

## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

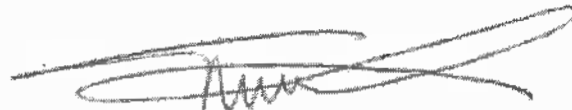
## DEPARTMENT OF EMPLOYMENT AND LABOUR

NOTICE 1529 OF 2022

## LABOUR RELATIONS ACT, 1995

## NATIONAL BARGAINING CONCIL FOR THE PRIVATE SECURITY SECTOR: EXTENSION OF PERIOD OF OPERATION OF THE MAIN COLLECTIVE AGREEMENT

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby, in terms of section 32(6)(a)(i) of the Labour Relations Act, 1995, extend the period fixed in Government Notice No R.193 of 20 February 2020 and R. 334 of 4 June 2021 by a further period ending 28 February 2027.



**MR TW NXESI, MP**  
**MINISTER OF EMPLOYMENT AND LABOUR**


DATE: 14/12/2022

## UMNYANGO WEZEMISEBENZI NEZABASEBENZI

## UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

## NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY SECTOR: UKWELULWA KWESIKHATHI SOKUSEBENZA KWESIVUMELWANO ESIYINGQIKITHI

Mina, **THEMBELANI WALTERMADE NXESI**, uNgqongqoshe Wezemisebenzi Nezabasebenzi, lapha ngokwesigaba 32(6)(a)(i) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngimemezela ukuthi isikhathi sokusebenza kwesivumelwano esinqunywe kwiSaziso sikaHulumeni esingunombolo R.193 womhlaka 20 kuNhlolanja 2020 kanye nesingunombolo R.334 womhlaka 4 kuNhlanguvana 2021 sengeziwe ngesikhathi esiphela ngomhlaka 28 kuNhlolanja 2027.



**NUMZANA TW NXESI, MP**  
**UNGGONGQOSHE WEZEMISEBENZI NEZABASEBENZI**

USUKU: 14/12/2022

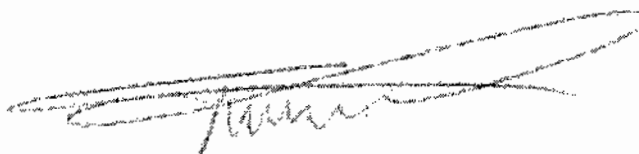
## DEPARTMENT OF EMPLOYMENT AND LABOUR

NOTICE 1530 OF 2022

## LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY  
SECTOR: EXTENSION TO NON-PARTIES OF THE MAIN COLLECTIVE  
AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **National Bargaining Council for the Private Security Sector**, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from 2 March 2023 and shall remain in force until 28 February 2027.

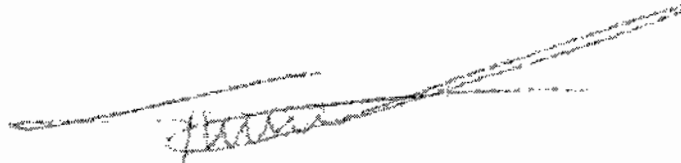


MR TW NXESI, MP  
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 14/12/2022

**UMNYANGO WEZEMISEBENZI NEZABASEBENZI****UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY  
SECTOR: UKWELULELWA KWESIVUMELWANO PHAKATHI  
KWABAQASHI NABASEBENZI ESIYINGQIKITHI SELULELWA KULABO  
ABANGEYONA INGXYENYE YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi neZabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa kwiNational Bargaining Council for the Private Security Sector, ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyoMboni, kusukela mhlaka 2 kuNdasa 2023 kuze kube isikhathi esiphela mhlaka 28 kuNhlolanja 2027.



**NUMZANA TW NXESI, MP**  
**UNGGONGQOSHE WEZEMISEBENZI NEZABASEBENZI**  
**USUKU: 14/12/2022**

**NATIONAL BARGAINING COUNCIL FOR THE PRIVATE SECURITY SECTOR**

**THE SCHEDULE**

**“BARGAINING COUNCIL MAIN COLLECTIVE AGREEMENT”**

**THE SCHEDULE**

in accordance with the provisions of the Labour Relations Act, 1995 (as amended),

made and entered into by and between the

**Security Association of South Africa ("SASA")**

**South African National Security Employers Association ("SANSEA")**

**Consolidated Employers Organization ("CEO")**

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

and the

**Abanqobi Workers Union ("AWU")**

**Democratic Transport Logistics and Allied Workers Union ("DETAWU")**

**Kungwini Amalgamated Workers Union ("KAWU")**

**National Security and Unqualified Workers Union ("NASUWU")**

**Professional Transport and Allied Workers' Union of South Africa ("PTAWU")**

**South African Algamated and Integrated Workers Union ("SAAIWU")**

**South African National Security and Allied Workers' Forum ("SANSAWF")**

**South African Transport and Allied Workers Union ("SATAWU")**

(hereinafter referred to as the "trade union") of the other part, being the parties to the  
National Bargaining Council for the Private Security Sector

## 1. SCOPE OF APPLICATION OF AGREEMENT

- (1) This Agreement applies to all employers and all employees who are engaged in the Private Security Sector, as defined hereunder, in the Republic of South Africa.

“Private Security Sector” or “sector” means the sector in which the employers and employees are associated for the purposes of guarding or protecting fixed property, premises, goods, persons or employees, including monitoring and responding to alarms at premises which are guarded by persons or by electronic means, but excluding the assets-in transit to the extent that it falls under the registered scope of the National Bargaining Council for the Road Freight and Logistics Industry.”

- (2) (a) this agreement shall apply to employees for whom wages are prescribed in this agreement and to employers of such employees; and  
(b) Other categories of employees, including car guards, in-house security officers, sub-contractors and other employees employed on non-standard service arrangements including fixed term contract agreements and disguised employment relationship such as self-employed security officers, who are deemed to be employees in terms of clause 21 and employers of such employees.
- (3) The provisions of this schedule shall not apply to:
- a a manager as defined in clause 3; and
  - b any employer or employee who is subject to a Sectoral Determination or an agreement of another bargaining council in the terms the Labour Relations Act, 1995 as amended.
- (4) For the purposes of determining the salary rate applicable to an employee, the area where the employee performs the employee’s duties shall be the area contemplated in tables 1, 2, 3 and 4 irrespective of whether or not the employer has an establishment in that area or not.
- (5) Subject to the provisions of the National Keypoint Act, 1980, this agreement shall apply to employers and employees in the Private Security Sector who provide security services at National Key Points, as defined.

## 2. PERIOD OF OPERATION OF THE AGREEMENT

- (1) This Agreement is binding on the parties to the Council and shall come into operation from the date as determined by the Minister and shall remain in force until 28 February 2027.
- (2) Furthermore this agreement shall become binding and operational on non-party employees and employers once this agreement is extended by the Minister of Employment and Labour in terms of section 32 of the Act as determined by the Minister until 28 February 2027.

### 3. DEFINITIONS

For the purpose of this agreement, unless the context otherwise indicates, any expression used in this Main Collective Agreement which is defined in the Labour Relations Act 66 of 1995 as amended, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context.

**"Act"** means the Labour Relations Act 66 of 1995, as amended from time to time

**"actuary"** means the actuary to the Fund appointed by the Board in terms of the rules.

**"administrator"** means an approved administrator of the fund in terms of section 13(b) of the Pension Fund Act, as amended from time to time and who has been appointed by the trustees of the fund in terms of the Pension Funds Act and the fund rules to administer the fund.

**"area"** includes any number of areas, whether or not closest.

**"armed response duty"** means the duty whereby a security officer, in the case of an emergency or alarm activation, may respond to a call from a client of a private security company, normally at the premises or property of the client.

**"armed response officer"** means a security officer who is remunerated at a minimum rate as for a Grade C security officer to conduct armed response duties, which shall include the driving of a motor vehicle in the performance of armed response duties.

**"armed security officer"** means a security officer who is remunerated at a minimum rate as for a Grade C security officer and who is required to utilise and is provided with a firearm in the course of his duties.

**"artisan"** means an employee who has completed or is deemed to have completed a contract of apprenticeship in a trade designated or deemed to have been designated in terms of the Manpower Training Act, 1981, or who holds a certificate issued or deemed to have been issued to the employee by the Registrar of Manpower Training and conferring Artisan status on the employee in terms of that Act, and any other employee engaged in work normally performed by an Artisan except where specifically otherwise provided in this agreement.

**"BCEA"** means a provision of the Basic Conditions of Employment Act, No 75 of 1997.

**"benefits"** shall mean the death, disability and funeral benefits provided to members of the fund in terms of the fund rules.

**"board"** means the board of trustees of the fund elected in accordance with its rules and the Pension Fund Act.

**“canine/dog handler”** means a security officer that is accredited and trained in accordance with the with the minimum standards in terms of the Government Gazette No. 19067 Notice 120, and Government Gazette 19740, Notice 15 and is required to have a dog escorted by the security officer on a specific shift.

**“car guard/trolley guard”** means an employee who guards vehicles and/or trolleys.

**“casual employee”** means an employee without a fixed contract of employment who works not more than 24 hours in any week.

**“child”** means a person who is under 18 years of age.

**“clerical assistant”** means an employee who is engaged in any one or more of the following duties:

- (a) adding or subtracting, including making use of a machine;
- (b) checking attendance registers or entering particulars in connection with employees who are absent or present or the time spent by employees on different tasks at establishments or places of employment;
- (c) filing documents according to written instructions or a list, in any order;
- (d) interpreting or translating languages;
- (e) issuing passes or preparing certificates of service;
- (f) issuing time cards;
- (g) preparing time cards;
- (h) recording particulars of annual or sick leave;
- (i) recording particulars in registers;
- (j) recording the engagement, dismissal or resignation of employees, including any necessary entries in an employee's file or documents; and
- (k) transferring names and addresses from compiled documents to envelopes, labels or circulars otherwise than by means of a typewriter or computer.

**“clerk”** means an employee who is engaged in writing, typing or filing or in any other form of clerical work and includes a cashier, store man and a telephone switch-board operator, and who may make up money into specified amounts and place such money in envelopes or other containers, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work.

**“contribution”** means the combined amount of the employer and employee contribution to the Private Security Sector Provident Fund, as per clause 30(2), payable monthly to the fund by each employer in the sector in respect of each of his or her employees whose conditions of employment are governed by the Bargaining Council Main Collective Agreement.

**“controller (“stock”)** means an employee who controls or checks the issuing or receiving of uniforms, overalls, protective clothing, batons, handcuffs,

flashlights, firearms, ammunition or other equipment and who may keep the necessary records.

**"Control Centre Operator"** and **"Communication Centre Operator"** means a security officer who is utilised in an administrative capacity in a control centre or communication centre and who may be called upon to perform any or all of the duties of a clerk.

**"day"** means a period of 24 consecutive hours reckoned from the time such employee usually commences work and daily has a corresponding meaning.

**"driver"** means an employee, other than a Security officer, grade A, B or C, who drives a motor vehicle, and for the purposes of this definition the expression **"drives a motor vehicle"** includes all periods during which an employee drives, all time spent on work connected with the vehicle or the load, and all periods during which the employee is obliged to remain at the post in readiness to drive.

**"emergency work"** means work that is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work.

**"employee"** means any person who works for another person or who in any manner assist in carrying on or conducting the business of an employer; and who receives, or is entitled to receive, any remuneration; and **"employed"** and **"employment"** have a corresponding meaning, and which also includes those persons who qualify to be deemed as employees in terms of this agreement and who do not fall under the jurisdiction of any other agreement or bargaining council agreement.

**"employer"** means any person (including created entities, corporate or un-incorporated) other than a person who is exempted in terms of sub clause 1(3) and of any other agreement or bargaining council agreement, who employs or provides work for any person in the Private Security Sector and remunerates him or permits any person in any manner whatsoever to assist him in the carrying on or conducting of his business and **"employ"** and **"employment"** shall have corresponding meanings.

**"establishment"** means the premises from which an employer conducts his business.

**"experience"** means, in relation to –

- (a) a clerk, the total period or periods of employment which an employee has had as a clerk in any trade or industry or in the service of a local authority or the State; and
- (b) a clerical assistant, the total period or periods of employment which an employee has had as a clerical assistant in any trade or industry or in the service of a local authority or the State.

**"fund"** means the Private Security Sector Provident Fund ("PSSPF"), established in terms of Government Notice 306 of 13 March 2001, which is governed by the fund rules and the Pension Fund Act.

**"general worker"** means an employee who is inter alia engaged in any one or more of the following duties:

- (a) affixing postage stamps to letters, parcels or other articles;
- (b) affixing rubber stamps or serial numbers where discretion is not required;
- (c) assisting an artisan by holding articles or tools or working with the artisan without making independent use of any tools;
- (d) assisting on vehicles, otherwise than driving, guarding or repairing such vehicles, carrying, lifting, storing, moving, loading, unloading, opening or closing goods or parcels;
- (e) cleaning or washing premises, doors, windows, equipment, tools, plant, machinery, furniture, vehicles, containers or other articles and including the polishing of floors, furniture or vehicles or the brushing of mats or the cleaning of mats by means of a machine;
- (f) cooking rations or making tea or similar beverages for employees, including serving them, or making tea or other refreshments for the employer or the employer's guests, including the serving thereof;
- (g) delivering or conveying messages, letters, goods or parcels on foot, or by any means excluding motor vehicles;
- (h) feeding or tending animals;
- (i) filling fuel tanks or filling or draining of oils sumps;
- (j) gardening;
- (k) oiling or greasing vehicles, plant or machinery;
- (l) opening or closing doors or windows;
- (m) pushing or pulling vehicles otherwise than by means of mechanical equipment;
- (n) removing refuse or ashes;
- (o) removing, replacing, changing wheels, tyres or tubes, or repairing or pumping tyres or tubes;
- (p) removing, topping up or replacing batteries;
- (q) replacing towels, soap or toilet paper;
- (r) stamping or stencilling containers or parcels where discretion is not required;
- (s) washing or ironing overalls, uniforms or protective clothing; and
- (t) whitewashing, cleaning or disinfecting kennels, stables, outbuildings or toilets.

**"goods"** means any movable property, including but not limited to, money and other valuables belonging to or in the custody of the employer, that has to be guarded, protected or transported under guard.

**"gross vehicle mass"**, in relation to a motor vehicle, means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by the registering authority.

**"health insurance"** means a type of insurance coverage that pays for health and medical expenses in accordance with the preferred supplier appointed by the NBCPSS terms and conditions, specific insurance plan and regulations.

**"handyman"** means an employee, other than an apprentice or a trainee, who is engaged in making minor repairs or adjustments to machinery or equipment, and who may also effect minor repairs or renovations to buildings, but who does not do any work normally performed by an Artisan.

**"heavy motor vehicle"** means a motor vehicle the gross vehicle mass of which exceeds 9000 kg.

**"hourly wage"** means an employee's hourly equivalent wage, as calculated in terms of the formula set out in clause 4(5)(b).

