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**19 June  
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**No. 43448**



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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**


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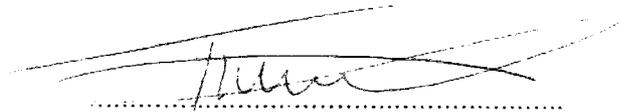
**DEPARTMENT OF EMPLOYMENT AND LABOUR**

NO. R. 688

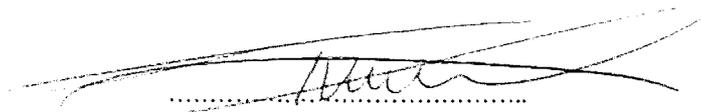
19 JUNE 2020

**LABOUR RELATIONS ACT, 1995****CANCELLATION OF GOVERNMENT NOTICES****MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: MOTOR INDUSTRY PROVIDENT FUND COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel Government Notices No. R.891 of 25 August 2017 and R.1128 of 30 August 2019, with effect from the second Monday after the date of publication of this notice.

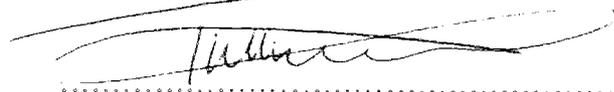

**MR TW NXESI, MP****MINISTER OF EMPLOYMENT AND LABOUR**DATE: *26/03/2020***UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA - 1995****UKUHOXISWA KWEZAZISO ZIKAHULUMENI****MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: ISIVUMELWANO SE MOTOR INDUSTRY PROVIDENT FUND**

Mina, **THEMBELANI WALTERMADE NXESI**, uNgqongqoshe WezeMisebenzi NezabaSebenzi ngokwesigaba 32(7) soMthetho Wobudlelwano KwezabaSebenzi ka-1995 ngihoxisa iZaziso zikaHulumeni ezinguNombolo R.891 womhlaka 25 kuNcwaba 2017 kanye nonombolo R.1128 womhlaka 30 kuNcwaba 2019, kusukela ngoMsombuluko wesibili emva kosuku lokushicilelwa kwalesiSaziso.


**MNUMZANE TW NXESI, MP****UNGQONGQOSHE WEZEMISEBZENZI NEZABASEBENZI**USUKU: *26/03/2020*

**LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE MOTOR INDUSTRY-MIBCO: EXTENSION TO  
NON-PARTIES OF THE MOTOR INDUSTRY PROVIDENT FUND 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 that was concluded in the Motor Industry Bargaining Council-MIBCO, 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 the second Monday after the date of publication of this notice and for the period ending 31 August 2022.



MR TW NXESI, MP

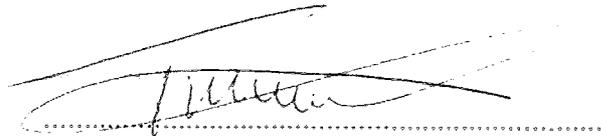
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26/03/2020

## UMTHETHO WEZOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI  
EMBONINI YEZIMOTO: UKWELULWA KWESIVUMELWANO SABAQASHI  
NABASEBENZI SE MOTOR INDUSTRY PROVIDENT FUND SELULELWA KILABO  
ABANGEYONA INGXYENYE YASO

Mina, THEMBELANI WALTERMADE NXESI, onguNgqongqoshe WezeMisebenzi  
Nezabasebenzi, lapha ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka 1995,  
ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe  
lapha, esenziwa eMkhandlwini Wokuxoxisana Phakathi Kwabaqashi Nabasebenzi Bemboni  
Yezimoto, futhi ngokwesigaba 31 soMthetho Wezobudlelwano Kwezabasebenzi ka 1995, esibopha  
labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyo Mboni kusukela  
ngoMsombuluko wesibili emva kokushicilelwa kwalesiSaziso futhi kuze kube isikhathi esiphela  
mhlaka 31 kuNcwaba 2022.



MR TW NXESI, MP

UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU: 26/03/2020

**SCHEDULE****MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO****MOTOR INDUSTRY PROVIDENT FUND AGREEMENT  
COLLECTIVE AGREEMENT**

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

**Retail Motor Industry Organisation – RMI**

and the

**Fuel Retailers' Association of Southern Africa- FRA**

and the

**National Employers Association of South Africa – NEASA**

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

**National Union of Metalworkers of South Africa - NUMSA**

and the

**Motor Industry Staff Association - MISA**

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council - MIBCO.

**CLAUSE 1 - PERIOD OF OPERATION**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force for the period ending 31 August 2022.

#### **CLAUSE 2 - SCOPE OF APPLICATION OF AGREEMENT**

- (1) Subject to the provisions of sub clause (2) of this clause, the terms of this Agreement shall be observed -
  - (a) in the Motor Industry in the Republic of South Africa;
  - (b) employees in Division B, grades 7 and 8 and apprentices in the Motor Industry and their employers.
- (2) Notwithstanding the provisions of sub clause (1), the provisions of this Agreement shall not apply to –
  - (a) employees in Division B, grades 7 and 8 and apprentices who are members of the Auto Workers' Provident Fund until such time as the parties agree that they are transferred to the Motor Industry Provident Fund.
  - (b) any employee who has been granted a retirement benefit by any fund which provides for such benefits;
  - (c) employees in respect of whom their employer contributes, and for as long as their employer so contributes, to a pension fund/provident fund which was in operation on the date of coming into operation of this Agreement and which, in the opinion of the Council, provides benefits not less favorable than those provided by the Fund;
  - (d) any fixed term and/or probationary employee for six months from the

date on which he begins employment in the Motor Industry; provided that any employer may in his discretion waive this exclusion.

### CLAUSE 3 - DEFINITIONS

Any expressions used in this Agreement and which are defined in the Labour Relations Act, 1995, as amended from time to time and the Main Agreement shall have the meanings assigned to them in the Act and that Agreement, references to an Act shall include any amendments to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females and vice versa; further, unless inconsistent with the context -

- (1) 'Act' means the Labour Relations Act, 1995 (Act 66 of 1995); as amended from time to time.
- (2) 'Apprentice' means an employee serving under a written contract of apprenticeship registered or deemed to have been registered under the Manpower Training Act, 1981, and includes a minor employed on probation in terms of the Act as well as a learner in terms of Chapter IV of the Skills Development Act, Act No. 97 of 1998;
- (3) 'Council' means the Motor Industry Bargaining Council – MIBCO, registered in terms of section 29 of the Act;
- (4) "Division B employees" means those employees as defined in the Main Agreement from time to time.
- (5) 'Establishment' means any premises or part thereof in or on which activities in the Motor Industry or part thereof are conducted;
- (6) 'Independent Board' means the Board established by the Council in terms of

section 32 of the Act, to consider appeals from non -parties against the refusal of a non -party's application for exemption from the provisions of this Agreement and the withdrawal of such an exemption by the Council;

