) day period calculated from the appointment of the conciliator, or any further period agreed between the parties, the conciliator shall provide all parties to the dispute with a copy of a certificate stating whether or not the dispute has been resolved: Provided that the conciliator may prior to the expiry of this period, confirm that conciliation has failed if he believes no further purpose would be gained by continuing with the process.

56. ARBITRATION

- (1) In the event of any dispute being referred in terms of this Agreement, it shall be dealt with in accordance with this clause. Subject thereto, any arbitration procedures shall be regulated by the Act.
- (2) The Council hereby establishes a panel of arbitrators, to whom matters shall be allocated at the discretion of the Secretary of the Council: Provided that -
 - (a) in the event of the Council having a direct interest in any dispute being processed, it shall be arbitrated by a member of the panel who is independent of the Council, and
 - (b) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.
- (3) After consultation with the parties and their appointed arbitrator, the Secretary shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.

- (4) The arbitrator may conduct the arbitration in a manner that he considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities. Subject thereto, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the arbitrator.
- (5) The appointed arbitrator may at any stage prior to or during the arbitration proceedings attempt to resolve the dispute through conciliation with the consent of the parties to the dispute. If appropriate, the arbitrator may refer the dispute to be conciliated by another conciliator.
- (6) In the event that the arbitrator attempts conciliation prior to the commencement of arbitration, any party to the dispute may prior to the commencement of the arbitration object to that person's continuing to arbitrate the dispute, by written notice to the Secretary of the Council. In such event, the Secretary shall appoint another arbitrator from the Council's panel as soon as possible.
- (7) In any arbitration proceedings, a party to the dispute may appear in person or be represented in accordance with sections 138(4) and 140(1) of the Act. For the purposes of applying section 140(1) of the Act, the arbitrator shall have the powers granted to a Commissioner in terms of that section.
- (8) Any arbitration in terms of this clause shall be conducted in terms of the Arbitration Act, 1965, and
 - (a) in terms of Section 17 of that Act, no formal record of proceedings need be kept, and
 - (b) arbitration awards may be delivered other than in the presence of the parties, thereby enabling arbitrators to deliver awards to parties by telefax, post or other similar means.
- (9) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, after having been given written notification thereof, the arbitrator may dismiss the matter. Subject to subclause (15), the arbitrator's decision shall be final and binding on all parties to the dispute.
- (10) If a party, other than the party who referred the dispute to the Council, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may -
 - (a) continue with the arbitration proceedings in the absence of that party, or
 - (b) adjourn the arbitration proceedings to a later date.
- (11) Within 10 (ten) working days of the conclusion of the arbitration proceedings, the arbitrator shall issue a signed arbitration award with reasons and the

Council shall, as soon thereafter as possible, serve a copy of that award on each party to the dispute. The award shall be final and binding on all parties to the dispute.

- (12) On good cause shown by the arbitrator concerned the Secretary of the Council may extend the period during which the arbitration award is to be issued.
- (13) The arbitrator shall take into account any relevant code of good practice established in terms of the Act and may make any appropriate award including, but not limited to, an award -

- (a) that gives effect to any collective agreement,
- (b) that gives effect to the provisions of primary objects of the Act,
- (c) that includes, or is in the form of, a declaratory order.

- (14) (a) If the arbitrator finds that any party to the dispute has failed to comply with a provision of any of the Council's collective agreements which are binding on that party, then the arbitrator may, in addition to any other appropriate order, impose a penalty on the non-compliant party in accordance with Schedule 7 of the Labour Relations Act, No 66 of 1995, read with section 33A of the Act.

An arbitrator may also include in an order any penalties that are due and payable in terms of clause 29.

- (b) A costs award by the arbitrator may include the following costs or any costs which in the opinion of the arbitrator should be awarded ;
 - (i) fee of the arbitrator including travelling and accommodation ;
 - (ii) venue costs ;
 - (iii) administration fee of the Council ;
 - (iv) costs of issuing subpoenas ;
 - (v) costs of the designated agent or other staff of the Council who have attended the arbitration ;
 - (vi) witness fees.

- (15) An arbitrator may at his own initiative or as a result of an application by an affected party, vary or rescind an award -

- (a) erroneously sought or erroneously made in the absence of any party affected by the award, or

- (b) in which there is an ambiguity, or any obvious error or omission, but only to the extent of that ambiguity, error or omission, or
 - (c) granted as a result of a mistake common to the parties to the proceedings.
- (16) The Secretary or any of the parties may apply to make the arbitration award an order of the Labour Court under Section 158(1) of the Act.
- (17) Review proceedings may be instituted in terms of Section 33 of the Arbitration Act, 1965.