**"In-House Security officer"** means a natural person:

- a) who is employed by another person, business or entity not defined as security provider or a security service provider or including an organ of State, and who receives or is entitled to receive from such other person any remuneration, reward, fee or benefit, for rendering one or more security services; or
- b) who assists in carrying on or conducting the affairs of another security service provider, and who receives or is entitled to receive from such other security service provider, any remuneration, reward, fee or benefit, as regards one or more security services; or
- c) who or whose services are directly or indirectly made available by another security service provider to any other person, and who receives or is entitled to receive from any other person any remuneration, reward, fee or benefit for rendering one or more security services;

**"law"** includes the common law.

**"learner"** for the purposes of this agreement, means a natural person that was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded (unemployed learner) and who has entered into a written agreement with a security service provider who has registered a learnership with the relevant SETA and the learnership programme is accredited by the SETA which registration shall precede the commencement of the learnership and such learnership requires that the learner perform the functions and/or obtain workplace experience in performing the function of a security officer as defined.

**"light motor vehicle"** means a motor vehicle the gross vehicle mass of which does not exceed 3500 kg.

**"local authority"** means any borough council, city council, municipal council, village management board, divisional council or any similar institution or body contemplated

in section 84(1)(f) of the Provincial Government Act, 1961, or in any other parliamentary legislation.

**"manager"** means an employee who is charged by an employer with the overall supervision over, responsibility for and direction of the activities of an establishment or part of an establishment and the employees engaged therein, but does not include any employee in the same establishment who relieves or acts for a manager during a manager's absence.

**"medical practitioner"** means a person entitled to practice as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 50 of 1974) as amended.

**"member"** means an employee who, having been admitted to membership of the fund in accordance with the rules of the fund and who has not ceased to be a member of the fund in terms of the rules of the Fund.

**"midwife"** means a person registered or enrolled to practice as a midwife in terms of the Nursing Act, 1978 (Act No. 50 of 1978) as amended.

**"medium motor vehicle"** means a motor vehicle the gross vehicle mass of which exceeds 3500 kg but not 9000 kg.

**"mobile supervisor"** means a security officer who is required to drive a motor vehicle between sites in the course of supervising, inspecting or controlling security officers.

**"motor vehicle"** means a self-propelled vehicle used for the transportation of goods, persons or dogs and includes a motorcycle and a motorised three wheeler.

**"National Key-Point"** means key-points as defined in the National Key Point Act 102 of 1980 and/or National Key Points Act and Strategic Installations Bill.

**"night work"** means work which is performed between the hours of 18:00 on one day and 06:00 the next day.

**"ordinary hours of work"** means the hours of work prescribed in clause 7 but if by agreement between an employer and employee the latter works a lesser number of ordinary hours, it means such shorter hours, and excludes any hours paid at a premium for work performed on a Sunday, public holiday or in respect of overtime.

**"ordinary salary"** means the employee's salary in respect of ordinary hours worked, excluding any premium amount paid for work on a Sunday, public holiday or in respect of overtime payable to an employee, or any allowances; and **"monthly salary"** shall have the same meaning.

**"overtime"** means that portion of any period worked by an employee in any week or on any day which is longer than the maximum permissible weekly or daily ordinary hours of work, as the case may be, or in the case of averaging, the maximum average permissible hours of work over the period of the averaging.

**"Pension Fund Act"** means the Pension Fund Act No. 24 of 1956, as amended.

**"PSSPF commencement date"** means 1 November 2002;

**"PSSPF rules"** means the rules of the fund as amended by the trustees of the fund from time to time and registered with the registrar of pension funds in terms of the Pension Fund Act.

**"PSSPF salary"** means the salary used for the calculation of employer and employee contributions to the fund and is calculated as follows:

**A X B X 4.333** where:

**A** = employee's ordinary hourly equivalent rate of pay, calculated in terms of clause 4(5) and

**B** = the maximum number of ordinary hours an employee is permitted to work at the ordinary rate of pay as per Bargaining Main Collective Agreement, or such lesser hours as may be agreed in writing between the employer and the employee or any reduced maximum ordinary hours an employee may work that may be legislated in terms of the Bargaining Council Main Collective Agreement or the Basic Conditions of Employment Act, whichever is applicable.

**"premises"** means any land and any building or structure above or below the surface of any land.

**"public holiday"** means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act number 36 of 1994).

**"qualified"**, in relation to an employee referred to in clause 3 in this agreement, means that the experience of an employee in the employee's class entitles the employee to the highest salary rate prescribed for that class of employees, and conversely, **"unqualified"** means that experience in the employee's class does not entitle the employee to such highest salary rate.

**"remuneration"** means any payment in money or kind, or both in money and kind, made or owing to any person in return for that person working for any other person, including the State, and **"remunerate"** has a corresponding meaning.

**"Retirement Fund Act"** means the Pension Fund Act, 1956 (Act No. 24 of 1956) as amended from time to time and the regulations thereunder.

**“rules”** means the rules of the fund agreed by the board in accordance with the Retirement Fund Act.

**“salary”** means the amount of money paid or payable to an employee in respect of work performed; and **“wages”** has a corresponding meaning.

**“screening officer”** means every officer or guard at an airport or any other place who screen and search passengers or their luggage at a security checkpoint by means of electronic equipment.

**“security officer”** means a Security officer, grade A, B, C, D or E, including those performing Armed Response and National Key Point duties.

**“security officer, grade A”** means an employee who performs any one or more of the following duties:

- (a) advising or reporting on any matter affecting guarding or protection services;
- (b) assisting in the screening of candidates for employment;
- (c) assuming responsibility for staff training;
- (d) drawing money or cheques or taking possession of negotiable documents;
- (e) drawing money at banks or similar institutions;
- (f) guarding or protecting goods;
- (g) supervising subordinate staff;
- (h) who may drive a motor vehicle in the performance of any or all of the employee's duties; and
- (i) who may be called upon to perform any or all of the duties of a security officer, grade B.

**“security officer, grade B”** means an employee who performs any one or more of the following duties, namely, supervising, controlling, instructing or training security officers, grade C, D or E or general workers and reporting thereon to an employer or any other specified person, and who may –

- (a) drive a motor vehicle in the performance of any or all of the employee's duties; and
- (b) be called upon to perform any or all of the duties of a security officer, grade C.

**“security officer, grade C”** means an employee who performs any one or more of the following duties –

- (a) supervising or controlling Security officers, grade D or E;
- (b) driving a motor vehicle in the course of supervising or controlling Security officers grade D or E;
- (c) driving a motor vehicle for the purpose of transporting Security officers;
- (d) armed response; and
- (e) who may be called upon to perform any or all of the duties of a security officer, grade D.

**“security officer, grade D”** means an employee who performs any one or more of the following duties –

- (a) controlling or reporting on the movement of persons or vehicles through checkpoints or gates;
- (b) searching persons and, if necessary, restraining them;
- (c) supervising or controlling Security officers, grade E;
- (d) searching goods or vehicles; and
- (e) who may be required to perform any or all of the duties of a security officer, grade E.

**“security officer, grade E”** means an employee, other than a Security officer, grade D, who performs any one or more of the following duties –

- (a) guarding, protecting or patrolling premises or goods;
- (b) handling or controlling dogs in the performance of any or all of the duties referred to as a security officer

**“spare and reliever”** means an employee –

- (a) Who reports for duty at a specified place and time; and
- (b) Who must remain at the specified place for the duration of that shift, or who is required to replace any other employee who may be on scheduled time-off, annual leave or absent from duty, or who is required to perform duties at any place designated by the employer.

**“short time”** means a temporary reduction in the number of ordinary hours of work owing to a slackness of business in the trade, a breakdown of plant, machinery or equipment, or a breakdown or threatened breakdown of buildings.

**“storeperson”** means an employee, other than a controller (stock), who is in charge of incoming stock and who is responsible for receiving, storing, packing or unpacking stock in or for issuing stock from a store, warehouse or open stockyard.

**“Sunday work”** means any work performed where the relevant shift commences on a Sunday and where at least half of that shift is ordinarily performed on that Sunday.

**“trustee”** or **“trustees”** means a trustee or the trustees or their alternates elected or appointed in term of the fund rules.

**“week”** in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls.

#### 4. REMUNERATION

##### (1) Minimum salary:

- (a) The ordinary salary which an employer shall pay employees shall be as specified in the tables listed below.

- (i) The hourly equivalents reflected in the table hereunder shall be used solely for the calculation of time worked in excess of the ordinary hours or for the deduction of monies from the ordinary salary for short time as defined or for any unauthorized absenteeism or any reduced ordinary hours of work as may be agreed between the employer and the employee in terms of "overtime" as defined in the definitions.
- (b) In respect of a learner contemplated in clause 3 and for the period when the learner performs the function of a security officer or obtains practical experience as a security officer at a workplace other than at a training centre where the learner may receive practical experience or perform similar duties than that of a security officer, then for that period the learner shall be paid, as a minimum and including for calculation purposes any stipend, at least the basic salary of a security officer Grade C or equivalent to the function performed for that period as prescribed in the tables below. During the aforesaid period, when the learner performs the function of a security officer and/or obtain work experience, the hours of work of a security officer as per clause 7(1)(a) shall apply.
- (c) Subject to sub clause (a)(i) above, an employer shall pay to each member of the undermentioned classes of employees, other than casual employees, the minimum monthly salaries specified hereunder in Table 1, 2, 3 and 4 –

**Table 1 – Monthly salary rate for year 1 of date of operation of this agreement of this. Effective 01 March 2023 to 28 February 2024**

Magisterial Districts of	AREAS 1 & 2		AREA 3		Maximum permissible working hours per week for each respective category of employee, subject to clause 6(2), with regard to averaging of working hours
	Monthly Salary	Hourly Rate	Monthly Salary	Hourly Rate	
Abertou, Bellville, Benoni, Bloemfontein, Boisburg, Brakpan, Camperdown, Chatsworth, Durban, East London, Germiston, Goodwood, Inanda, Johannesburg, Kempton Park, Kimberley, Klerksdorp, Krugeradorp, Kuis River, Mitchells Plain, Nlgel Oberholzer, Paarl, Pietermaritzburg, Pinetown, Qoqoberna, Tswane, Randburg, Randfontein, Roodepoort, Sasolburg, Simon's Town, Somerset West, Springs, Stellenbosch, Strand, The Cape, Uitenhage, Vanderbijlpark, Vereeniging, Westonaria, Wonderboom and Wynberg.		The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	All other areas	The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	
	Monthly Salary	Hourly Rate	Monthly Salary	Hourly Rate	
Artisan	R0 286.00	R47.6205	R0 193.00	R42.0154	45
Clerical Assistant	R5 197.00	R26.6513	R5 197.00	R26.6513	45
Clerk					
During the first year of experience	R5 356.00	R27.4667	R5 197.00	R26.6513	45
During the second year of Experience	R5 651.00	R28.9795	R5 197.00	R26.6513	
During the third year of experience	R5 909.00	R30.3026	R5 197.00	R26.6513	
Thereafter	R8 181.00	R31.7487	R5 384.00	R27.5077	
Control or Communication Centre Operator	As for the relevant security officer grading				48
Controller	As for Clerical Assistant				45
Driver of a -					
Light motor vehicle	R5 197.00	R26.6513	R5 197.00	R26.6513	45
Medium motor vehicle	R5 516.00	R26.2872	R5 197.00	R26.6513	
Heavy motor vehicle	R5 729.00	R29.3795	R5 197.00	R26.6513	
General Worker	R5 187.00	R26.6513	R5 197.00	R26.6513	45
Handyman	R5 671.00	R29.0821	R5 197.00	R26.6513	45
Security Officer					
Grade A	R6 907.00	R33.2067	R5 915.00	R28.4375	48
Grade B	R6 330.00	R30.4327	R5 499.00	R26.4375	
Grades C, D & E	R5 728.00	R27.5288	R5 499.00	R26.4375	
Employees not elsewhere specified	R5 197.00	R26.6513	R5 197.00	R26.6513	45

**Table 2 - Monthly salary rate for year 2 of date of operation of this agreement. Effective 01 March 2024 to 28 February 2025**

Magisterial Districts of	AREAS 1 & 2		AREA 3		Maximum permissible working hours per week for each respective category of employee, subject to clause 6(2), with regard to averaging of working hours
	Monthly Salary	Hourly Rate	Monthly Salary	Hourly Rate	
<p>Abertou, Belville, Benoni, Bloemfontein, Boksburg, Brakpan, Camperdown, Chatsworth, Durban, East London, Germiston, Goodwood, Inanda, Johannesburg, Kempton Park, Kimberley, Klerksdorp, Krugersdorp, Kuis River, Mitchell's Plain, Nigel, Oberholzer, Paarl, Pietermaritzburg, Pinetown, Qoqoberha, Tswane, Randburg, Randfontein, Roodspoot, Sasolburg, Simon's Town, Somersal, West, Springs, Stellenbosch, Strand, The Cape, Uitenhage, Vanderbijlpark, Vereeniging, Westonaria, Wonderboom and Wynberg.</p> <p>The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.</p>			<p>All other areas</p> <p>The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.</p>		
<b>Artisan</b>	R9 642.00	R49.1462	R8 549.00	R43.8410	45
<b>Clerical Assistant</b>	R5 553.00	R28.4769	R5 553.00	R28.4769	45
<b>Clerk</b>					
During the first year of experience	R5 712.00	R29.2923	R5 553.00	R28.4769	45
During the second year of Experience	R6 007.00	R30.8051	R5 553.00	R28.4769	
During the third year of experience	R6 285.00	R32.1282	R5 553.00	R28.4769	
Thereafter	R6 547.00	R33.5744	R5 720.00	R29.3333	
<b>Control or Communication Centre Operator</b>	As for the relevant security officer grading				48
<b>Controller</b>	As for Clerical Assistant				45
<b>Driver of a -</b>					
Light motor vehicle	R5 553.00	R28.4769	R5 553.00	R28.4769	
Medium motor vehicle	R5 872.00	R30.1128	R5 553.00	R28.4769	
Heavy motor vehicle	R6 085.00	R31.2051	R5 553.00	R28.4769	45
<b>General Worker</b>	R5 553.00	R28.4769	R5 553.00	R28.4769	45
<b>Handyman</b>	R6 027.00	R30.9077	R5 553.00	R28.4769	45
<b>Security Officer</b>					
Grade A	R7 277.00	R34.9856	R6 271.00	R30.1490	48
Grade B	R6 700.00	R32.2115	R5 855.00	R28.1490	
Grades C, D & E	R6 096.00	R29.3077	R5 855.00	R28.1490	
<b>Employees not elsewhere specified</b>	R5 553.00	R28.4769	R5 553.00	R28.4769	45

**Table 3 - Monthly salary rate for year 3 of date of operation of this agreement. Effective 01 March 2025 – 28 February 2026**