- (7) **'Fund'** means the Motor Industry Provident Fund, established in terms of the rules of the Fund for the purpose of providing lump sum benefits or annuities for employees in the Motor Industry or for the dependants of such employees on the death of such employees;
- (8) **"Grade 7 employees"** mean those employees as defined in the Main Agreement from time to time;
- (9) **"Grade 8 employees"** mean those employees as defined in the Main Agreement from time to time;
- (10) **'Main Agreement'** means the Agreement in which wages and other conditions of service are specified for employees in the Motor Industry, as published in terms of section 32 of the Act;
- (11) **'Motor Industry' or 'Industry'** means the Motor Industry as defined in the Main Agreement from time to time;
- (12) **' PFA'** means the Pension Funds Act 24 of 1956 as amended from time to time;
- (13) **'Pensionable remuneration'** means the amount which an employer would normally and/or regularly pay to an employee, either weekly or monthly, in respect of the ordinary hours required to complete either a full normal week or month, as the case may be, and does not include remuneration which an employee who is employed on a piece work basis receives over and above the amount he would have received if he had not been employed on such basis, but includes commission received on the sale of goods; provided, however, that all commission received in excess of R9 000 per month shall be excluded,

unless the employer and employee jointly agree that contributions shall be paid on commission earnings in excess of the aforementioned limitation;

- (14) “**Region EC**” means those areas defined as “Area A (EC)” and “Area B (EC)” in the Main Agreement;
- (15) “**Region KZNL**” means those areas as defined in “Area A (KZNTL)” and “Area B (KZNL)” in the Main Agreement;
- (16) “**Region FS & NC**” means those areas defined as “Area A (FS & NC)” and “Area B (FS & NC)” in the Main Agreement;
- (17) “**Region Highveld**” means those areas defined as “Area A (Highveld)” and “Area B (Highveld)” in the Main Agreement;
- (18) “**Region Northern**” means those areas defined as “Area A (Northern)” and “Area B (Northern)” in the Main Agreement;
- (19) “**Region WP**” means those areas defined as “Area A (WP)” and “Area B (WP)” in the Main Agreement;
- (20) “**Regional Council**” means a committee appointed as such by the Council in terms of its constitution for any region defined herein;
- (21) “**Retirement age**” means 65 years;
- (22) “**Voluntary member**” means a person admitted to membership by a Regional Council in terms of clause 5 of this Agreement;
- (23) “**Week**” means a period of seven consecutive days commencing at midnight on a Sunday.

**CLAUSE 4 - ESTABLISHMENT AND OBJECTS OF THE FUND**

- (1) The Motor Industry/MISA Provident Fund established on 1 January 2001 is hereby continued as the Motor Industry Provident Fund (hereinafter referred to as the "Fund").
- (2) The Fund shall consist of:
  - (a) Contributions paid to it in terms of this agreement;
  - (b) Interest, dividends, rental income and capital gains derived from the investment of its moneys;
  - (c) Money or any other assets transferred to it from any other pension or provident fund; and
  - (d) Any moneys or other assets lawfully acquired from any other source whatsoever.
- (3) The objects of the Fund shall be, in accordance with the rules of the Fund as determined from time to time, to provide benefits for members.

**CLAUSE 5 - MEMBERSHIP**

- (1) Subject to the provisions of clause 2 of this agreement and of sub clause (3) of this clause, membership of the fund shall be compulsory for every employee, within the registered scope of the Council and falling below the threshold defined in the Main Agreement, employed in the Motor Industry in grades 1 to 6 who has not reached retirement age.
- (2) Employees who are not compulsory members in terms of sub clause (1) and Directors of companies, members of Close Corporations, Sole Proprietors and Partners in business directly engaged in, or in connection with the Motor

Industry, may be admitted to voluntary membership of the Fund at the sole discretion of the Regional Council concerned, and the provisions of the Agreement shall *mutatis mutandis* apply to persons admitted to voluntary membership and their employers.

- (3) Every employee for whom membership is compulsory in terms of sub clause (1) of this clause, and every person admitted to voluntary membership in terms of sub clause (2) of this clause, shall -
  - (a) complete the form specified in Annexure A to this Agreement and lodge such completed form with the Secretary of the Regional Council for the Region in which he is employed, within one month after the date on which he enters, re-enters or becomes employed in the Motor Industry; and for purposes of this paragraph an employee shall be deemed to have re-entered the Motor Industry when he has changed employment from one Region to another;
  - (b) when required to do so by the Council, a Regional Council or the Fund, furnish such evidence and information, documentary or otherwise, as may be necessary for purposes of his identity, his membership of the Fund and/or payment or determining of any benefit arising out of such membership.
- (4) Every person who is admitted to voluntary membership in terms of sub clause (2) of this clause shall complete the form specified in Annexure B to this agreement and lodge such completed form with the Secretary of the Regional Council concerned.

#### CLAUSE 6 - CONTRIBUTIONS

- (1) Every employee for whom membership of the Fund is compulsory in terms of clause 5(1) or every voluntary member in terms of clause 5(2) of this

Agreement, shall contribute 7,5 per cent of his pensionable remuneration to the Fund in respect of each week of employment in the Motor Industry; provided that where an employee receives or is entitled to receive wages for less than 23 hours in any week, no contributions shall be payable by him in respect of such week.

- (2) The contributions specified in sub clause (1) shall, subject to the proviso contained in sub clause (1), be deducted by the employer from every employee's wages on the first pay-day after this Agreement comes into operation, and on each pay-day thereafter.
- (3) Every employer shall contribute and add to the contributions deducted in terms of sub clause (2) an amount equal to 8% of the member's pensionable remuneration.
- (4) The total amount of contributions deducted from the earnings of employees and contributed by employers in terms of sub clause (2) and (3) of this clause shall be paid each month to the Secretary of the Regional Council for the Region within the area of jurisdiction within which the employer's establishment is situated, and each such payment shall be accompanied by a written statement containing the following details:
  - (a) Name, initials, trade union membership number (if any) and national identification number of each employee;
  - (b) amount of contributions remitted in respect of each employee;
  - (c) the date on which service began or service ended, in the case of employees whose employment began or ended since the details were last submitted.
- (5) Employee and employer contributions (contributions) payable in terms of this

clause shall be payable by the employer no later than 30 (thirty) days after of the month immediately following that to which the contributions relate. The employer shall, together with the contributions payable under this clause, submit a statement containing the details referred to in sub clause 4 of this Agreement to the Secretary of the relevant Regional Council.