Magisterial Districts of	AREAS 1 & 2		AREA 3		Maximum permissible working hours per week for each respective category of employee, subject to clause 6(2), with regard to averaging of working hours
	Monthly Salary	Hourly Rate	Monthly Salary	Hourly Rate	
Alberton, Bellville, Banoni, Bloemfontein, Boksburg, Braampan, Camperdown, Chatsworth, Durban, East London, Germiston, Goodwood, Inanda, Johannesburg, Kempton Park, Kimberley, Klarksdorp, Krugersdorp, Kulls River, Mitchell's Plain, Nigel, Oberholzer, Paarl, Pietermaritzburg, Pinetown, Gqeberha, Tswane, Randburg, Randfontein, Roodepoort, Sasolburg, Simon's Town, Somerset West, Springs, Stellenbosch, Strand, The Cape, Uitenhage, Vanderbijlpark, Vereeniging, Westonaria, Wonderboom and Wynberg.		The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	All other areas	The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	
<b>Artisan</b>	R10 043.00	R51.5026	R8 950.00	R45.8974	45
<b>Clerical Assistant</b>	R5 954.00	R30.5333	R5 954.00	R30.5333	45
<b>Clark</b>					
During the first year of experience	R6 113.00	R31.3487	R5 954.00	R30.5333	45
During the second year of Experience	R6 408.00	R32.8615	R5 954.00	R30.5333	
During the third year of experience	R6 666.00	R34.1846	R5 954.00	R30.5333	
Thereafter	R6 948.00	R35.6308	R6 121.00	R31.3897	
<b>Control or Communication Centre Operator</b>	As for the relevant security officer grading				48
<b>Controller</b>	As for Clerical Assistant				45
<b>Driver of a -</b>					
Light motor vehicle	R5 954.00	R30.5333	R5 954.00	R30.5333	
Medium motor vehicle	R6 273.00	R32.1682	R5 954.00	R30.5333	
Heavy motor vehicle	R6 486.00	R33.2615	R5 954.00	R30.5333	45
<b>General Worker</b>	R5 954.00	R30.5333	R5 954.00	R30.5333	45
<b>Handyman</b>	R6 426.00	R32.9641	R5 954.00	R30.5333	45
<b>Security Officer</b>					
Grade A	R7 695.00	R36.9952	R6 672.00	R32.0769	48
Grade B	R7 118.00	R34.2212	R6 256.00	R30.0769	
Grades C, D & E	R6 514.00	R31.3173	R6 256.00	R30.0769	
<b>Employees not elsewhere specified</b>	R5 954.00	R30.5333	R5 954.00	R30.5333	45

**Table 4 - Monthly salary rate for year 4 of date of operation of this agreement. Effective 01 March 2026 – 28 February 2027**

Magisterial Districts of	AREAS 1 & 2		AREA 3		Maximum permissible working hours per week for each respective category of employee, subject to clause 6(2), with regard to averaging of working hours
	Alberton, Beville, Benoni, Bloemfontein, Botshaburg, Brakpan, Camperdown, Chatsworth, Durban, East London, Germiston, Goodwood, Inanda, Johannesburg, Kempton Park, Kimberley, Klerksdorp, Krugersdorp, Kuis River, Mitchell's Plain, Nigel, Oberholzer, Paarl, Pietermaritzburg, Pinetown, Gaebertia, Tswane, Randburg, Randfontein, Rodepoort, Sasolburg, Simon's Town, Somerset West, Springs, Stekenbosch, Strand, The Cape, Uitenhage, Vanderbijlpark, Vereeniging, Westonaria, Wonderboom and Wynberg.	The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	All other areas	The "hourly equivalent" figure below shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.	
	Month/ Hourly Salary	Hourly Rate	Month/ Hourly Salary	Hourly Rate	
Artisan	R10 513.00	R53.9128	R9 420.00	R48.3077	45
Clerical Assistant	R6 424.00	R32.9436	R6 424.00	R32.9436	45
Clerk					
During the first year of experience	R6 583.00	R33.7590	R6 424.00	R32.9436	45
During the second year of Experience	R6 878.00	R35.2718	R6 424.00	R32.9436	
During the third year of experience	R7 138.00	R36.5949	R6 424.00	R32.9436	
Thereafter	R7 418.00	R38.0410	R6 591.00	R33.8000	
Control or Communication Centre Operator	As for the relevant security officer grading				48
Controller	As for Clerical Assistant				45
Driver of a -					
Light motor vehicle	R6 424.00	R32.9436	R6 424.00	R32.9436	
Medium motor vehicle	R6 743.00	R34.5795	R6 424.00	R32.9436	
Heavy motor vehicle	R6 956.00	R35.6718	R6 424.00	R32.9436	45
General Worker	R6 424.00	R32.9436	R6 424.00	R32.9436	45
Handyman	R6 898.00	R35.3744	R6 424.00	R32.9436	45
Security Officer					
Grade A	R8 184.00	R39.3462	R7 142.00	R34.3365	48
Grade B	R7 607.00	R36.5721	R6 726.00	R32.3365	
Grades C, D & E	R7 003.00	R33.6683	R6 726.00	R32.3365	
Employees not elsewhere specified	R6 424.00	R32.9436	R6 424.00	R32.9436	45

**(2) Casual employees**

An employer shall pay a casual employee in respect of each hour or part of an hour (excluding overtime) worked by the employee on any day other than a paid Public holiday or a Sunday not less than the hourly wage as calculated in terms of clause 4(5)(b) for an ordinary employee who in the same area performs the same class of work as the casual employee is required to do, plus 15 percent, or not less than the hourly wage or hourly equivalent of the salary actually being paid to the ordinary employee, whichever is the greater amount –

Provided that

- (i) for the purposes of this paragraph the expression "the ordinary employee" means the employee who performs the particular class of work in the employer's full-time employ and who is being paid the lowest salary for that class of work; and
- (ii) where the employer requires the casual employee –
  - (aa) to perform the work of a class of employee for whom salaries on a rising scale are prescribed, the expression "**hourly wage**" shall mean the hourly equivalent wage prescribed for a qualified employee of that class; and
  - (ab) to work for a period of less than four hours on any day, the employee shall be deemed to have worked four hours and be remunerated accordingly.

**(3) Basis of contract:**

For the purposes of this clause, the contract of employment of an employee, other than a casual employee, shall be on a weekly basis.

**(4) Differential salary:**

An employer who requires or permits a member of one class of employee to perform for longer than one hour on any day, either in addition to the employee's own work or in substitution therefore, work of another class for which –

- (a) Salary is higher than that of the employee's own class is prescribed in clause 4(1), shall pay to such employee in respect of that day not less than the daily equivalent calculated at the higher rate; or
- (b) a rising scale of remuneration resulting in a salary higher than that of the employee's own class, as prescribed in sub clause 4(1), shall pay to such employee in respect of that day not less than the daily salary calculated on the notch in the rising scale immediately above the salary which the employee was receiving for the employee's ordinary work: provided that –
  - (aa) this sub clause shall not apply where the difference between the classes in terms of sub clause 4(1) is based on experience; and

- (ab) unless expressly otherwise provided in a written contract between the employer and employee, nothing in this agreement shall be so construed as to preclude an employer from requiring an employee to perform work of another class for which class the same or a lower salary is prescribed for such an employee.

**(5) Calculation of salary**

The ordinary salary, overtime and Sunday time of an employee, other than a casual employee, shall be calculated on a monthly basis and an employee shall be paid accordingly.

- (a) The monthly salary of an employee shall be as stipulated in the relevant column of the tables 1, 2, 3 and 4; and

- (i) Any hours in excess of the maximum daily or weekly ordinary hours or, if applicable, average weekly ordinary hours, as well as any hours in respect of work performed on a Sunday or public holiday, shall be calculated by using the formula below to determine the "hourly equivalent" figure and applying the relevant premium:

$$\frac{x}{y} \times \frac{3}{13}$$

Where: x = monthly salary as per clause 4(1)(b) defined in Table 1, 2, 3 and 4.

and y = ordinary hours per week as per clause 7(1)

- (b) The "hourly equivalent" figure shall not be used to calculate the employee's ordinary salary in respect of ordinary hours worked, i.e., the employee's basic salary.

**(6) Allowances**

**(a) Special Allowances**

The following allowances shall be paid per shift, to each employee performing the following duties, on condition that no employee shall be entitled to accumulate more than any two of these special allowances in respect of any shift worked.

Special Allowance	Year 1	Year 2	Year 3	Year 4
Mobile Supervisor	R8.50/shift	R9.50/shift	R9.50/shift	R10.50/shift
Armed Security Officer	R8.50/shift	R9.50/shift	R9.50/shift	R10.50/shift
Armed Response Officer	R8.50/shift	R9.50/shift	R9.50/shift	R10.50/shift
National Key Point Officer	R8.50/shift	R9.50/shift	R9.50/shift	R10.50/shift
Control Centre Operator	R8.50/shift	R9.50/shift	R9.50/shift	R10.50/shift
Canine/Dog Handler		R9.50/shift	R9.50/shift	R10.50/shift

**(b) Night shift allowance**

If at least half of the shift ordinarily falls between the hours of 18:00 on the one day and 06:00 the next day that employee will be entitled to and shall receive an allowance in respect of each night shift worked as below.

Night Shift Allowance	Year 1	Year 2	Year 3	Year 4
Night Shift Allowance	R6.00/shift	R7.00/shift	R7.00/shift	R8.00/shift

**(c) Cleaning allowance**

An employer who provides and requires an employee with uniform apparel, may require the employee to clean it in the employee's own time, in which event the employer shall pay the employee not less than the amounts specified below per month, which shall however not be payable during periods of absence from work.

Cleaning Allowance	Year 1	Year 2	Year 3	Year 4
Cleaning Allowance	R30.00/month	R31.00/month	R31.00/month	R32.00/month

**(d) Transfer allowance**

An employer shall pay a security officer a transfer allowance as specified below per month under the following circumstances –

- (i) If the transfer is permanent, the employee shall be entitled to the transfer allowance for a period of not more than 12 (twelve) months after the date of transfer;
- (ii) If the employee is transferred for a period exceeding six months but not exceeding twelve months, he/she shall be entitled to receive the transfer allowance for the equivalent number of months as the transfer;
- (iii) All transfer allowance payments are subject to the following conditions:
  - (aa) The employer requires the security officer to transfer on a permanent basis or for a period exceeding six months; and
  - (bb) The security officer is transferred to a site or other such business which is in excess of 60 kilometres away from the deployment of the security officer at the time of the transfer.

- (iv) This clause does not apply in the event:
- (aa) of a transfer arising from an offer of alternate employment by the employer during a consultation process conducted in terms of section 189 of the Labour Relations Act (66 of 1995) as amended; or
  - (bb) that the transfer of the employee is the result of a request for such transfer by the employee.

Transfer Allowance	Years 1, 2, 3 and 4
Transfer allowance	R100.00/month

## 5. HEALTH INSURANCE

- (1) As from the first year of this agreement, the Health Insurance shall continue to be applicable to security officers in all areas as defined in Tables 1, 2, 3 and 4 and payable each month.
- (2) The contribution due by the employer shall however not be payable for periods of unauthorised absence from work and shall be calculated on a pro-rated basis. Any shortfall in the employer's contribution resulting from such unauthorised absenteeism shall be added to the security officer's contribution.
- (3) As from the first year of this agreement the total premium contribution shall be R295.00. The employer shall contribute R172.50 and the security officer R122.50.
- (4) Should there be any reduction in the total premium for health insurance the total reduced amount shall be divided equally between the employer and the security officer. For the duration of this agreement any increase of the total premium shall be divided equally between the employer and the security officer.
- (5) Should the security officer wish to add any dependents, the cost for such dependents shall be solely for the cost of the security officer. The preferred service provider shall be responsible for the administration and shall advise the employer of the specific deduction for the dependents' additional premium.
- (6) The employer shall be entitled to charge a 5% administration fee based on the premium of the additional dependents. The security officer's premium shall be excluded from the 5% administration fee.

## 6. PAYMENT OF REMUNERATION

- (1) For employees, other than casual employees, an employer must pay to an employee any remuneration –
  - (a) in South African currency;
  - (b) daily, weekly, fortnightly or monthly; and
  - (c) in cash or by direct deposit in an account designated by the employee.
- (2) Any remuneration paid in cash must be given to each employee –
  - (a) during the ordinary hours of work;
  - (b) within 15 minutes thereafter on the usual pay-day of the establishment for such employee, or

- (c) at such time as may have been agreed upon between such employee and the employer, which time shall fall during the ordinary hours of work of the establishment, but not later than 48 hours after the usual pay-day, or
  - (d) within 48 hours of termination of employment, weekends and public holidays excluded.
- (3) Such amount, if payable in cash, shall be contained in a sealed envelope.
- (4) An employer must give an employee, or make available digitally, a salary advice on which the following information is included in writing on each day the employee is paid –
- (a) the employer's name and address;
  - (b) the employee's name or his number on the payroll, the employee's job category and grade;
  - (c) the period for which payment is made;
  - (d) the amount and purpose of any deductions made from the remuneration;
  - (e) the nett amount paid to the employee;
  - (f) the employee's rate of pay and overtime rate;
  - (g) the number of ordinary hours worked by the employee;
  - (h) the number of overtime hours worked by the employee;
  - (i) the number of hours worked by the employee on a Sunday during that period;
  - (j) the number of hours worked by an employee on a public holiday during that period; and
  - (k) the details of any other remuneration arising out of the employee's employment contract or in terms of an agreement to average working time in terms of the BCEA No 75 of 1997.
- (5) The written information required in terms of sub clause (4) must be given to each employee at the workplace or at a place agreed to by the employee or be made available digitally by the employer to the employee and such salary advice on which these particulars are recorded or such statement shall become the property of the employee:

Provided that –

- (a) the particulars prescribed above may be recorded on a salary advice or digitally in accordance with sub section 4 which shall be set out and explained in an accompanying notice or in a notice kept posted in some conspicuous place in the establishment, accessible to all employees affected thereby;
- (b) the amount due to the employee may be paid into the employee's nominated building society or bank account, by manual or electronic funds transfer, by the employer, who shall, however, deliver to the employee the aforementioned statement, by hand or electronically.

#### **(5A) Casual employees**

An employer shall pay a casual employee the remuneration due to the employee in cash, EFT or electronic means on completion of each day's work:

Provided that the employer may, at the request of such employee, pay the employee the remuneration at the end of that week or month, by mutual agreement.

**(6) Premiums**

Subject to any other law, no payment by or on behalf of an employee shall be accepted by an employer, either directly or indirectly, in respect of the employment or training of that employee; and

- (a) repay any portion of the remuneration which was due to that employee; or
- (b) acknowledge receipt of an amount greater than the remuneration actually paid to the employee.

**(7) Purchase of goods**

An employer shall not require an employee to purchase any goods from the employer or from any shop, place or person nominated by the employer.

**(8) Accommodation, meals and rations and payment in kind:**

An employer shall not, as a condition of employment, require an employee to accept accommodation, meals or rations from the employer or from any person or at any place nominated by the employer. An employer shall not, as a condition of employment, require an employee to receive any *in kind* form of payment in lieu of salaries or a part thereof.

**(9) Spares or relievers:**

If an employee works as a "spare" or "reliever", the employee will be employed on a full time basis, at the rate for the relevant category of employment, and the employer must pay the employee the amount that the employee would ordinarily have earned even if that employee had not been placed at a post.

**(10) Deductions**

An employer shall not levy any fines against an employee nor make any deductions from the employee's remuneration other than the following –

- (a) Other than clause 6(10)(c), by agreement with the employee in writing, in respect of a debt specified in the agreement, or
- (b) A deduction of any amount which an employer by law or order of any competent court is required or permitted to make;
- (c) To reimburse the employer for loss or damage only if -

- (i) the loss or damage occurred in the course of employment and was due to the fault of the employee,
  - (ii) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction should not be made,
  - (iii) the total amount of the debt does not exceed the actual amount of the loss or damage, and
  - (iv) the total monthly deductions from the employee's remuneration in terms of this sub clause do not exceed one quarter of the employee's gross monthly remuneration in money.
- (d) With the written consent of the employee, a deduction for any medical, insurance, savings, provident or pension fund, or in respect of subscriptions to a trade union, other than compulsory statutory deductions and/or contributions;
- (e) Whenever the ordinary hours of work are reduced because of short time, a deduction not exceeding the amount of the employee's, other than a casual employee, hourly equivalent wage in respect of each hour of such reduction:

Provided that –

- (i) such deduction shall not exceed one third of the employee's salary, irrespective of the number of hours by which the ordinary hours of work are thus reduced;
  - (ii) no deduction shall be made in the case of short time arising from slackness of business, unless the employer has given an employee notice on or before the previous working day of the employer's intention to reduce the ordinary hours of work;
  - (iii) no deduction shall be made in the case of short time owing to a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings, in respect of the first hour not worked, unless the employer has given an employee notice on or before the previous day that no work will be available.
- (f) With the written consent of an employee, a deduction towards the repayment of any amount loaned or advanced to the employee by the employer.

Provided that –

- (i) any such deduction shall not exceed one third of the total remuneration due to the employee on the payday concerned;
- (ii) no such deduction shall be made in respect of any period during which the employee's salary is reduced in terms of sub clause 10(e); Sub clause 10(f)(i) and (ii) shall not apply where the contract of employment is terminated.

- (g) A deduction in accordance with the provisions of clause 10(9); and
- (h) any other deduction made at the written request of the employee and with the agreement of the employer: Provided that if the purpose of such deduction is the payment of any amount to any banking institution, building society, insurance business, registered financial institution, local authority, the State or any third party, the employer shall make such payment to such institution in accordance with the request of the employee within the timeframe indicated in such request, or where no timeframe is indicated, within one week.

## **7. ORDINARY HOURS OF WORK, OVERTIME AND PAYMENT FOR OVERTIME**

- (1) An employer shall not require or permit an employee to work more ordinary hours of work than provided for from the date of implementation of this agreement –
  - (a) a security officer -
    - (i) 48 in any week; and
    - (ii) Subject to clause 7(1)(a)(i) 12 hours on any day.
  - (b) Any other category of employee; -
    - (i) 45 in any week; and
    - (ii) subject to subparagraph 7(1)(b)(i), in the case of an employee who normally works on –
      - (aa) not more than five days in a week, nine (9) on any day; and
      - (ab) more than five days in a week, eight (8) on any day.

### **(2) Averaging of Working Hours**

Despite clause 7(1), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months, in terms of a written agreement.

- (a) An employer may not require or permit an employee who is a security officer to work more than –
  - (i) an average of 48 ordinary hours of work in a week over the agreed period; and
  - (ii) an average of ten hours overtime in a week over the agreed period.
- (b) Any employee whose hours are averaged in terms hereof must be paid at the premium hourly rate in respect of all work performed on a Sunday or public holiday, as per clauses 9 and 10.
- (c) Any employee whose hours are averaged in terms hereof will still take, and the employer shall grant, a weekly free period of at least 36 hours or a fortnightly free period of at least 60 hours in terms of clause 7(10).

**(3) Compressed working week**

An agreement in writing may require or permit an employee to work up to 12 hours in a day, without receiving overtime pay. No such agreement may require or permit an employee to work –

- (a) more than 48 ordinary hours in any week, with the exception of the arrangements in respect of security officers in terms of clause 7(1)(a);
- (b) more than 10 hours overtime in any week; or
- (c) on more than five days in any week.

**(4) Meal intervals:**

- (a) An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour.
- (b) During a meal interval an employee may be required or permitted only duties that cannot be left unattended and cannot be performed by another employee.
- (c) An employee must be remunerated –
  - (i) for a meal interval in which the employee is required to work or is required to be available for work; and
  - (ii) For any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the workplace is situated.
- (d) For the purposes of sub clause (a), work is continuous unless it is interrupted by an interval of at least 30 minutes.
- (e) An agreement in writing may –
  - (i) reduce the meal interval to not less than 30 minutes;
  - (ii) Dispense with a meal interval for an employee who works fewer than six hours.
- (f) No deduction in respect of a meal interval shall reduce the employee's monthly salary, as specified in this agreement or any amendment thereto.

**(5) Rest intervals**

An employer shall grant to each employee, other than a driver or a security officer, a rest period of not less than 15 minutes as practicable in the middle of the first and second work periods of the day, and during which intervals such employee shall not be required or

permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work of such employee.

**(6) Hours of work to be consecutive**

Save as provided in sub clause 4, all hours of work of an employee on any day shall be consecutive.

**(7) Night Work**

(a) An employer may only require or permit an employee to perform night work if:

- (i) the employee is compensated by the payment of an allowance, as per clause 4(6)(b); and
- (ii) public or other transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.

(b) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must inform the employee in writing, or orally, if the employee is not able to understand a written communication, in a language that the employee understands –

- (i) of any health and safety hazards associated with the work that the employee is required to perform; and
- (ii) of the employee's right to undergo a medical examination in terms of sub clause 7(7)(c).

(c) At the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, 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.

(d) 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) if it is practicable for the employer to do so.

(e) For the purposes of clause 7(7)(b), 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.

**(8) Limitation of overtime**

The need to work overtime shall be at the sole discretion of the employer and an employer shall not require or permit an employee to work overtime otherwise than in terms of an agreement concluded by the employer with the employee and such overtime shall not exceed –

- (a) 3 hours on any day; or
- (b) 10 hours in any week.

Provided that the weekly limitation may be increased to 12 in terms of a written agreement between the employer and employee.

**(9) Payment for overtime**

An employer shall pay an employee who works overtime, of any nature, at a rate of not less than one and a half times the employee's hourly equivalent wage in respect of the total overtime period so worked by such employee.

**(10) Rest periods**

- (a) An employer must allow an employee –
  - (i) a daily rest period of at least 12 consecutive hours between the normal ending and recommencing work; and
  - (ii) a weekly rest period of at least 36 consecutive hours.
- (b) A daily rest period in terms of sub clause (10)(a) may, by written agreement, be reduced to 10 hours for an employee –
  - (i) who lives on the premises at which the workplace is situated; and
  - (ii) whose meal interval lasts for at least three hours.
- (c) Despite sub clause (10)(a)(ii), an agreement in writing may provide for –
  - (i) a rest period of at least 60 consecutive hours every two weeks; or
  - (ii) an employee's weekly rest period to be reduced by up to eight hours in any week; if the rest period in the following week is extended equivalently.

**(11) Exceptions**

- (a) Sub clauses (4), (5), (6) and (8) shall not apply to an employee while an employee is engaged in emergency work.
- (b) Sub clause (4) shall not apply to an employee wholly or mainly engaged in the tending, feeding or cleaning of animals.

## 8. ANNUAL BONUS

- (1) An employer shall pay to every security officer, for each month that the employee was paid or entitled to be paid in respect of each completed 12 months of service with such employer, an annual bonus, subject to the conditions of sub clauses (2) and (3) calculated as follows:

$$\frac{(A \times 12) - (B \times C)}{12}$$

Where

A = Security officer's monthly salary at the date upon which the bonus is payable

B = Security officer's hourly equivalent rate of pay at the date upon which the bonus is payable

C = The number of hours worked short due to absenteeism and/or late coming; i.e. unauthorised absenteeism

Provided that –

- (i) only unauthorised hours of absence shall be used in determining the figure "C" in the above formula;
  - (ii) any period of approved absence, including but not limited to, annual leave, sick leave; maternity leave, study leave, family responsibility leave and protected industrial action shall not be used to reduce the bonus payable in terms of this clause; and
  - (ii) any employee who is scheduled to perform duties as a spare and is not utilised for that shift shall suffer no detriment for the duration of the shift in the accumulation of his/her annual bonus.
- (2) The annual bonus shall be paid on the anniversary of the security officer's date of employment with the employer unless the employer and a representative trade union and/or the security officer mutually agree in writing upon another date.
- (3) The annual bonus shall be calculated as per sub clause (1) at the ordinary salary rate as at the date that the annual bonus falls due and paid to the security officer as per sub clause (2).
- (4) In the event that the employee's contract of employment ends before the end of any subsequent 12 month cycle with then same employer, for any reason other than resignation or dismissal for misconduct, poor performance not related to incapacity or ill health, the employee must receive a prorated share of the bonus for the period of the year that he/she has worked.

## 9. COMPENSATION FOR WORK ON A PUBLIC HOLIDAYS

- (1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.

- (2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay
- (a) an employee who does not work on the public holiday, at least the salary that the employee would ordinarily have received for work on that day, already included in the monthly salary;
  - (b) an employee who does work on the public holiday-
    - (i) at least double the amount referred to in (a); or
    - (ii) if it is greater the amount referred to in paragraph (a) plus the amount earned by the employee for the time worked on that day
- (3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to double the employee's ordinary salary for the period worked.
- (4) An employer must pay an employee for a public holiday on the employee's usual payday.
- (5) If a shift worked by an employee commences on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.
- (6) If the public holiday falls on a Sunday, the following Monday will be deemed to be the public holiday in lieu of the Sunday. The Sunday shall be remunerated at the relevant premium payment for that day.
- (7) In terms of Section 2(2) of the Public Holidays Act (Act 36 of 1994), a public holiday is exchangeable for any other that is fixed by agreement or agreed to between the employer and the employee.
- (8) Compensation to a casual employee for work on a public holiday:
- (a) Whenever a casual employee works on a public holiday, the employer shall pay the employee in respect of the total period worked by the employee on such day an amount calculated at a rate of not less than double the hourly wage prescribed for a full-time employee in the same area who performs the same class of work as the casual employee is required to do.

Provided that where the employer requires a casual employee to –

- (i) perform the work of a class of employee for whom salaries on a rising scale are prescribed, the expression "hourly wage" shall mean the hourly equivalent wage for a qualified employee of that class as calculated in terms of clause 4(5)(b);
- (ii) work for less than four hours on such a day, an employee shall be deemed to have worked for four hours.

## 10. COMPENSATION FOR WORK ON A SUNDAY

- (1) An employer must pay an employee who works on a Sunday at double the employee's salary for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and a half times the employee's salary for each hour worked.
- (2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub clause (1) is less than the employee's ordinary daily salary, the employer must pay the employee the employee's ordinary daily salary.
- (3) Despite sub clauses (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub clauses (1) and (2).
- (4) An employer must grant paid time off in terms of sub clause (3) within one month of the employee becoming entitled to it.
- (5) An agreement in writing may increase the period contemplated by sub clause (4) to 12 months.
- (6) Compensation to a casual employee for work on a Sunday:
  - (a) Whenever a casual employee works on a Sunday, the employer shall pay the employee in respect of the total period worked by the employee on such day an amount calculated at a rate of not less than double the hourly wage prescribed for a full-time employee in the same area who performs the same class of work as the casual employee is required to do.

Provided that where the employer requires a casual employee -

- (i) to perform the work of a class of employee for whom salaries on a rising scale is prescribed, the expression "hourly wage" shall mean the hourly equivalent for a qualified employee of that class as calculated in term of clause 4(5)(b);
- (ii) to work for less than four hours on such a day, an employee shall be deemed to have worked for four hours.

### (7) Payment

The remuneration payable in terms of this clause to an employee, other than a casual employee, shall be paid to the employee not later than the normal pay-day immediately after the day in respect of which such remuneration is payable.

## 11. ANNUAL LEAVE

- (1) In this clause "annual leave cycle" means the period of 12 months employment with the same employer immediately following -

- (a) an employee's commencement of employment; or
  - (b) the completion of that employee's prior leave cycle.
- (2) The employer must grant an employee at least 21 consecutive days annual leave paid in accordance with sub clause (14) below, in respect of each annual leave cycle.
- (3) The leave entitlement for any employee who has completed two years uninterrupted employment with the same employer, shall be increased to by three additional days paid annual leave.
- (4) An employee is entitled to take leave accumulated in an annual leave cycle, in terms of sub clause (2), on consecutive days.
- (5) An employer must grant, and an employee must take, annual leave not later than six months after the end of the annual leave cycle.
- (6) An employer may not require or permit an employee to take annual leave during –
- (a) any other period of leave to which an employee is entitled in terms of this agreement;
  - or
  - (b) any period of notice of termination of employment.
- (7) Despite sub clause (6), an employer must permit an employee, at the employee's written request, to take paid leave during a period of unpaid leave, subject to availability.
- (8) An employer must pay an employee leave pay on the employee's usual payday.
- (9) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave, calculated at the employee's rate of remuneration, granted to the employee at the employee's request during that leave cycle.
- (10) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.
- (11) An employer may not require or permit an employee to work for the employer during any period of annual leave.
- (12) Annual leave must be taken –
- (a) in accordance with an agreement between the employer and the employee; or
  - (b) if there is no agreement in terms of sub clause (12)(a), at a time determined by the employer in accordance with this section.
- (13) An employer may not pay an employee instead of granting paid leave in terms of this clause, except –
- (a) upon termination of employment; and
  - (b) in accordance with clause 26(9).

**(14)** An employer must pay an employee leave pay at least equivalent to the ordinary salary payable to the employee for the ordinary hours the employee would normally have worked during the period of annual leave, calculated at the employee's rate of remuneration immediately before the beginning of the period of annual leave, as per the following formula:

$$"A" \times \frac{21 \text{ Consecutive days}}{7 \text{ days per week}} = "B"$$

Where –

"A" equals the number of ordinary hours normally worked by the employee per week, and

"B" equals the number of paid leave hours entitlement

**(15)** An employee who has become entitled to a period of leave prescribed in sub clause (1), read with sub clause (9), and whose employment terminates before such leave has been granted and been taken, shall, upon such termination be paid the amount an employee would have received, in respect of the leave, had the leave been granted to the employee and taken by the employee as at the date of the termination, calculated in terms of sub clause (2).