**Note:**

- (a) The present postal addresses of the Secretaries of the various Regional Councils are as follows:

For Region EC: P.O. Box 7270, Port Elizabeth, 6056

For Region KZNL: P.O. Box 17263, Congella, 4013

For Region FS & NC: P.O.Box 910, Bloemfontein, 9300

For Region Highveld: P.O.Box 2578, Randburg, 2125

For Region Northern: P O Box 2578, Randburg, 2125

For Region WP: P.O.Box 17, Bellville, 7535

- (b) Forms prepared specifically for the furnishing of the details required by this clause may be obtained from the Regional Secretary of the Region concerned.

- (6) The contributions payable by employers as specified in sub clause (3) shall not be refundable.
- (7) The contributions collected by Regional Councils in terms of this clause shall be paid to the Fund.
- (8) Compound interest on late payments or unpaid amounts and values shall be calculated for the period from the first day of the month following the expiration of the period in respect of which the relevant amounts or values are payable or transferable until the date of receipt by the fund at the rate prescribed...

- (9) Notwithstanding the provisions of this clause an employer who has been discovered in terms of the provisions of the Collective Administrative Agreement between the parties, shall be liable for any amounts due in respect of provident fund contributions, excluding contributions for which the employee is liable in terms of this agreement or any other agreement relating to the provident fund, from commencement of employment in respect of each employee including penalties and interest payable to the provident fund in terms of the PFA in respect of such employee. This provisions of this clause are subject to the respective employee electing in writing within 30 days of the discovery referred to sub clause (b) above whether to enforce or the waive compliance with the provisions of this clause by the employer.

#### CLAUSE 7 - ADMINISTRATION

- (1) The Fund shall be administered in accordance with rules approved by the Financial Services Board; which rules shall not be inconsistent with the provisions of this Agreement, the Act or of the PFA, and a copy of the rules and details of any amendments to them shall be lodged with the Financial Services Board.

#### CLAUSE 8 – LIQUIDATION OR DISSOLUTION

In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Parties may appoint the Company, to perform the functions of the Council in respect of this Agreement. If the Company is unwilling or unable to discharge such duties the Financial Services Board shall appoint a trustee or trustees to perform the Council's function. The Company or the trustee(s) so appointed shall have all the powers vested in the Council for purposes of this Agreement.

#### CLAUSE 9 - AGENTS

The Council or any Regional Council may appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement, and it shall be the duty of every employer and every employee to permit such persons to enter such premises, institute and complete such enquiries and to examine such documents, books, wage sheets, time sheets and pay tickets, question such individuals and to do all such acts as may be necessary for the purposes of ascertaining whether the provisions of this Agreement are being observed, and no person shall make a false statement to such agent in connection with his investigations.

#### **CLAUSE 10 – EXEMPTIONS**

- (1) Subject to the provisions of the Act and the PFA, exemption from any of the provisions of this agreement may be granted by the Council or Regional Councils, to any party on application.
- (2) Application for exemption shall be made, in a form prescribed by the Council, to the General Secretary of the Council or the Secretary of the Regional Council within whose area the applicant operates or is employed.
- (3) The Regional Council or the Council, as the case may be, shall subject to the provisions of the Act and PFA, fix the conditions subject to which such exemptions shall be valid, and may, if it deems fit, after one week's notice has been given, in writing, to the person(s) concerned, withdraw any license of exemption.
- (4) The secretary of the Regional Council or the Secretary of the Council, as the case may be, shall issue to every person granted exemption, a license signed by him setting out –
  - (a) the name of the person concerned;
  - (b) the provisions of this Agreement from which exemption is granted;

- (c) the conditions subject to which such exemption is granted; and
  - (d) the period during which the exemption shall be valid.
- (5) In respect of establishments registered under Chapters II or III of this Agreement, the following exemptions procedure applies:
- (a) An employer that applies for an exemption in order to pay a lesser wage increase or to be exempted from paying on actuals shall complete the wage exemption application form available on request from the local Regional Councils.
  - (b) The employer shall consult its employees on the employer's intention to apply for an exemption and the application for exemption must contain details and proof of the consultation process.
  - (c) The employer, in the application shall furnish all relevant financial information supporting the motivation for the exemption applied for.
  - (d) The employer shall lodge the application for exemption with the local Regional Council and the employer shall specify that it is a Chapter II or III application for an exemption and the employer shall specify the exact nature of the exemption applied for as prescribed in paragraph (5)(a) of this clause.
  - (e) Any application for exemption made to the Council or Regional Council, as the case may be, shall be considered in accordance with the following exemption criteria:
    - (i) the written substantiation and motivation submitted by the applicant;
    - (ii) the extent of consultation with and the petition for or against

- 
- granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
- (iii) the scope of exemption required;
  - (iv) the infringement of basic conditions of employment rights;
  - (v) the fact that a competitive advantage is not created by the exemption;
  
  - (vi) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
  - (vii) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Motor Industry;
  - (viii) any existing special economic or other circumstances which warrant the granting of the exemption;
  - (ix) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
  - (x) any recommendation from the Council.
- (f) The Council or the Regional Council, as the case may be, shall make a decision on the application for an exemption within 30 days from the date upon which the application was lodged with them.

- (6) The Secretary of the Regional Council or the Secretary of the Council, as the case may be, shall -
- (a) number consecutively all licenses issued;
  - (b) retain a copy of each licenses issued; and
  - (c) where exemption is granted to an employee, forward a copy of the license to the employer concerned.
- (7) The Secretary of the Regional Council or the General Secretary, as the case may be, shall issue to every person granted a license, a letter of authority signed by him setting out, read with the changes required by the context, the information referred to in sub clauses (5) and (6) above.

#### **CLAUSE 11 - DISHONOURED CHEQUES**

Subject to the provisions of clause 6 of this agreement, whenever an employer pays any sum of money which is due to the Council in terms of this Agreement, in any manner other than in cash and such payment is not honored for any reason whatsoever, then and in such event a penalty shall be payable by the employer to the Council, which penalty shall be equal to 1,5 per cent to 2 per cent as determined by the Council in its sole discretion, of the amount of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.

#### **CLAUSE 12 - INDEPENDENT BOARD**

- (1) In terms of section 32(3)(e) of the Act, the Council hereby establishes an independent body, to be known as the Independent Board to consider appeals from non-parties against a refusal of a non-party's application for exemption

from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council. The following provisions shall apply to the Independent Board:

- (a) The Council shall appoint 6 (six) independent persons (Members) to constitute the Independent Board, for the avoidance of doubt, such persons shall not be representative, office bearer or official of the council or party to the Council or any of its collective bargaining agreements. The independent persons shall be appointed for a period of 12 (twelve) months and shall possess *inter alia* the following qualities:
  - (i) the ability to be objective, independent and impartial;
  - (ii) sound decision-making skills;
  - (iii) leadership qualities, particularly in respect of exercising sound judgment;
  - (iv) be a person in whose impartially and integrity the public can have confidence;
  - (v) understand and comply with confidentiality requirements;
  - (vi) working knowledge and experience of labour and collective bargaining matters; and
  - (vii) knowledge and understanding of judicial / quasi-judicial processes.
- (b) The Council shall determine such other terms of appointment of Members of the Independent Board subject to the provisions of the Labour Relations Act.