## 12. SICK LEAVE

- (1)** In this clause "sick leave cycle" means the period of 36 months uninterrupted 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 is entitled to an amount of paid sick leave equal to the number of ordinary days the employee would ordinarily work during a period of six weeks.
- (3)** Despite sub clause (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 ordinary days worked.
- (4)** During an employee's first sick leave cycle an employer may reduce the employee's sick leave entitlement to sick leave in terms of sub clause (2) by the number of days sick leave taken in terms of sub clause (3).
- (5)** Subject to clause 12, an employer must pay an employee for a day's sick leave –
  - (a) The ordinary salary the employee would have received, excluding any allowances; 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 section if –
- (a) the number of days of paid sick leave is increased at least commensurately with any
  - (b) reduction in the daily amount of sick pay; and
  - (c) the employee's entitlement to pay –
    - (i) for any day's sick leave is at least 75 per cent of the salary 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 sub clause (2)

### 13. PROOF OF INCAPACITY

- (1) An employer is not required to pay an employee in terms of clause 11 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) A medical certificate in terms of sub clause (1) must be issued and signed by –
- (a) A medical practitioner; or
  - (b) 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.

### 14. FAMILY RESPONSIBILITY LEAVE

- (1) This section applies to an employee –
- (a) who has been in employment with an employer for longer than four months; and
  - (b) who works for at least four days a week for that employer.
- (2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, five days paid leave, which the employee is entitled to take –
- (a) when the employee's child is born;
  - (b) when the employee's child is sick; or
  - (c) in the event of the death of -
  - (d) the employee's spouse or life partner; or
  - (e) the employee's parent, adoptive parent, parent in law, grandparent, child, adopted; child, grandchild or sibling.
- (3) An employer must pay an employee for a day's family responsibility leave –
- (a) the ordinary salary the employee would have received for a day worked; and
  - (b) on the employee's usual payday.
- (4) An employee may take family responsibility leave in respect of the whole or part of a day.

- (5) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub clause (2) for which the leave was required.
- (6) An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual cycle in which it accrues.
- (7) Any reference to Parental Leave must be read in conjunction with the Basic Conditions of Employment Act 75 of 1997 as amended. Clause 14 of this agreement allows 5 days paid leave for the birth of a child and which clause remains in effect, and shall be read in conjunction with Section 25A of the BCEA. In total an employee will be granted 10 days family responsibility / parental leave where only 5 days will be paid and 5 days to be claimed from UIF.

## 15. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive month's 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 a 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 stillbirth.
- (5) An employee must notify her employer in writing, unless the employee is unable to do so, 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 sub clause (5) must be given –
  - (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 will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966)

(8) During the period of maternity leave the employer shall continue to contribute the provident fund monthly premium in respect of both the employer and employee contributions, the latter not to be recovered upon the return of the employee to work.

(9) During the period of maternity leave the employer shall continue to contribute the employee's Private Security Industry Regulatory Authority monthly subscription fees, this not to be recovered upon the return of the employee to work.

## 16. MATERNITY BENEFITS

A female security officer who remains in the permanent employ of the same employer for a period of at least three years shall be entitled to an amount equivalent to 34% (thirty four per cent) of her basic monthly salary for a period not exceeding four months during any period of maternity leave, as a supplement to her UIF benefits.

## 17. STUDY LEAVE

Every employee with a minimum of one year uninterrupted employment with the same employer shall be entitled to 6 (six) days paid study leave in any year, in respect of any study at a tertiary establishment, subject to acceptable proof of such studies being presented to the employer prior to the study leave being granted.

## 18. SERVICE BENEFIT

Each security officer shall, upon completion of the following period of uninterrupted service with the same employer, calculated from 19 February 2007, receive a once-off service benefit payment of not less than –

- (a) R500.00 (five hundred rand) after 5 (five) years,
- (b) R1,000.00 (one thousand rand) after 10 (ten) years, and
- (c) R5,000.00 (five thousand rand) after 20 (twenty) years.

## 19. WRITTEN PARTICULARS OF EMPLOYMENT

- (1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing –
- (a) the full name and address of the employer;
  - (b) the name and occupation of the employee or a brief description of the work for which the employee is employed;
  - (c) the places of work and, where the employee is required or permitted to work at various places, an indication of this;
  - (d) the date on which the employment began;
  - (e) the employee's ordinary hours of work and days of work;
  - (f) the employee's salary or the rate and method of calculating salary;
  - (g) the rate of pay for overtime work;

- (h) any other payments to which the employee is entitled;
  - (i) how frequently remuneration will be paid;
  - (j) any deductions to be made from the employee's remuneration;
  - (k) the leave to which the employee is entitled;
  - (l) the period of notice required to terminate employment, or if the employment is for a specified period, the date when employment is to terminate;
  - (m) a description of any council or collective agreement which covers the employer's business;
  - (n) any period of employment with a previous employer that counts towards the employee's period of employment;
  - (o) a list of any other documents that form part of the contract of employment, indicating a place that is readily accessible to the employee where a copy of each may be obtained.
- (2) When any matter listed in sub clause (1) changes, the written particulars must be revised to reflect the change and the employee must be supplied with a copy of the document reflecting the change.
- (3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- (4) Written particulars of this section must be kept by the employer for a period of three years after the termination of employment.

## 20. KEEPING OF RECORDS

- (1) Every employer must for all employees in his current employ keep a record containing at least the following information –
- (a) the employee's name and occupation;
  - (b) the time worked by each employee;
  - (c) remuneration paid to each employee;
  - (d) the date of birth of any employee under 18 years of age; and
  - (e) any other prescribed information.
- (2) A record in terms of sub clause (1)(b) and (1)(c) must be kept by the employer for a period of three years from the date of the last entry in the record of which the most recent six months record must be hard copy and older may be kept electronically.
- (3) No person may make a false entry in a record maintained in terms of sub clause (1).
- (4) An employer who keeps a record in terms of this clause is not required to keep any other record of time worked and remuneration paid as required by any other employment law.
- (5) An employer must for all employees who have left his employ keep the above records for a period of three years of which the most recent six months records as per (1)(b) and (1)(c) must be hard copy.

## 21. PRESUMPTION AS TO WHO IS AN EMPLOYEE

- (1) Any person on contract performing the duties of a security officer, as defined in clause 3 of this agreement, as well as any person on contract performing the duties of other categories, as defined herein, except for managers.
- (2) Until the contrary is proved, a person who works for, or provides services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present –
  - (a) the manner in which the person works is subject to the control or direction of another person;
  - (b) the person's hours of work are subject to the control or direction of another person;
  - (c) in the case of a person who works for an organisation, the person forms part of that organisation;
  - (d) the person has worked for that person for an average of at least 40 hours per month over the last three months;
  - (e) that person is economically dependent on the person for whom they work or provide services;
  - (f) the person is provided with their tools of trade or work equipment by that person; or
  - (g) the person only works for or supplies services to one person.

## 22. WEAPONS, UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

- (1) An employer shall –
  - (a) provide free of charge any weapon, ammunition, tool, whistle or other equipment which a security officer, in the performance of the employee's duties, needs or is required to use for self defence or apprehension;
  - (b) provide, free of charge, new footwear and two sets of daily washable uniform items, as well as any other protective clothing which an employee is required by any law to provide for an employee.
- (2) Any article provided by an employer in terms of sub clause (1) shall remain the employer's property.
- (3) No employer shall make any deduction from the salary of any employee in regard to any article provided to that employee in terms of sub clause (1):

Provided that where an article is found by a fair procedure to have been lost or damaged by an employee, excluding damage arising from the performance of the employee's duties or normal wear and tear, an employer may, notwithstanding anything to the contrary in this agreement, recover the replacement cost of such article from the employee by making a deduction over an appropriate period from that employee's salary. Further, provided that such monthly deduction shall not exceed one tenth of the employee's monthly remuneration, except upon termination of employment, when the full balance in respect of the replacement value of such missing or damaged items due to the employer shall be deducted.

- (4) No employer shall collect or deduct any form of uniform deposit from any employee.

### **23. TEMPORARY EMPLOYMENT SERVICES, LABOUR BROKERS AND INDEPENDENT CONTRACTORS**

- (1) Employers shall abide by the provisions of the Labour Relations Act, Act 66 of 1995, as amended, in respect of Temporary Employment Services, Labour Brokers and Independent Contractors.
- (2) Notwithstanding the above, no employer may use the services of a Temporary Employment Services, Labour Brokers or Independent Contractors unless the Temporary Employment Service, Labour Broker or Independent Contractor provides the employer with satisfactory proof that it is in compliance with –
- (a) Bargaining Council Main Collective Agreement;
  - (b) the Unemployment Insurance Act;
  - (c) the Compensation for Occupational Injuries and Diseases Act.
  - (d) the South African Revenue Services, and is in possession of an IT30 tax certificate; and
  - (e) the rules of the Private Security Sector Provident Fund.
- (3) The provisions of sub clause (2) shall not apply to Alarm Installers and Employment Agencies.
- (4) Disguised employment relationships, including those involving self-employed security guards, may be tested according to the factors in clause 21.

### **24. PROHIBITION OF EMPLOYMENT OF CHILDREN**

- (1) No person may employ a child –
- (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- (2) No person may employ a child in employment –
- (a) that is inappropriate for a person at that age; or
  - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) A person who employs a child in contravention of sub clause (1) or (2) commits an offence.

### **25. PROHIBITION OF FORCED LABOUR**

- (1) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (2) No person may, for the employee's own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of sub clause (1).

- (3) A person who contravenes sub clauses (1) or (2) commits an offence.

## 26. TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) Subject to sub clause (6)(b), a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than –
- (a) one week, if the employee has been employed for four weeks or less;
  - (b) two weeks, if the employee has been employed for more than four weeks but less than one year; and
  - (c) four weeks, if the employee has been employed for one year or more.
- (2) A collective agreement may not permit a notice period shorter than required by sub clause (1).
- (3) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.
- (4) Further conditions with regard to notice of termination:
- (a) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.
  - (b) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.
- (5) Notice of termination of a contract of employment given by an employer or an employee must not –
- (a) be given during any period of leave to which the employee is entitled in terms of clause 11; and
  - (b) run concurrently with any period of leave to which the employee is entitled in terms of clause 11(1) except sick leave.
- (6) Nothing in this clause affects the right –
- (a) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law, and
  - (b) of an employer to terminate a contract of employment without notice for any cause recognised by law.
- (7) Instead of giving an employee or employer notice in terms of sub clause (1), an employer may pay the employee the remuneration the employee would have received, calculated in accordance with sub clause (1), as if the employee had worked during the notice period.
- (8) If an employee gives notice of termination of employment and the employer waives any part of the notice, the employer must pay the remuneration referred to in sub clause (7), unless the employer and employee agree otherwise.
- (9) On termination of employment, an employer must pay an employee -

- (a) remuneration in respect of –
  - (i) ordinary time worked, calculated in terms of clause 7;
  - (ii) overtime worked, calculated in terms of clause 7(9);
  - (iii) time worked on a Sunday, calculated in terms of clause 10; and
  - (iv) time worked on a public holiday or in respect of a public holiday on which the employee would normally have worked if it had not been a public holiday, in terms of clause 9;
- (b) remuneration calculated in accordance with clause 11(15) for any period of annual leave due in terms of clause 11(2) that the employee has not taken;
- (c) if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle, at a rate of one day's remuneration in respect of every 17 ordinary days on which the employee worked or was entitled to be paid.

## **27. SEVERANCE PAY**

- (1) For the purposes of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.
- (2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with clause 3.
- (3) An additional one (1) day shall be added after the existing severance pay calculations for Security Officers employed for a period exceeding one year (more than 12 months continued employment with the same employer), effective as from year 3 of this agreement.
- (4) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub clauses (2) and (3).
- (5) The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.
- (6) If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to –
  - (a) a council, if the parties to the dispute fall within the registered scope of that council;  
or
  - (b) the CCMA, if no council has jurisdiction.
- (7) The employee who refers a dispute to the council or the CCMA must satisfy it that a copy of the referral has been served on all other parties to the dispute.
- (8) If the dispute remains unresolved, the employee may refer it to arbitration.

- (9) If the Labour Court is adjudicating a dispute about a dismissal based on the employer's operational requirements, the Court may inquire into and determine the amount of any severance pay to which the employee may be entitled and the Court may make an order directing the employer to pay that amount.

## 28. CERTIFICATE OF SERVICE

- (1) On termination of employment an employee is entitled to a certificate of service stating –
- (a) the employee's full name and identity number;
  - (b) the name and address of the employer;
  - (c) a description of any bargaining council or sectoral employment standard by which the employer's business is covered;
  - (d) the date of commencement and date of termination of employment;
  - (e) the title of the job or a brief description of the work for which the employee was employed at the date of termination;
  - (f) the remuneration at date of termination; and
  - (g) if the employee so requests, the reason for termination of employment.

## 29. ATTENDANCE REGISTER

- (1) An employer shall maintain an attendance register, in which the employer shall record in ink or indelible pencil the name and class of each of the employees for each day worked and on that day make the necessary entries in respect of items (i) to (vi) of clause 3.
- (2) An employer may, instead of an attendance register, provide an automatic or semi-automatic time recorder which records substantially the same information as is required to be kept in the attendance register specified in sub clause (1).
- (3) Every employer shall, in respect of each day worked by an employee on that day –
- (a) record in ink, indelible pencil or electronically in such attendance register referred to in sub clause (1) –
    - (i) the day of the week;
    - (ii) the time an employee commenced work;
    - (iii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work;
    - (iv) the time of finishing work for the day;
    - (v) the time of commencement and termination of overtime worked for the day; and
    - (vi) the total amount of hours worked for the day.
  - (b) in an establishment where an automatic or semi-automatic time recorder is provided, make an entry by means of such recorder to show the following –
    - (i) the time of commencement of work;
    - (ii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work; and
    - (iii) the time of finishing work for the day.

- (4) An employer shall retain such attendance register referred to in sub clause (1) or the information recorded by a semi-automatic time recorder referred to in sub clause (2), as case may be, for a period of not less than three years after the date of the last entry therein or thereon. Such register may be kept in electronic form.

### 30. PRIVATE SECURITY SECTOR PROVIDENT FUND

#### (1) Membership

- (a) Each security officer, subject to the exclusions in clause 1(3), who falls within the definition of eligible employee as contained in the fund rules, shall, on or after coming into operation of this agreement, become a member of the Private Security Sector Provident Fund (PSSPF).
- (b) If an security officer who has become a member of the Fund ceases to fall within the scope of this agreement owing to the security officer ceasing to be employed in the Private Security Sector or as a result of the employee no longer being classified as an eligible member, as defined, the security officer shall cease to be a member of the Fund and the payment of withdrawal benefit will be made to the member as provided for in the Fund Rules.