- (2) Any non-party employer may lodge an appeal with the Independent Board against the Council's or Regional Council's decision, as the case may be, to refuse to grant an application for an exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council, in which event the following procedure shall apply:
- (a) An appeal shall be in writing and shall be addressed to the General Secretary of the Council or the Secretary of the Regional Council, as the case may be, for consideration by the Independent Board.
  - (b) All appeals lodged by non -parties shall be considered by the Independent Board with due regard to the Exemption criteria set out in sub clause (7) below.
  - (c) All appeals shall be substantiated or motivated by the applicant and shall include the following details:
    - (i) the period for which the appeal is required;
    - (ii) the Agreement and clauses or sub clauses of the Agreement from which appeal is required;
    - (iii) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives; and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.
- (3) The Independent Board may, having regard to the individual merits of each appeal, grant or refuse the appeal if -
- (a) it does not undermine the agreement;

- 
- (b) it is fair to the employer or his employees and other employers and employees in the Industry.
  - (4) The Independent Board shall deal with all appeals within 30 days of the date on which the appeal was submitted:
  - (5) Once the Independent Board has granted an appeal, it must issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.
  - (6) When the Independent Board dismisses or dismisses part of an appeal it shall advise the applicant(s) within 14 days of the date of such decision.
  - (7) *Exemption criteria:* The Independent Board must consider all appeals with reference to the following criteria:
    - (a) the written substantiation and motivation submitted by the applicant;
    - (b) the extent of consultation with and the petition for or against granting the appeal as provided by employers or employees who are to be affected by the appeal if granted;
    - (c) **the scope of appeal required;**
    - (d) the infringement of basic conditions of employment rights;
    - (e) the fact that a competitive advantage is not created by the appeal ;
    - (f) the viewing of the appeal from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;

- (g) the extent to which the proposed appeal undermines collective bargaining and labour peace in the Motor Industry;
- (h) any existing special economic or other circumstances which warrant the granting of the appeal ;
- (i) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
- (j) any recommendation from the Council.

#### CLAUSE 13 - RESOLUTION OF DISPUTES

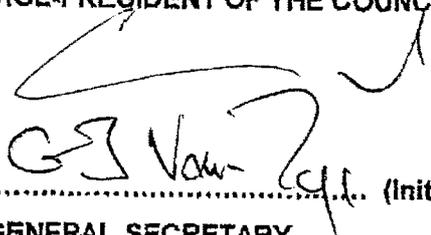
- (1) For the purpose of this Agreement a "dispute" means any dispute about the application, interpretation or enforcement of this Agreement, or any other collective agreements entered into by the parties to the Council.
- (2) Any such dispute shall be referred to the Council in the form specified by the Council. This provision does not apply when the Council makes use of the procedure set out in sub-paragraph (4).
- (3) If the Council fails to resolve the dispute through conciliation and the dispute remains unresolved, it shall be referred for arbitration to the MIBCO-Dispute Resolution Centre in terms of section 52 of the Act. The arbitrator shall have the power to decide upon the procedure to be followed at the arbitration hearing in terms of section 138 of the Act, and be entitled to make an award in respect of the parties' arbitration cost in terms of section 138 (10) of the said Act.
- (4) The provisions of this clause stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

- (5) The arbitrator's decision shall be final and binding subject to the parties' right of review to the Labour Court.
  
- (6) Any other dispute shall have the same meaning as defined in the Act and be dealt with in terms of section 51 of the said Act.

SIGNED AT RANDBURG, ON BEHALF OF THE PARTIES, THIS 13<sup>TH</sup> DAY OF  
JANUARY 2020

  
..... (Initial and Surname)  
PRESIDENT OF THE COUNCIL

  
..... (Initial and Surname)  
VICE-PRESIDENT OF THE COUNCIL

  
..... (Initial and Surname)  
GENERAL SECRETARY

**ANNEXURE A TO THE MOTOR INDUSTRY PROVIDENT FUND AGREEMENT  
APPLICATION FOR REGISTRATION AS A MEMBER**

Fund No .....

Identity No .....

Surname .....

First names .....

Date of birth .....(year) ..... (month) .....(day)

Sex (state male or female).....

Employed by (employer's name and address)

.....  
.....

Occupation

.....

Applicant's private address

.....  
.....

Where you employed in the Motor Industry previously?

.....

If the answer is "Yes", state name and address of employer

.....

I, the undersigned, hereby apply to be registered as a member of the Motor Industry Provident Fund and agree to abide by the provisions of the Fund's rules in force from time to time.

I nominate as my beneficiary in the event of my death:

First names

(Mr/Mrs/Miss).....

Surname.....

Relationship (state: wife, husband, father, mother, son, daughter, as the case maybe)

.....

Address:

.....  
.....

Identity No. of beneficiary (where applicable)

.....

Date.....

*(Member's signature)*

**ANNEXURE B TO THE MOTOR INDUSTRY PROVIDENT FUND AGREEMENT  
APPLICATION FOR REGISTRATION AS A VOLUNTARY MEMBER**

Fund No .....

Identity No .....

Surname .....

First names .....

Date of birth .....(year) ..... (month) .....(day)

Sex (state male or female).....

Employed by (employer's name and address)

.....  
.....

Occupation .....

If an employer, state full name of business

.....  
.....

Status of employer (e.g. owner, director, partner, member?)

.....

If the answer is "Yes", state name and address of employer

.....

I, the undersigned, member of .....

Hereby apply to be registered as a member of the Motor Industry Provident Pension Fund and agree to abide by the provisions of the Fund Rules in force from time to time.

Where you employed in the Motor Industry previously? .....

If answer is "Yes", state name and address of employer and your Fund No

.....

Date.....

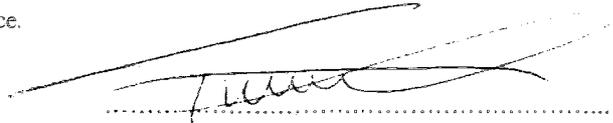
*(Member's signature)*

**DEPARTMENT OF EMPLOYMENT AND LABOUR****NO. R. 689****19 JUNE 2020**

LABOUR RELATIONS ACT, 1995

**CANCELLATION OF GOVERNMENT NOTICES****MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: AUTOWORKERS PROVIDENT FUND COLLECTIVE AGREEMENT**

I, THEMBELANI WALTERMADE NXESI, Minister of Employment and Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel Government Notices No. R.890 of 25 August 2017 and R. 1127 of 30 August 2019, with effect from the second Monday after the date of publication of this notice.



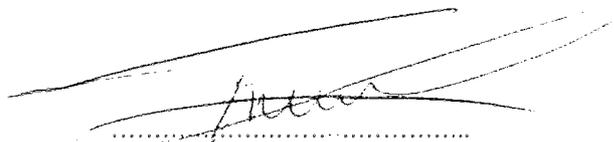
MR TW NXESI, MP

MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26/03/2020

**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA - 1995****UKUHOXISWA KWEZAZISO ZIKAHULUMENI****MOTOR INDUSTRY BARGAINING COUNCIL-MIBCO: ISIVUMELWANO SE AUTOWORKERS PROVIDENT FUND**

Mina, THEMBELANI WALTERMADE NXESI, uNgqongqoshe WezeMisebenzi NezabaSebenzi ngokwesigaba 32(7) soMthetho Wobudlelwano KwezabaSebenzi ka-1995 ngihoxisa iZaziso zikaHulumeni ezinguNombolo R.890 womhlaka 25 kuNewaba 2017 kanye nonombolo R.1127 womhlaka 30 kuNewaba 2019, kusukela ngoMsombuluko wesibili emva kosuku lokushicilelwa kwalesiSaziso.



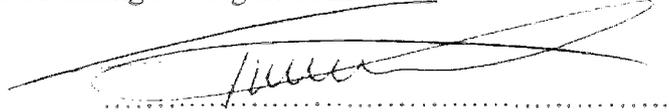
MNUMZANE TW NXESI, MP

UNGQONGQOSHE WEZEMISEBZENZI NEZABASEBENZI

USUKU: 26/03/2020

**LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE MOTOR INDUSTRY-MIBCO: EXTENSION TO  
NON-PARTIES OF THE AUTOWORKERS' PROVIDENT FUND 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 was concluded in the Motor Industry Bargaining Council-MIBCO, 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 the second Monday after the date of publication of this notice and for the period ending 31 August 2022.



.....  
MR TW NXESI, MP

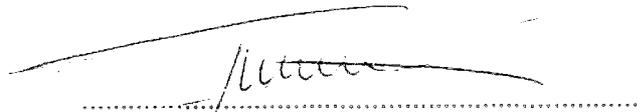
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26/03/2020.....

## UMTHETHO WEZOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI  
EMBONINI YEZIMOTO: UKWELULWA KWESIVUMELWANO SABAQASHI  
NABASEBENZI SE AUTO WORKERS PROVIDENT FUND SELULELWA KILABO  
ABANGEYONA INGXEYENYE YASO

Mina, THEMBELANI WALTERMADE NXESI, onguNgqongqoshe WezeMisebenzi  
Nezabasebenzi, lapha ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka 1995,  
ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe  
lapha, csenziwa eMkhandlwini Wokuxoxisana Phakathi Kwabaqashi Nabasebenzi Bemboni  
Yezimoto, futhi ngokwesigaba 31 soMthetho Wezobudlelwano Kwezabasebenzi ka 1995, esibopha  
labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyo Mboni kusukela  
ngoMsombuluko wesibili emva kokushicilelwa kaSaziso futhi kuze kube isikhathi esiphela mhlaka  
31 kuNcwaba 2022.



MR TW NXESI, MP

UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU: 26/03/2020.....

**SCHEDULE****MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO****AUTOWORKERS PROVIDENT FUND  
COLLECTIVE AGREEMENT**

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

Retail Motor Industry Organisation – RMI

and the

Fuel Retailers' Association of Southern Africa- FRA

and the

**National Employers Association of South Africa – NEASA**

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

**National Union of Metalworkers of South Africa - NUMSA**

and the

**Motor Industry Staff Association - MISA**

(hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Motor Industry Bargaining Council - MIBCO.

**CLAUSE 1 - PERIOD OF OPERATION**

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Act, and shall remain in force for the period ending 31 August 2022.

**CLAUSE 2 - SCOPE OF APPLICATION OF AGREEMENT**

- (1) Subject to the provisions of sub clause (2) of this clause, the terms of this Agreement shall be observed -
- (a) in the Motor Industry in the Republic of South Africa;
  - (b) by all employees in grades 1 to 6 in the Motor Industry and by their employers in the Motor Industry.
- (2) Notwithstanding the provisions of sub clause (1), the provisions of this Agreement shall not apply to –
- (a) grades 1 to 6 employees who are members of the Motor Industry Provident Fund until such time as the parties agree that they are transferred to the Auto Workers' Provident Fund.
  - (b) any employee who has been granted a retirement benefit by any fund which provides for such benefits;
  - (c) employees in respect of whom their employer contributes, and for as long as their employer so contributes, to a pension fund/provident fund which was in operation on the date of coming into operation of this Agreement and which, in the opinion of the Council, provides benefits not less favorable than those provided by the Fund;
  - (d) any fixed term and/or probationary employee for six months from the date on which he begins employment in the Motor Industry; provided that any employer may in his discretion waive this exclusion.

**CLAUSE 3 - DEFINITIONS**

Any expressions used in this Agreement and which are defined in the Labour

Relations Act, 1995, as amended from time to time and the Main Agreement shall have the meanings assigned to them in the Act and that Agreement, references to an Act shall include any amendments to such Act, and unless the contrary intention appears, words importing the masculine gender shall include females and vice versa; further, unless inconsistent with the context -

- (1) 'Act' means the Labour Relations Act, 1995 (Act 66 of 1995); as amended from time to time.
- (2) 'Apprentice' means an employee serving under a written contract of apprenticeship registered or deemed to have been registered under the Manpower Training Act, 1981, and includes a minor employed on probation in terms of the Act as well as a learner in terms of Chapter IV of the Skills Development Act, Act No. 97 of 1998;
- (3) 'Council' means the Motor Industry Bargaining Council – MIBCO, registered in terms of section 29 of the Act;
- (4) "Division B employees" means those employees as defined in the Main Agreement from time to time.
- (5) 'Establishment' means any premises or part thereof in or on which activities in the Motor Industry or part thereof are conducted;
- (6) 'Independent Board' means the Board established by the Council in terms of section 32 of the Act, to consider appeals from non -parties against the refusal of a non -party's application for exemption from the provisions of this Agreement and the withdrawal of such an exemption by the Council;
- (7) 'Fund' means the Auto Workers' Provident Fund, established in terms of the rules of the Fund for the purpose of providing lump sum benefits or annuities for employees in the Motor Industry or for the dependants of such employees on the death of such employees;