#### (2) Contributions

Contributions shall be made by employers and security officers from the date of operation of this agreement as specified hereunder –

- (a) The employer shall each month deduct from the earnings of each security officer in respect of each month, or part thereof, an amount equal to the table as set out below of the employees Fund Salary, being contributions to the Provident Fund, and employers shall make an equal contribution to the Provident Fund in line with the Provident Fund Rules as approved by FSCA.
- (b)

	Employer	Security Officer
Year 1	5%	5%
Year 2	6.5%	6.5%
Year 3	7.5%	7.5%
Year 4	7.5%	7.5%

- (c) When an security officer is on approved leave with full pay, or with less than full pay, the security officer shall contribute to the Fund, in accordance with sub clause (2)(a), and the employer shall continue to contribute in respect of the security officer, in accordance with sub clause (2)(a), and all benefits under the Fund in respect of the security officer shall be maintained.
- (d) If an security officer is on approved leave without pay, no contributions shall be made by the security officer in terms of sub clause (2)(a), but the employer shall continue to contribute the employers portion of the contribution, in order that the death, disability and funeral benefits shall continue to be payable –
- (i) throughout the period of leave, if the security officer's leave is due to sickness; or

- (ii) for not longer than six months, if the security officer's leave is due to reasons other than sickness.
- (e) The amount payable in each month in terms of this clause shall be deposited by the employer directly into the Fund's bank account by no later than the 7th day of the month immediately following the month in which deductions and contributions were made and shall be as follows –
  - (i) in South African currency;
  - (ii) in cash, by cheque or by direct deposit into an account designated by the administrators; and
  - (iii) together with such particulars as are required in terms of the Retirement Funds Act and/or by the Board;
  - (iv) the contributions payable shall constitute an amount calculated at a rate of not less than the total contributions set out in sub clause (2)(a) of the employee's salary or as amended by the Board from time to time;
  - (v) such amount as referred to in sub clause (2)(b) shall constitute an equal contribution by an employer and security officer.
- (f) If any amount which falls due in terms of this clause is not received in full by the administrator of the Fund by the 7th day of the month following the month for which the amount is payable, then the employer is liable to pay penalty interest in accordance with section 13A of the Pension Fund Act.
- (g) Any deductions in terms of this clause will not be in violation of clause 6(10)(d) of this agreement.

### **(3) Administration and provision of the Fund**

In order to realise the objects of the Fund the trustees shall –

- (a) directly control and oversee the operation of the Fund in accordance with the Fund Rules and the Pension Fund Act;
- (b) enter into an agreement with an administrator to administer the Fund; and
- (c) At their elections –
  - (i) enter into an agreement with a registered insurance company; or
  - (ii) establish a self-insurance arrangement or cell captive arrangement to provide Death, Disability and/or Funeral benefits.

### **(4) Fund Rules**

- (a) The Fund Rules constitute the rules that govern the Private Security Sector Provident Fund.

In the event of any discrepancy between the Main Collective Agreement of the Bargaining Council and the Fund Rules, the Main Collective Agreement shall prevail in so far as any specific provisions as set out in the Pension Fund Act describes specific provisions and requirements as set out in the Fund Rules as approved by FSCA

## **31. EMPLOYERS TO KEEP A COPY OF THIS AGREEMENT**

Every employer upon whom this Agreement is binding must -

- (a) keep a copy of this Bargaining Council Main Collective Agreement available in the workplace at all times;
- (b) make a copy available for inspection by an employee; and
- (c) give a copy of this Main Agreement:
  - (i) to an employee; and
  - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

### **32. VARIATION BY AGREEMENT**

The provisions of section 49 of the Basic Conditions of Employment Act, 1997, applies to this agreement.

### **33. DESIGNATED AGENTS**

- (1) The Minister at the request of the council appoint one or more specified persons who shall be designated as agents in terms of section 33 of the LRA to assist in giving effect to the terms and conditions of this Agreement. The designated agents shall have the right to in terms of section 33 of the Act read with Schedule 10 of the Act to:
  - (a) enter inspect and examine any premises or place, in which the agent suspect that private security services are carried on at any time when he has reasonable cause to believe that any person is employed therein
  - (b) orally examine, either alone or in the presence of any person, as the agent thinks fit, with respect to matters relating to this Agreement, every employee who is a designated agent finds in or about the premises and require such employee to answer the questions put to him
  - (c) require the production of any notice, book, list, electronic file, computer or document which is by this Agreement required to be kept or made and inspect examine and copy the same including all pay sheets.
- (2) The designated agent when entering inspecting or examining any such shall on request produce his certificate of authority and may take with him an interpreter or any person reasonably required to assist in conducting an inspection.
- (3) Every person upon whom the provisions of this Agreement are binding shall grant the designated agent any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.

### **34. EXEMPTION AND APPEALS**

- (1) Any person bound by this Agreement may apply for exemption.
- (2) The authority of the Bargaining Council is to consider applications for exemptions and grant exemptions.

- (3) The Bargaining Council must determine its exemptions policy and process all exemption applications in terms of this policy.
- (4) All applications for exemption must be made in writing on the appropriate application form, obtained from the Bargaining Council, setting out relevant information, including –

  - (a) the provisions of the agreement in respect of which exemption is sought;
  - (b) the number of persons in respect of whom the exemption is sought;
  - (c) the reasons why the exemption is sought;
  - (d) the nature and size of the business in respect of which the exemption is sought;
  - (e) the duration and timeframe for which the exemption is sought;
  - (f) the business strategy and plan of the applicant seeking the exemption;
  - (g) the applicants past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate.
  - (h) The recorded views expressed by the trade union or workforce itself during the plant level consultation process; and
  - (i) Any other relevant supporting data and financial information the Council may prescribe from time to time.
- (5) The Bargaining Council shall decide on an application for exemption within 30 days of receipt.
- (6) Upon receipt of an application by the Bargaining Council, it shall immediately refer the application to the exemptions committee which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- (7) An exemption committee appointed by the Council may request additional information from an applicant applying for exemption.
- (8) In scrutinizing the application, the Exemption Committee or the Independent Exemptions Body will consider the details of the application, the views expressed by the trade union or workforce, affected employers, any other representations received in relation to the application, and the factors and criteria as listed in sub clause (14) below.
- (9) The secretary must advise the applicant in writing of the decision of the exemptions committee within 15 days from the date of the decision, failing which the Bargaining Council shall be deemed to have refused the application for exemption.
- (10) In the event of the exemptions committee granting, partially granting or refusing to grant an application, the applicant shall be informed of the reasons for the decision to the appeal in writing on the appropriate appeal application form against the decision to the Independent Exemptions Body, established by the Bargaining Council within 21 days from the date of being informed of the outcome.
- (11) In the terms of section 32(3)(e) of the Labour Relations Act [as amended], the Bargaining Council must establish an independent Exemption Body to hear and decide

as soon as possible any appeal brought against the exemption committee's refusal of a non-party's application for exemption for the provision of a collective agreement by the exemption committee or withdrawal of an exemption by the Bargaining Council.

- (12) The Independent Exemption Body shall hear and decide and inform the applicant and the Bargaining Council as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemption committee.
- (13) No representative, office-bearer, or official of a trade union or employer's organizations party to the Bargaining Council, may be a member of, or participate in the deliberations of, the Independent Exemptions Body established by the Bargaining Council.
- (14) When considering an application, the Exemptions Committee or the Independent Exemptions Body whichever the case may be, must consider, in addition to sub clause 8, the following:
- (a) Whether the granting of the exemption or appeal will prejudice the objectives of the Bargaining Council or contravene the provisions of any labour legislation or Collective Agreements;
  - (b) The circumstances prevailing in the Private Security Sector as a whole likely to be affected by the application and/or the interest of the industry regarding unfair competition, collective bargaining, potential for labour unrest and increased employment;
  - (c) the nature and size of the business in respect of which the application is made;
  - (d) whether the duration of the exemption or appeal is for a limited or specified period;
  - (e) any representations made by the employees likely to be affected by the application and interest of employees as regards exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety of workers and infringement of basic rights;
  - (f) whether the business strategy and plan presented by the applicant demonstrates that the granting of the exemption will make a material difference to the long-term viability of the business in respect of which the exemption or appeal is sought;
  - (g) whether a refusal to grant an exemption or appeal will result in undue financial hardship to the applicant; financial instability, impact on productivity, future relationship with the employees' trade union and operational requirements;
  - (h) whether the granting of the exemption or appeal will undermine collective bargaining and be likely to cause undue financial hardship to the employees affected;
  - (i) whether the granting of the exemption or appeal will impact negatively on parity agreements; and
  - (j) whether the granting of the exemption or appeal will impact negatively on local competitors who are complying with a Collective Agreement; and
  - (k) whether the employees or their representatives have been consulted and their views recorded, and/or any agreement reached between the applicant and the workforce.
  - (l) Any other relevant supporting data and financial information as prescribed by the Bargaining Council and supplied by the Applicant.

- (15) In the event of the Independent Exemptions Body granting, partially granting or refusing to grant the appeal, the applicant shall be informed in writing of the reasons for the decision within 21 days from the date of the decision.
- (16) The decision of the Independent Exemptions Committee is final and binding upon the applicant and the Bargaining Council.
- (17) If an exemption or appeal is granted or partially granted, the Exemption Committee or the Independent Exemptions Body, shall issue a certificate, signed by Secretary, containing the following particulars:
- (a) The full name of the applicant(s) or enterprise concern;
  - (b) The trade name;
  - (c) The provisions of the Agreement from which exemption or appeal has been granted;
  - (d) The period of which the exemption or appeal shall operate;
  - (e) The date of issue and from which day the exemption or appeal shall operate;
  - (f) The condition(s) of the exemption or appeal granted; and
  - (g) The area in which the exemption or appeal applies.
- (18) An employer to whom a certificate has been issued shall at all times have the certificate available for inspection of the workplace.
- (19) The Secretary must maintain a register of all exemption and appeal certificates granted, partially granted or refused.
- (20) Specific to the Provident fund, the exemption process shall be:
- (21) The following criteria for an exemption from the Private Security Sector Provident Fund will apply, provided that –
- (i) If the employer, prior to the publication of Gazette Notice No. 306 of 30 March 2001, had an existing pension or provident fund registered with the Registrar of Pension Funds covering employees for whom minimum wages are prescribed in the Bargaining Council Main Collective Agreement, as amended or replaced.
  - (ii) If the employer, prior to the publication of Gazette Notice No. 306 of 30 March 2001, did not have an existing pension or provident fund registered with the Registrar of Pension Funds covering employees for whom minimum wages are prescribed in Bargaining Council Main Collective Agreement, as amended or replaced, but before 30 March 2001, the employer and its employees have consulted in writing to commence negotiations for the establishment of a pension or provident fund for such employees.
    - (a) Applications will be in writing and addressed to the Board of the Private Security Sector Provident Fund. Applications shall comply with the following:
      - (i) Be fully motivated;
      - (ii) Be accompanied by relevant supporting data and financial information;
      - (iii) Applications that affect employees' conditions of service will not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document;

- (iii) Indicate the period for which the exemption is required.
- (b) In considering the application the Board shall take into consideration all relevant factors, which may include, but shall not be limited to, the following criteria:
  - (i) Any special circumstances that exist;
  - (ii) Any precedent that may be set;
  - (iii) The interest of the industry as regards –
    - (aa) Unfair competition,
    - (ab) Collective bargaining,
    - (ac) Potential for labour unrest,
    - (ad) Increased employment.
  - (iv) The interest of employees as regards:
    - (aa) Exploitation,
    - (ab) Job preservation,
    - (ac) Sound Conditions of Employment,
    - (ad) Possible financial benefits,
    - (ae) Health and Safety,
    - (ab) Infringement of basic rights.
  - (v) The interest of the employer as regards:
    - (aa) Financial stability,
    - (ab) Impact on productivity,
    - (ac) Future relationship with employees' trade union,
    - (ad) Operational requirements.
- (c) If the application is granted, the Board will issue an exemption certificate, signed by the chairperson, containing the following particulars:
  - (i) The full name of the applicant;
  - (ii) The trade name of the applicant;
  - (iii) The period for which the exemption shall operate;
  - (iv) The date of issue; and
  - (v) The conditions of the exemption granted.
- (d) If the exemption is refused the Board shall specify its reasons for not granting the application, and which will be communicated to the applicant.
- (e) The Board shall retain a copy of the certificate and number each certificate sequentially.
- (f) An employer to whom a certificate of exemption has been issued shall at all times have the certificate available for inspection at his establishment.
- (g) Any application by an employer for exemption shall in no way whatsoever affect the employer's obligations, nor his employees' rights, with regard to the payment of all contributions and benefits in terms of the rules of that employer's retirement fund and/or his employees' conditions of employment during any period that the application is under consideration.

##### (5) Waiting period

- (a) An employee entering the private security sector for the first time and an employee who has been out of the sector for more than six months shall be required to wait for a period of four months before joining the fund.

- (b) An employee with at least four months uninterrupted service in the private security industry, not necessarily with the same employer, shall join the fund immediately upon joining a new employer.

**(6) Special provision during waiting period**

- (a) Every employee shall, during the waiting period set out in sub clause (6), enjoy risk cover in respect of death and disability benefits, as well as the fund funeral scheme, which contribution, totalling 5% (five percent) of the Fund Salary, per month shall be borne equally between the employer and the employee.
- (b) This risk cover shall apply as from the first day of employment and shall be submitted to the fund administrators at the end of every month.

### **35. LEVELS OF BARGAINING**

- (1) The council is the exclusive forum for the negotiation and conclusion of agreements on substantive issues between employers and employers organisations, on the one hand, and trade unions on the other hand.
- (2) No trade union or employers organization may call a strike or lock out or in any way seek to induce or compel negotiations on the issues referred to in sub clause (1) at any level other than the council.
- (3) Any collective procedural agreement between an employer who is a member of the employers organisation and a party trade union which contains provisions that are inconsistent with this agreement –
  - (a) Must be regarded by the parties to the agreement as having been amended to create consistency with this clause; and
  - (b) Is not binding to the extent that its provisions are inconsistent with this clause.

### **36. ADMINISTRATION OF AGREEMENT**

The Council administers this agreement and may , for the guidance of employers and employees, issue rulings, provided that those rulings are consistent with the provisions of the agreement and the Act.

### **37. SUPERSEDING OF PREVIOUS GOVERNMENT GAZETTES**

All the provisions of Sectoral Determination 6: Private Security Sector shall be superseded by this collective agreement which shall come into operation from the date as determined by the Minister.