- (8) **“Grades 1 to 6 employees”** means those employees as defined in the Main Agreement from time to time;
- (9) ‘Journeyman’ means an employee who is validly in possession of either a Grade CA or Grade CAE membership card issued to him on or after 1 January 1984 by either the Motor Industry Combined Workers’ Union or the National Union of Metalworkers of South Africa, or MISA/SAMU or any one of the organisations that preceded the amalgamation of the Motor Industry Staff Association and the South African Motor Union;
- (10) ‘Main Agreement’ means the Agreement in which wages and other conditions of service are specified for employees in the Motor Industry, as published in terms of section 32 of the Act;
- (11) **‘Motor Industry’ or ‘Industry’** means the Motor Industry as defined in the Main Agreement from time to time;
- (12) ‘PFA’ means the Pension Funds Act 24 of 1956 as amended from time to time;
- (13) **‘Pensionable remuneration’** means the amount which an employer would normally and/or regularly pay to an employee, either weekly or monthly, in respect of the ordinary hours required to complete either a full normal week or month, as the case may be, and does not include remuneration which an employee who is employed on a piece work basis receives over and above the amount he would have received if he had not been employed on such basis, but includes commission received on the sale of goods; provided, however, that all commission received in excess of R9 000 per month shall be excluded, unless the employer and employee jointly agree that contributions shall be paid on commission earnings in excess of the aforementioned limitation;
- (14) **“Region EC”** means those areas defined as “Area A (EC)” and “Area B (EC)”

in the Main Agreement;

- (15) "Region KZNL" means those areas as defined in "Area A (KZNTL)" and "Area B (KZNL)" in the Main Agreement;
- (16) "Region FS & NC" means those areas defined as "Area A (FS & NC)" and "Area B (FS & NC)" in the Main Agreement;
- (17) "Region Highveld" means those areas defined as "Area A (Highveld)" and "Area B (Highveld)" in the Main Agreement;
- (18) "Region Northern" means those areas defined as "Area A (Northern)" and "Area B (Northern)" in the Main Agreement;
- (19) "Region WP" means those areas defined as "Area A (WP)" and "Area B (WP)" in the Main Agreement;
- (20) "**Regional Council**" means a committee appointed as such by the Council in terms of its constitution for any region defined herein;
- (21) "**Retirement age**" means 65 years;
- (22) "**Voluntary member**" means a person admitted to membership by a Regional Council in terms of clause 5 of this Agreement;
- (23) "**Week**" means a period of seven consecutive days commencing at midnight on a Sunday.

#### **CLAUSE 4 - ESTABLISHMENT AND OBJECTS OF THE FUND**

- (1) The Auto Workers' Provident Fund (hereinafter referred to as the "Fund"), originally established in terms of Government Notice No. R. 837 of 23 June

1995, is hereby continued.

- (2) The Fund shall consist of contributions as specified in this Agreement, and interest, dividends or rental earnings on investments.
- (3) The objects of the Fund shall be, in accordance with the rules of the Fund as determined from time to time, to provide benefits for members.

#### CLAUSE 5 - MEMBERSHIP

- (1) Subject to the provisions of clause 2 of this agreement and of sub clause (3) of this clause, membership of the fund shall be compulsory for every employee, within the registered scope of the Council and falling below the threshold defined in the Main Agreement, employed in the Motor Industry in grades 1 to 6 who has not reached retirement age.
- (2) Employees who are not compulsory members in terms of sub clause (1) and Directors of companies, members of Close Corporations, Sole Proprietors and Partners in business directly engaged in, or in connection with the Motor Industry, may be admitted to voluntary membership of the Fund at the sole discretion of the Regional Council concerned, and the provisions of the Agreement shall *mutatis mutandis* apply to persons admitted to voluntary membership and their employers.
- (3) Every employee for whom membership is compulsory in terms of sub clause (1) of this clause, and every person admitted to voluntary membership in terms of sub clause (2) of this clause, shall -
  - (a) complete the form specified in Annexure A to this Agreement and lodge such completed form with the Secretary of the Regional Council for the Region in which he is employed, within one month after the date on which he enters, re-enters or becomes employed in the Motor Industry;

and for purposes of this paragraph an employee shall be deemed to have re-entered the Motor Industry when he has changed employment from one Region to another;

- (b) when required to do so by the Council, a Regional Council or the Fund, furnish such evidence and information, documentary or otherwise, as may be necessary for purposes of his identity, his membership of the Fund and/or payment or determining of any benefit arising out of such membership.

#### CLAUSE 6 - CONTRIBUTIONS

- (1) Every employee for whom membership of the Fund is compulsory in terms of clause 5(1) or every voluntary member in terms of clause 5(2) of this Agreement, shall contribute 7,5 per cent of his pensionable remuneration to the Fund in respect of each week of employment in the Motor Industry; provided that where an employee receives or is entitled to receive wages for less than 23 hours in any week, no contributions shall be payable by him in respect of such week.
- (2) The contributions specified in sub clause (1) shall, subject to the proviso contained in sub clause (1), be deducted by the employer from every employee's wages on the first pay-day after this Agreement comes into operation, and on each pay-day thereafter.
- (3) Every employer shall contribute and add to the contributions deducted in terms of sub clause (2) an amount equal to 8% of the member's pensionable remuneration.
- (4) The total amount of contributions deducted from the earnings of employees and contributed by employers in terms of sub clause (2) and (3) of this clause shall be paid each month to the Secretary of the Regional Council for the

Region within the area of jurisdiction within which the employer's establishment is situated, and each such payment shall be accompanied by a written statement containing the following details:

- (a) Name, initials and national identification number of each employee;
  - (b) amount of contributions remitted in respect of each employee;
  - (c) the date on which service began or service ended, in the case of employees whose employment began or ended since the details were last submitted.
- (5) Employee and employer contributions (contributions) payable in terms of this clause shall be payable by the employer no later than 30 (thirty) days after of the month immediately following that to which the contributions relate. The employer shall, together with the contributions payable under this clause, submit a statement containing the details referred to in sub clause 4 of this Agreement to the Secretary of the relevant Regional Council.

*Note:*

- (a) The present postal addresses of the Secretaries of the various Regional Councils are as follows:

For Region EC: P.O. Box 7270, Port Elizabeth, 6056

For Region KZNL: P.O. Box 17263, Congella, 4013

For Region FS & NC: P.O.Box 910, Bloemfontein, 9300

For Region Highveld: P.O.Box 2578, Randburg, 2125

For Region Northern: P O Box 2578, Randburg, 2125

For Region WP: P.O.Box 17, Bellville, 7535

- (b) Forms prepared specifically for the furnishing of the details required by this clause may be obtained from the Regional Secretary of the Region

concerned.

- (6) The contributions payable by employers as specified in sub clause (3) shall not be refundable.
- (7) The contributions collected by Regional Councils in terms of this clause shall be paid to the Fund.
- (8) Compound interest on late payments or unpaid amounts and values shall be calculated for the period from the first day of the month following the expiration of the period in respect of which the relevant amounts or values are payable or transferable until the date of receipt by the fund at the rate prescribed...
- (9) Notwithstanding the provisions of this clause an employer who has been discovered in terms of the provisions of the Collective Administrative Agreement between the parties, shall be liable for any amounts due in respect of provident fund contributions, excluding contributions for which the employee is liable in terms of this agreement or any other agreement relating to the provident fund, from commencement of employment in respect of each employee including penalties and interest payable to the provident fund in terms of the PFA in respect of such employee. This provisions of this clause are subject to the respective employee electing in writing within 30 days of the discovery referred to sub clause (b) above whether to enforce or the waive compliance with the provisions of this clause by the employer.

#### **CLAUSE 7 - ADMINISTRATION**

- (1) The Fund shall be administered in accordance with rules approved by the Financial Services Board; which rules shall not be inconsistent with the provisions of this Agreement, the Act or of the PFA, and a copy of the rules and details of any amendments to them shall be lodged with the Financial Services Board.

**CLAUSE 8 – LIQUIDATION OR DISSOLUTION**

- (1) In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Parties may appoint the Company, to perform the functions of the Council in respect of this Agreement. If the Company is unwilling or unable to discharge such duties the Financial Services Board shall appoint a trustee or trustees to perform the Council's function. The Company or the trustee(s) so appointed shall have all the powers vested in the Council for purposes of this Agreement.
  
- (2) In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Financial Services Board may appoint the Company to perform the functions of the Council in respect of this Agreement. If the Company is unwilling or unable to undertake the performance of such functions, the Financial Services Board may appoint a trustee or trustees to perform the Council's function. The Company or the trustee(s) so appointed shall have all the powers vested in the Council for purposes of this Agreement.
  
- (3) In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Registrar of Labour Relations may appoint the Company to perform the functions of the Council in respect of this Agreement. If the Company is unwilling or unable to undertake the performance of such functions, the Registrar of Labour Relations may appoint a trustee or trustees to perform the Council's function. The Company or the trustee(s) so appointed shall have all the powers vested in the Council for purposes of this Agreement.

**CLAUSE 9 - AGENTS**

The Council or any Regional Council may appoint one or more specified persons as

agents to assist in giving effect to the terms of this Agreement, and it shall be the duty of every employer and every employee to permit such persons to enter such premises, institute and complete such enquiries and to examine such documents, books, wage sheets, time sheets and pay tickets, question such individuals and to do all such acts as may be necessary for the purposes of ascertaining whether the provisions of this Agreement are being observed, and no person shall make a false statement to such agent in connection with his investigations.

#### CLAUSE 10 – EXEMPTIONS

- (1) Subject to the provisions of the Act and the PFA, exemption from any of the provisions of this agreement may be granted by the Council or Regional Councils, to any party on application.
- (2) Application for exemption shall be made, in a form prescribed by the Council, to the General Secretary of the Council or the Secretary of the Regional Council within whose area the applicant operates or is employed.
- (3) The Regional Council or the Council, as the case may be, shall subject to the provisions of the Act and PFA, fix the conditions subject to which such exemptions shall be valid, and may, if it deems fit, after one week's notice has been given, in writing, to the person(s) concerned, withdraw any license of exemption.
- (4) The secretary of the Regional Council or the Secretary of the Council, as the case may be, shall issue to every person granted exemption, a license signed by him setting out -
  - (a) the name of the person concerned;
  - (b) the provisions of this Agreement from which exemption is granted;
  - (c) the conditions subject to which such exemption is granted; and

- (d) the period during which the exemption shall be valid.
- (5) In respect of establishments registered under Chapters II or III of this Agreement, the following exemptions procedure applies:
- (a) An employer that applies for an exemption in order to pay a lesser wage increase or to be exempted from paying on actuals shall complete the wage exemption application form available on request from the local Regional Councils.
  - (b) The employer shall consult its employees on the employer's intention to apply for an exemption and the application for exemption must contain details and proof of the consultation process.
  - (c) The employer, in the application shall furnish all relevant financial information supporting the motivation for the exemption applied for.
  - (d) The employer shall lodge the application for exemption with the local Regional Council and the employer shall specify that it is a Chapter II or III application for an exemption and the employer shall specify the exact nature of the exemption applied for as prescribed in paragraph (5)(a) of this clause.
  - (e) Any application for exemption made to the Council or Regional Council, as the case may be, shall be considered in accordance with the following exemption criteria:
    - (i) the written substantiation and motivation submitted by the applicant;
    - (ii) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;

- 
- (iii) the scope of exemption required;
  - (iv) the infringement of basic conditions of employment rights;
  - (v) the fact that a competitive advantage is not created by the exemption;
  - (vi) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
  - (vii) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Motor Industry;
  - (viii) any existing special economic or other circumstances which warrant the granting of the exemption;
  - (ix) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
  - (x) any recommendation from the Council.
- (f) The Council or the Regional Council, as the case may be, shall make a decision on the application for an exemption within 30 days from the date upon which the application was lodged with them.
- (6) The Secretary of the Regional Council or the Secretary of the Council, as the case may be, shall -
- (a) number consecutively all licenses issued;

- (b) retain a copy of each licenses issued; and
  - (c) where exemption is granted to an employee, forward a copy of the license to the employer concerned.
- (7) The Secretary of the Regional Council or the General Secretary, as the case may be, shall issue to every person granted a license, a letter of authority signed by him setting out, read with the changes required by the context, the information referred to in sub clauses (5) and (6) above.

#### CLAUSE 11 - DISHONOURED CHEQUES

Subject to the provisions of clause 6 of this agreement, whenever an employer pays any sum of money which is due to the Council in terms of this Agreement, in any manner other than in cash and such payment is not honored for any reason whatsoever, then and in such event a penalty shall be payable by the employer to the Council, which penalty shall be equal to 1,5 per cent to 2 per cent as determined by the Council in its sole discretion, of the amount of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.

#### CLAUSE 12 - INDEPENDENT BOARD

- (1) In terms of section 32(3)(e) of the Act, the Council hereby establishes an independent body, to be known as the Independent Board to consider appeals from non-parties against a refusal of a non-party's application for exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council. The following provisions shall apply to the Independent Board:
- (a) The Council shall appoint 6 (six) independent persons (Members) to constitute the Independent Board, for the avoidance of doubt, such persons shall not be representative, office bearer or official of the council

or party to the Council or any of its collective bargaining agreements. The independent persons shall be appointed for a period of 12 (twelve) months and shall possess *inter alia* the following qualities:

- (i) the ability to be objective, independent and impartial;
- (ii) sound decision-making skills;
- (iii) leadership qualities, particularly in respect of exercising sound judgment;
- (iv) be a person in whose impartiality and integrity the public can have confidence;
- (v) understand and comply with confidentiality requirements;
- (vi) working knowledge and experience of labour and collective bargaining matters; and
- (vii) knowledge and understanding of judicial / quasi-judicial processes.