## **38. DISPUTE RESOLUTION**

### **PART ONE: SERVING AND FILING OF DOCUMENTS**

#### **1. How to contact the Council**

- (1) The addresses, telephone, telefax numbers and e-mail addresses of the offices of the Council are listed in Schedule One of these Rules.
- (2) Documents may only be filed with the Council at the addresses, telefax numbers and e-mail addresses listed in Schedule One of these Rules

#### **2. When are the offices of the Council open**

- (1) The head office and the regional offices of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h00 and 16h00, or as determined by the Council.
- (2) Documents may be filed with the Council during the hours referred to in sub-rule (1).
- (3) Notwithstanding sub-rule (2), documents may be e-mailed at any time on any day of the week to the Council.

#### **3. How to calculate time periods in these Rules**

- (1) For the purpose of calculating any period of time in terms of these Rules -
  - (a) day means a calendar day; and
  - (b) the first day is excluded and the last day is included, subject to sub- rule (2).
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January .

#### **4. Who must sign documents**

- (1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A list in writing of the employees who have mandated the employee to sign on their behalf must be attached to the referral document.

## 5. How to serve documents on other parties

(1) Unless otherwise provided for in these Rules, a party must serve a document on the other parties -

(a) by handing a copy of the document to -

- (i) the person concerned;
- (ii) a representative authorised in writing to accept service on behalf of the person;
- (iii) a person who appears to be at least 16 years old and apparently in charge of the person's place of residence, business or place of employment premises at the time; or
- (iv) a person identified in sub-rule (2);

(b) by leaving a copy of the document at -

- (i) an address chosen by the person to receive service; or
- (ii) any premises in accordance with sub-rule (3);

(c) by e-mailing, faxing or telexing a copy of the document to the person's e-mail, fax or telex number respectively, or an e-mail address, fax or telefax number chosen by that person to receive service;

(d) by sending a copy of the document by registered post or telegram to the last known address of the party or an address chosen by the party to receive service.

(2) A document may also be served -

(a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;

(b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;

(c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;

(d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on

a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;

(e) on a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;

(f) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or

(g) on the State or a province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.

(3) If no person identified in sub-rule (2) is willing to accept service, service may be affected by affixing a copy of the document to -

(a) the main door of the premises concerned; or

(b) if this is not accessible, a post-box or other place to which the public has access.

(4) The Council or a commissioner may order service in a manner other than prescribed in this Rule.

#### **5A. Notice of proceedings before the Council**

The Council may provide notice of a conciliation or arbitration hearing, or any other proceedings before it, by means of any of the methods prescribed in Rule 5 and/or by means of short message service.

#### **6. How to prove that a document was served in terms of the Rules**

(1) A party must prove to the Council or a commissioner that a document was served in terms of these Rules, by providing the Council or a commissioner -

(a) with a copy of proof that the document has been mailed by registered post to the other party;

(b) with a copy of the telegram or telex transmitting the document to the other party;

(c) with a copy of the telefax transmission report indicating the successful transmission to the other party of the whole document;

(d) if a document was served by hand -

(i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or

(ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises; and

(e) if a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned.

(2) If proof of service in accordance with sub-rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document. The relevant provisions of The Electronic Communications and Transactions Act 25 of 2002 are applicable in respect of any issue concerning service by e-mail or the service of a notice of proceedings by short message service as permitted by rule 5A.

(3) The Council may accept proof of service in a manner other than prescribed in this Rule, as sufficient.

## **7. How to file documents with the Council**

(1) A party must file documents with the Council -

(a) by handing the document to the regional office of the NBCPSS;

(b) by sending a copy of the document by registered post to the regional office of the Council at the address listed in Schedule One; or

(c) by faxing or e-mailing the document to the regional office at a number or e-mail address listed in Schedule One. Documents filed by means of e-mail must be transmitted in MS Word or PDF format.

(2) A document is filed with the Council when -

(a) the document is handed to the regional office listed in Schedule One;

(b) a document sent by registered post is received, or presumed to be received as provided for in Rule 8, by the regional office of the NBCPSS listed in Schedule One;

(c) the transmission of a fax is successfully completed; or

(d) the e-mail is received in the regional office, as provided for in the Electronics Communications and Transactions Act 25 of 2002.

- (3) A party must only file the original of a document, if requested to do so by the Council or a commissioner. A party must comply with a request to file an original document within seven (7) days of the request,

#### **8. Documents and notices sent by registered post**

Any document or notice sent by registered post by a party or the Commission is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was posted.

#### **9. How to seek condonation for documents delivered late**

(1) This Rule applies to any referral document or application delivered outside of the applicable time period prescribed in the Act or these Rules.

(2) A party must apply for condonation, in terms of Rule 31, when delivering the document to the Council.

(3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:

- (a) the degree of lateness;
- (b) the reasons for the lateness;
- (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
- (d) any prejudice to the other party; and
- (e) any other relevant factors.

(4) The Commission may assist a referring party to comply with this Rule.

### **PART TWO: CONCILIATION OF DISPUTES**

#### **10. How to refer a dispute to the Council for conciliation**

(1) A party must refer a dispute to the Council for conciliation by delivering a completed prescribed Council LRA Form 7.11 ('the referral document').

(2) The referring party must -

- (a) sign the referral document in accordance with Rule 4; and

(b) attach to the referral document, written proof, in accordance with Rule 6, that the referral document was served on the other parties to the dispute.

(c) if the referral document is filed out of time, attach an application for condonation in accordance with Rule 9(3) read with Rule 31.

(3) The Council must accept, but may refuse to process, a referral document until sub-rule (2) has been complied with.

#### **11. When must the Council notify parties of a conciliation**

(1) The Council must notify the parties in writing of a conciliation hearing at least –

(a) seven (7) days prior to the scheduled date in matters relating to Section 64.

(b) fourteen (14) days prior to the scheduled date, in the case of any other matter.

(2) Despite sub-rule 1, the Council may give the parties a shorter period of notice, if the parties have agreed or reasonable circumstances require a shorter period.

(3) An additional seven (7) days must be provided, if a notice of conciliation in terms of this rule is sent by registered mail only.

#### **12. Council may seek to resolve dispute before conciliation**

The Council or a commissioner may contact the parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

#### **13. What happens if a party fails to attend at conciliation**

(1) If a party who has referred a dispute fails to attend or to be represented as contemplated in Rule 25(1)(a), the commissioner may -

(a) continue with the proceedings;

(b) adjourn the conciliation to a later date within the 30-day period; or

(c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.

(2) In exercising a discretion in terms of sub-rule (1), a commissioner should take into account, amongst other things -

- (a) whether the party has previously failed to attend a conciliation in respect of that dispute;
- (b) any reason given for that party's failure to attend;
- (c) whether conciliation can take place effectively in the absence of one or more of the parties;
- (d) the likely prejudice to the other party of the commissioner's ruling; and
- (e) any other relevant factors.

#### **14. How to determine whether a commissioner may conciliate a dispute**

If it appears during conciliation proceedings that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Council has the jurisdiction to conciliate the dispute through conciliation.

#### **14A. Extension of conciliation period in terms of Section 135 (2A) of the Act**

- (1) The conciliating commissioner or a party to a conciliation process may request an extension of the conciliation period referred to in Section 135.
- (2) The request must be made on the prescribed form and before the expiry of the conciliation period as determined in terms of Section 135.
- (3) The Council's Head of Dispute Resolution must within 2 (two) days of receipt of the request -
  - (a) consider whether:
    - An extension is necessary to ensure a meaningful conciliation process;
    - The refusal to agree to the extension is unreasonable; and
    - There are reasonable prospects of reaching agreement; and
  - (b) Advise the parties on whether or not the extension is granted and where the extension is granted, the period of such extension
- (4) The Council's Head of Dispute Resolution may not extend the conciliation period if the State is the employer party.

**15. Issuing of a certificate in terms of Section 135(5)**

A certificate issued in terms of Section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the Commissioner during the conciliation proceedings.

**16. Conciliation proceedings may not be disclosed**

(1) Conciliation proceedings are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing or as ordered otherwise by a court of law.

(2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation unless as ordered by a court of law or a commissioner conducting an arbitration.

**PART THREE****CON-ARB IN TERMS OF SECTION 191(5A)****17. Conduct of con-arb in terms of Section 191(5A)**

(1) The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail an additional seven (7) days must be allowed.

(2) A party that intends to object to a dispute being dealt with in terms of Section 191(5A), must deliver a written notice to the Council and the other party, at least seven (7) days prior to the scheduled date in terms of sub-rule (1).

(3) Sub-rule (2) does not apply to:

(a) a dispute relating to the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation;

(4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1):

(a) the commissioner must conduct the conciliation on the date specified in the notification issued in terms of sub-rule (1), irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).

(b) Where the provisions of sub-rule 3 are applicable or no notice of objection has been lodged in terms of sub-rule (2), the commissioner must commence with the arbitration immediately after certifying that the dispute remains unresolved.

(c) Notwithstanding sub-rule 4(b), the commissioner having commenced the arbitration, retains a discretion, as contemplate in Section 138(5) of the Act, to adjourn the proceedings to a later date.

(5) The provisions of these Rules that are applicable to conciliation and arbitration respectively, including rules on representation, apply with the changes required by the context, to the conciliation and arbitration parts of con-arb proceedings, respectively.

(6) If the arbitration does not proceed or is not concluded on the date specified in terms of the notice in sub-rule (1), the Council must schedule the matter for arbitration either in the presence of the parties or by notifying the parties in terms of Rule 21. (21 days or date agreed)

## **PART FOUR: ARBITRATIONS**

### **18. How to request arbitration**

(1) A party may request the Council to arbitrate a dispute by delivering a duly completed LRA form 7.13

(2) The requesting party must -

(a) sign the request in accordance with Rule 4;

(b) attach to the request written proof that the request was served on the other parties to the dispute in accordance with Rule 6; and

(c) if the request is served out of time, attach an application for condonation in accordance with Rule 9(3).

(3) The Council must accept, but may refuse to process a request until sub-rule (2) has been complied with.

(4) This Rule does not apply to con-arb proceedings held in terms of Section 191(5A) read together with rule 17.

### **19. When must the parties file statements**

(1) The Council or a commissioner may direct -

(a) the requesting party in an arbitration to deliver a statement of case and;

(b) the other parties to deliver an answering statement.

(2) A statement in terms of sub-rule (1) must -

(a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and

(b) be delivered within the time-period specified by the Council or commissioner.

- (3). The commissioner has a discretion to continue with the matter despite non-compliance with a directive of the Council or commissioner in terms of sub-rule (1). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

## **20. When the parties must hold a pre-arbitration conference**

(1). The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (3), if:

- (a) both parties are represented by a trade union, employer's organisation, legal practitioner and/or candidate attorney;
- (b) both parties agree to hold a pre-trial conference; or
- (c) directed to do so by the Senior Commissioner in charge of a region or the presiding commissioner.

(2) A pre-trial conference convened in terms of sub-rule (1)(a) and (b) must be convened at least fourteen (14) days prior to the date of the scheduled arbitration.

(3) In a pre-arbitration conference, the parties must attempt to reach consensus on the following -

- (a) any means by which the dispute may be settled;
- (b) facts that are agreed between the parties;
- (c) facts that are in dispute;
- (d) the issues that the Council is required to decide;
- (e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
- (f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
- (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
- (h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
- (i) which party must begin;
- (j) the necessity for any on-the-spot inspection;
- (k) securing the presence at the Council of any witness;

- (l) the resolution of any preliminary points that are intended to be taken;
  - (m) the exchange of witness statements;
  - (n) expert evidence;
  - (o) any other means by which the proceedings may be shortened;
  - (p) an estimate of the time required for the hearing;
  - (q) the right of representation; and
  - (r) whether an interpreter is required and, if so, for how long and for which languages.
- (4) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- (5) A minute in terms of sub-rule (4) may also deal with any other matter listed in sub-rule (3).
- (6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the appointed commissioner seven (7) days prior to the date scheduled for the arbitration.
- (7) The commissioner may, after receiving a pre-arbitration minute -
- (a) direct the parties to hold a further pre-arbitration conference; and / or
  - (b) issue any other directive to the parties concerning the conduct of the arbitration, including rescheduling the matter for hearing on another date.
- (8) The commissioner has a discretion to continue with the matter despite non-compliance with the directive in terms of sub-rule (1), or the provisions of sub-rule (4), (5) and/or (6). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

## **21. When must the Council notify parties of an arbitration**

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. If a notification is sent by registered mail only an additional seven (7) days must be allowed.

**22. How to determine whether a commissioner may arbitrate a dispute**

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

**23. How to postpone an arbitration**

(1) An arbitration may be postponed -

(a) by written agreement between the parties; or

(b) by application to the Council and on notice to the other parties in terms of sub-rule (3).

(2) The Council must postpone an arbitration without the parties appearing if-

(a) all the parties to the dispute agree in writing to the postponement; and

(b) the written agreement for the postponement is received by the Council at least seven (7) days prior to the scheduled date of the arbitration.

(3) If the conditions of sub-rule (2) are not met, any party may apply in terms of Rule 31 to postpone an arbitration by delivering an application to the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

(4) After considering the written application, the Council may -

(a) without convening a hearing, postpone the matter; or

(b) convene a hearing to determine whether to postpone the matter.

**PART FIVE****RULES THAT APPLY TO CONCILIATIONS AND ARBITRATIONS AND CON-ARBS****24. Where a conciliation or arbitration will take place**

(1) A dispute must be conciliated or arbitrated in the region in which the cause of action arose or the employer's principle place of business is located, unless the Head of Dispute in the head office of the Council directs otherwise.

(2) The Council within a region determines the venue for conciliation or arbitration proceedings.

## 25. Representation before the Council

(1)(a) In conciliation proceedings a party to the dispute may appear in person or be represented only by -

(i) if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member or employee of that close corporation;

(ii) any member of that party's registered trade union or registered employers' organisation or an office bearer or official as defined in the Act or an office bearer or official as defined in the Act of a registered federation of trade unions or registered federation of employers' organisations;

(iii) if the party is a registered trade union, any member of that trade union or any office bearer or official as defined in the Act and authorized to represent that party or an office bearer or official as defined in the Act of a registered federation of trade unions and authorized to represent that party; or

(iv) if the party is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or an official or office bearer as defined in the Act and authorized to represent that party or an office bearer or official as defined in the Act of a registered federation of employers' organisations and authorized to represent that party.

(v) if a party is the department of labour, any employee or official of the department of labour.

(b) Subject to paragraph (c), in any arbitration proceedings a party to the dispute may appear in person or be represented only by -

(i) a legal practitioner;

(ii) a candidate attorney; or

(iii) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1)(a).