(b) The Council shall determine such other terms of appointment of Members of the Independent Board subject to the provisions of the Labour Relations Act.

(2) Any non-party employer may lodge an appeal with the Independent Board against the Council's or Regional Council's decision, as the case may be, to refuse to grant an application for an exemption from the provisions of a published collective agreement and the withdrawal of such an exemption by the Council, in which event the following procedure shall apply:

- (a) An appeal shall be in writing and shall be addressed to the General Secretary of the Council or the Secretary of the Regional Council, as the case may be, for consideration by the Independent Board.
  - (b) All appeals lodged by non -parties shall be considered by the Independent Board with due regard to the Exemption criteria set out in sub clause (7) below.
  - (c) All appeals shall be substantiated or motivated by the applicant and shall include the following details:
    - (i) the period for which the appeal is required;
    - (ii) the Agreement and clauses or sub clauses of the Agreement from which appeal is required;
    - (iii) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives; and the responses resulting from such consultation, either in support of or against the application, are to be included with the appeal.
- (3) The Independent Board may, having regard to the individual merits of each appeal, grant or refuse the appeal if -
- (a) it does not undermine the agreement;
  - (b) it is fair to the employer or his employees and other employers and employees in the Industry.
- (4) The Independent Board shall deal with all appeals within 30 days of the date on which the appeal was submitted.

- 
- (5) Once the Independent Board has granted an appeal, it must issue a certificate and advise the applicant(s) accordingly within 14 days of the date of its decision.
- (6) When the Independent Board dismisses or dismisses part of an appeal it shall advise the applicant(s) within 14 days of the date of such decision.
- (7) *Exemption criteria:* The Independent Board must consider all appeals with reference to the following criteria:
- (a) the written substantiation and motivation submitted by the applicant;
  - (b) the extent of consultation with and the petition for or against granting the appeal as provided by employers or employees who are to be affected by the appeal if granted;
  - (c) the scope of appeal required;
  - (d) the infringement of basic conditions of employment rights;
  - (e) the fact that a competitive advantage is not created by the appeal ;
  - (f) the viewing of the appeal from any employee benefit fund or training provision in relation to the alternative compatible *bona fide* benefit or provision, including the cost of the employee, transferability, administration management and cost, growth and stability;
  - (g) the extent to which the proposed appeal undermines collective bargaining and labour peace in the Motor Industry;
  - (h) any existing special economic or other circumstances which warrant the granting of the appeal ;

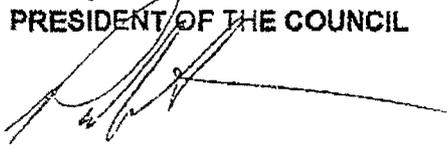
- (i) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy; and
- (j) any recommendation from the Council.

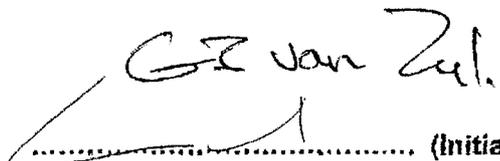
### **CLAUSE 13 - RESOLUTION OF DISPUTES**

- (1) For the purpose of this Agreement a "dispute" means any dispute about the application, interpretation or enforcement of this Agreement, or any other collective agreements entered into by the parties to the Council.
- (2) Any such dispute shall be referred to the Council in the form specified by the Council. This provision does not apply when the Council makes use of the procedure set out in sub-paragraph (4).
- (3) If the Council fails to resolve the dispute through conciliation and the dispute remains unresolved, it shall be referred for arbitration to the MIBCO-Dispute Resolution Centre in terms of section 52 of the Act. The arbitrator shall have the power to decide upon the procedure to be followed at the arbitration hearing in terms of section 138 of the Act, and be entitled to make an award in respect of the parties' arbitration cost in terms of section 138 (10) of the said Act.
- (4) The provisions of this clause stand in addition to any other legal remedy through which the Council may enforce a collective agreement.
- (5) The arbitrator's decision shall be final and binding subject to the parties' right of review to the Labour Court.
- (6) Any other dispute shall have the same meaning as defined in the Act and be dealt with in terms of section 51 of the said Act.

SIGNED AT RANDBURG, ON BEHALF OF THE PARTIES, THIS 13 DAY OF  
JANUARY 2020

  
..... (Initial and Surname)  
PRESIDENT OF THE COUNCIL

  
..... (Initial and Surname)  
VICE-PRESIDENT OF THE COUNCIL

  
..... (Initial and Surname)  
GENERAL SECRETARY

**ANNEXURE A TO THE AUTO WORKERS' PROVIDENT FUND AGREEMENT  
APPLICATION FOR REGISTRATION AS A MEMBER**

Fund No .....

Identity No .....

Surname .....

First names .....

Date of birth .....(year) ..... (month) .....(day)

Sex (state male or female).....

Employed by (employer's name and address)

.....  
.....

Occupation

.....

Applicant's private address

.....  
.....

Where you employed in the Motor Industry previously?

.....

If the answer is "Yes", state name and address of employer

.....

I, the undersigned, hereby apply to be registered as a member of the Auto Workers' Provident Fund and agree to abide by the provisions of the Fund's rules in force from time to time.

I nominate as my beneficiary in the event of my death:

First names

(Mr/Mrs/Miss).....

Surname.....

Relationship (state: wife, husband, father, mother, son, daughter, as the case  
maybe)

.....

Address:

.....

.....

Identity No. of beneficiary (where applicable)

.....

Date.....

*(Member's signature)*

**ANNEXURE B TO THE AUTO WORKERS' PROVIDENT FUND AGREEMENT  
APPLICATION FOR REGISTRATION AS A VOLUNTARY MEMBER**

Fund No .....

Identity No .....

Surname .....

First names .....

Date of birth .....(year) ..... (month) .....(day)

Sex (state male or female).....

Employed by (employer's name and address)

.....  
.....

Occupation .....

If an employer, state full name of business

.....  
.....

Status of employer (e.g. owner, director, partner, member?)

.....

If the answer is "Yes", state name and address of employer

.....

I, the undersigned, member of .....

Hereby apply to be registered as a member of the Auto Workers' Provident Pension Fund and agree to abide by the provisions of the Fund Rules in force from time to time.

Where you employed in the Motor Industry previously? .....

If answer is "Yes", state name and address of employer and your Fund No

.....

Date.....

*(Member's signature)*