(c) If the dispute being arbitrated is referred in terms of section 69(5), or is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or capacity, a party is not entitled to be represented by a legal practitioner or a candidate attorney in the proceedings unless:

(iv) the commissioner and all the other parties consent;

(v) the commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering -

(a) the nature of the questions of law raised by the dispute;

- (b) the complexity of the dispute;
- (c) the public interest; and
- (d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (e) No representation by a legal practitioner or candidate attorney shall be allowed in facilitations of large scale retrenchments as contemplated in section 189A(3).
- (f) No person representing a party in proceedings before the Commission in a capacity contemplated in sub-rule (1)(a) or (b), other than a legal practitioner or candidate attorney contemplated in sub-rule (1)(b)(i) and (ii), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party.

(2) If the party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of this rule, the commissioner must determine the issue.

(3) The commissioner may call upon the representative to establish why the representative should be permitted to appear in terms of this rule.

(4) A representative must tender any documents requested by the commissioner for the purposes of sub-rule (3), including constitutions, payslips, contracts of employment, documents and forms or recognition agreements and proof of membership of a trade union or employers' organisation.

(5) Despite the provisions of sub-rule (1), a commissioner may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organisation as an employer party, or a member of an employers' organisation that is a party to proceedings, if the commissioner, after enquiring into the matter and considering relevant representations, believes that –

- (e) the representative joined the employer's organisation for the purpose of representing parties in the Council; or
- (f) the representative's participation in the dispute resolution process
  - (i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
  - (ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
  - (iii) may have the consequence of unfairly disadvantaging another party to the dispute."

(6) Despite the provisions of this rule, but subject to the provisions of sub-rule (1)(f), the commissioner may, on application brought in accordance with rule 31, allow a person not contemplated by sub-rule (1) to represent a party at arbitration proceedings before the commission, after considering -

- (a) whether the proposed representative is subject to the oversight and discipline of a professional or statutory body;
- (b) whether the proposed representative will contribute to the fairness of the proceedings and the expeditious resolution of the dispute;
- (c) prejudice to the other party; and
- (d) any other relevant factors.

## **26. How to join or substitute parties to proceedings**

(1) The Council or a commissioner may, at any stage prior to the conclusion of an arbitration or hearing, make an order joining any number of persons as parties in the proceedings if:

- (a) The right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim;
- (b) the party to be joined has a substantial interest in the subject matter of the proceedings; or
- (c) the party to be joined may be prejudicially affected by the outcome of the proceedings.

(2) A Council or commissioner may make an order in terms of sub-rule (1):

- (a) on own accord;
- (b) on application by a party; or
- (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

(3) An application in terms of this Rule must be made in terms of Rule 31.

(4) When making an order in terms of sub-rule (1), a commissioner may -

- (a) give appropriate directions as to the further procedure in the proceedings; and
- (b) make an order of costs in accordance with these Rules.

(5) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that party for an existing party, and a commissioner may make such order or give appropriate directions as to the further procedure in the proceedings.

(6) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, including the referral form, unless the person concerned or that person's representative is already in possession of the documents. The application may be made at any stage prior to the conclusion of an arbitration hearing.

(7) Subject to any order made in terms of sub-rules (4) and (5), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

#### **27. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, the Council may of its own accord, by consent of the parties or on application and on notice to the parties concerned, correct the error or defect.

#### **28. When the Council may consolidate disputes**

(1) The Council or a commissioner may, of its own accord, by consent of the parties or on application, and on notice to the parties concerned, consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

(2) The Council or a commissioner may order consolidation of separate disputes of right, where-

- (a) the relief sought in each of the separate dispute to be consolidated, depends on the determination of similar or substantially the same questions of law and fact.
- (b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation order;
- (c) the balance of convenience favour such consolidation; and

the NBCPSS has jurisdiction on all disputes sought to be consolidated.

#### **29. Disclosure of documents**

- (1) At any time after the request for arbitration, but not less than fourteen (14) days prior to the hearing date, either party may request the other party to disclose any documents or material relevant to the dispute.
- (2) The party to whom the request is made must respond to the request within five (5) days from the date on which the request was received.
- (3) A commissioner may either before or during the proceedings at his own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.

- (4) Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.

### **30. What happens if a party fails to attend arbitration proceedings before the Council**

- (1) If a party to the dispute fails to attend or be represented at any arbitration proceedings before the Council, and that party-
- (a) had referred the dispute to the Council, a commissioner may dismiss the matter by issuing a written ruling; or
  - (b) had not referred the matter to the Council, the commissioner may -
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the proceedings to a later date.
- (2) A commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1).
- (3) If a matter is dismissed, the Council must send a copy of the ruling to the parties within 14 days.

## **PART SIX: APPLICATIONS**

### **31. How to bring an application**

- (1) This Rule applies to any -
- (a) application for condonation, joinder, substitution, variation, rescission, or postponement;
  - (b) application in a jurisdictional dispute; and
  - (c) other preliminary or interlocutory application.
- (2) Subject to Rule 32, an application must be brought at least fourteen (14) days prior to the date of the hearing on notice to all persons who have an interest in the application.
- (3) The party bringing the application must sign the notice of application in accordance with Rule 4 and must state -
- (a) the title of the matter;
  - (b) the case number assigned to the matter by the Council, if available;

- (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;
  - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within five (5) days after the application has been delivered to it;
  - (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e); and
  - (g) that a schedule is included listing the documents that are material and relevant to the application.
- (4) The application must be supported by an affidavit. The affidavit must clearly and concisely set out -
- (a) the names, description and addresses of the parties;
  - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
  - (c) a statement of legal issues that arises from the material facts, in sufficient detail to enable any party to reply to the document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with Rule 9; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.
- (5)(a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within five (5) days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.
- (6)(a) The party initiating the proceedings may deliver a replying affidavit within three (3) days from the day on which any notice of opposition and answering affidavit are served on it.
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (7) A commissioner may permit the affidavits referred to in this Rule to be substituted by a written statement.

(8) In an urgent application, the Council or a commissioner-

(a) may dispense with the requirements of this Rule; and

(b) may only grant an order against a party that has had reasonable notice of the application.

(9)(a) The Council must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

(b) The Council must notify the parties of the date, time and place of the hearing of the application.

(c) Applications may be heard on a motion roll.

(10) Despite this Rule, the Council or a commissioner may determine an application in any manner it deems fit, provided that the Council or the commissioner informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

### **31A. How to apply for Picketing Rules or the determination of disputes relating thereto (NOT APPLICABLE TO NBCPSS)**

### **31B. How to apply for the enforcement of Written Undertakings and/or Compliance orders (NOT APPLICABLE TO NBCPSS)**

### **32. How to apply to vary or rescind arbitration awards or rulings**

An application for the variation or rescission of an arbitration award or ruling must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

### **33. How to apply to refer a dismissal dispute to the Labour Court**

(1) An application in terms of Section 191(6) of the Act to refer a matter to the Labour Court, must be delivered -

(a) within ninety (90) days of a certificate that the dispute has not been resolved being issued; or

(b) by a party that has not requested arbitration, within fourteen (14) days of the referral for arbitration being filed.

- (2) Despite sub-rule (1), a party that requests arbitration may not thereafter make an application in terms of Section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven (7) days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of Section 191(8) within fourteen (14) days of receiving the objection.
- (6) In the event that the request has been granted, the party who applied for the referral by the director must refer the matter to the Labour Court in line with rule 11 of the Labour Court rules.

## **PART SEVEN**

### **Section 188A INQUIRY**

#### **34. How to request an inquiry in terms of Section 188A**

- (1) An employer requesting the Council to conduct an inquiry, must do so by delivering a completed LRA Form 7.19 to the Council.
- (2) The employee must sign the LRA Form 7.19 unless the employee has agreed in terms of Section 188A(4)(b)5 to the inquiry in a contract of employment or the inquiry is held in accordance with a collective agreement, in which case a copy of the contract or the collective agreement must be attached to the Form.
- (3) When filing the LRA Form 7.19, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by -
  - (a) bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the Council.
- (4) Within seven (7) days of receiving a request in terms of sub-rule (1) and payment of the prescribed fee, the Council must notify the parties to the inquiry of when and where the inquiry will be held.
- (5) Unless the parties agree otherwise, the Council must give the parties at least seven (7) days notice of the commencement of the Inquiry.
- (6) The Council is only required to refund a fee paid in terms of sub-rule (3), if the Commission is notified of the resolution of the matter prior to issuing a notice in terms of sub-rule (4).

## **PART EIGHT: GENERAL**

### **35. Condonation for failure to comply with the Rules and form**

- (1) Subject to sub-rule (3), the Council or a commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- (2) In exercising its powers and performing its functions the Commission may act in such a manner as it deems expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise.
- (3) The provisions of this Rule do not apply to Rule 25.

### **36. Recordings of Council proceedings**

- (1) The Council must keep a record of -
  - (a) all processes except conciliations, unless otherwise stated in these Rules;
  - (b) any arbitration award or ruling made by a commissioner.
- (2) The record must be kept by means of a digital recording and, if practically possible, also by legible notes.
- (3) A party may request a copy of the record or a portion of a record kept in terms of sub-rule (2), on payment of the costs where applicable.

### **37. How to have a subpoena issued and served**

- (1) Any party who requires the Council or a commissioner to subpoena a person in terms of Section 142(1) of the Act, must file a completed Council's LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of Section 142(7) (c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness. The Council's decision must be made in writing and delivered when issuing the subpoena.
- (3) An application in terms of sub-rule (1) must be filed with the Council at least fourteen (14) days prior to the arbitration hearing, or as directed by the commissioner hearing the arbitration.

- (4) The Council may refuse to issue a subpoena if-
- (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have seven (7) days in which to comply with the subpoena;
  - (c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees, reasonable travel costs and/or subsistence expenses of the person subpoenaed.
- (5) A subpoena must be served:
- (a) by the person who has requested the issuing of the subpoena or by the Sheriff, at least seven (7) days prior to the scheduled date of the arbitration by;
  - (b) by delivering a copy of it to the person subpoenaed personally;
  - (c) by sending a copy of it by registered post to the subpoenaed person's –
    - (i) residential address;
    - (ii) place of business or employment; or
    - (iii) post office box or private bag number;
  - (d) by leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there.
- (6) Service of a subpoena must be accompanied by proof of payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Government Gazette in terms of Section 142(7) of the Act and the witnesses' reasonable travel costs and subsistence expenses.
- (7) Sub-rules (4)(c) and (5)(b) do not apply if the Council, in terms of Section 142(7)(c), has waived the requirement to pay witness fees.

### **37.A Expert witnesses**

A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Council and the other party to the dispute together with a summary of the proposed evidence of such witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and obviate the need for any postponement.

### 38. Payment of witness fees

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Government Gazette in terms of Section 142(7) of the Act.
- (2) The witness fee must be paid by -
  - (a) the party who requested the Council to issue the subpoena; or
  - (b) the Council, if the issuing of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of Section 142(7)(c) .
- (3) Despite sub-rule (1), the commissioner may, in appropriate circumstances, order that a witness receives no fee or reasonable travel costs and subsistence expenses or only part of such fees or expenses.

### 39. Order of costs in an arbitration

- (1) In any arbitration proceedings, the commissioner may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to -
  - (a) the measure of success that the parties achieved;
  - (b) considerations of fairness that weigh in favour of or against granting a cost order;
  - (c) any with prejudice offers that were made with a view to settling the dispute;
  - (d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner
    - (i) by proceeding with or defending the dispute in the arbitration proceedings, or
    - (ii) in its conduct during the arbitration proceedings;
  - (e) the effect that a cost order may have on a continued employment relationship;
  - (f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
  - (g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;
  - (h) any other relevant factor.

- (2) A commissioner may make an award of costs in favour of a party who appears or is represented in arbitration by a person contemplated in rule 25(1)(a) in respect of reasonable disbursements actually incurred in the conduct of its case in the arbitration. A commissioner who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- (3) A commissioner may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner or candidate attorney, only if the other parties to the arbitration were represented by a legal practitioner or candidate attorney.
- (4) An award for costs in terms of sub-rule (3) must be in the amount of –
  - (a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R7 000-00 (VAT inclusive);
  - (b) in respect of each additional day of an arbitration – R4 700-00 (VAT inclusive).
- (5) An award for costs in respect of a candidate attorney must be 50 percent of the amount set out in sub-rule (4).

#### **40. Certification and enforcement of arbitration awards**


- (1) An application to have an arbitration award certified must be made on -
  - (a) LRA Form 7.18 in respect of an award by a commissioner;
  - (b) LRA Form 7.18A in respect of an award in arbitration conducted under the auspices of a bargaining council.
- (2) Any arbitration award that has been certified in terms of Section 143 of the Act that -
  - (a) orders the payment of an amount of money may be enforced by execution against the property of the employer party by the Sheriff of the court in the Magisterial district where the employer party resides, or conducts business;
  - (b) orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.
- (3) For the purposes of sub-rule (2), an arbitration award includes an award of costs in terms of Section 138(10), a taxed bill of costs in respect of an award of costs and an arbitration fee charged in terms of Section 140(2).
- (4) The amount of money that may be enforced through execution by the Sheriff in terms of this Rule includes–

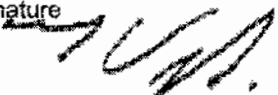
- (a) The amount that is ordered to be paid in terms of the award;
  - (b) Any interest on that amount calculated in terms of section 143(2);
  - (c) The Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.
- (5) In the event that the CCMA financially assisted the party in whose favour the award was granted in the enforcement or execution thereof, the CCMA may, if the costs of the execution were not realized therein, collect such costs, with interest, directly from the defaulting party.

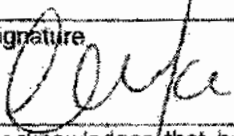
#### 40A Payment of an arbitration fee ordered in terms of section 140 of the Act

- (1) Where the commissioner, having found that the dismissal was procedurally unfair, orders payment of an Arbitration fee in terms of 140(1) of the Act:
- (a) The arbitration fee shall be the fee set out in the Council's Tariff of Fees, as gazette annually.
  - (b) The employer must pay the prescribed fee to the Council within 14 (fourteen) days of receipt of the award ordering payment of such a fee.
  - (c) Payment of the fee may only be made by –
    - (i) bank guaranteed cheque, delivered to any of the Council's offices; or
    - (ii) electronic transfer into the bank account of the Council

DATED AT JOHANNESBURG ON THIS THE 25<sup>th</sup> DAY OF November 2022.

Chairperson of the NBCPSS	Signature	Name
		Kumbulani Moyo
who, by his signature hereto duly acknowledges that he is authorized and mandated to sign such agreement.		
Postal address		
Email address	moyo@gtconstruction.co.za	

Deputy Chairperson of the NBCPSS	Signature 	Name Franz Peter Verhufen
who, by his signature hereto duly acknowledges that he is authorized and mandated to sign such agreement.		
Postal address		
Email address		

General Secretary for the NBCPSS	Signature 	Name CHRISTIAN OKEKE
who, by his signature hereto duly acknowledges that he is authorized and mandated to sign such agreement.		
Postal address		
Email address		