

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE ELECTRICAL INDUSTRY OF SOUTH AFRICA.

NATIONAL PENSION AND PROVIDENT FUNDS COLLECTIVE AGREEMENT.

in accordance with the provisions of the Labour Relations Act, 66 of 1995,
made and entered into by and between the :

Electrical Contractors' Association (South Africa)

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

South African Equity Workers' Association,

(hereinafter referred to as the "employees" or the "trade unions"), of the other
part,

being the parties to the National Bargaining Council for the Electrical
Industry of South Africa.

1. SCOPE OF APPLICATION.

- (1) The terms of this Agreement shall be observed by
 - (a) all employers and employees in the Electrical Industry who are members of the employers' organisation and trade unions, respectively,
 - (b) and who are engaged or employed in the Industry in the following areas :
 - (i) In the province of the Transvaal and the Magisterial Districts of Sasolburg and Bloemfontein as they existed at 19 June 1985;
 - (ii) in the Magisterial Districts of Barkley West, Gordonia, Hartswater, Kuruman and Postmasburg as they existed at 18 October 1989;
 - (iii) in the Province of the Free State (excluding the Magisterial Districts of Sasolburg and Bloemfontein) as it existed at 19 June 1985;
 - (iv) in the Magisterial Districts of Aberdeen, Adelaide, Albert, Aliwal North, Barkly East, Bedford, Britstown, Carnavon, Cathcart, Colesberg, Cradock, De Aar, Elliot, Fort Beaufort, Fraserburg, Graaff-Reinet, Hankey, Hanover, Hofmeyr, Indwe, Jansenville, King William's Town, Kirkwood, Komga, Lady Grey, Maclear,

Middelburg (Eastern Cape), Molteno, Murraysburg, Noupoort, Pearston, Philipstown, Prince Albert,

Richmond (Northern Cape), Somerset East, Sterkstroom, Steynsburg, Steytlerville, Stutterheim, Tarka, Venterstad, Victoria West, Williston, Willowmore and Wodehouse as they existed at 13 April 1995;

- (v) in the Magisterial Districts of Albany, Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Knysna, Ladismith, Mossel Bay, Oudtshoorn, Port Elizabeth, Queenstown, Riversdale, Uitenhage, Uniondale as they existed at 24 November 1995;
- (vi) in the Magisterial Districts of the Cape, Wynberg (including that portion of the Magisterial District of Somerset West which, prior to 9 March 1973, Government Notice No. 173 of 9 February 1973, fell within the Magisterial District of Wynberg), Simonstown, Goodwood and Bellville; in those portions of the Magisterial Districts of Malmesbury and Stellenbosch which, prior to the publication of Government Notices Nos. 171 of 8 February 1957 and 283 of 2 March 1962, respectively, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch but which, prior to 2 March 1962, fell within the Magisterial District of Bellville and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville;
- (vii) In the Province of KwaZulu-Natal, excluding any portions of that area falling within the former self-governing territory of KwaZulu as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993(Act No. 200 of 1993);
- (viii) The Magisterial District of East London;

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall-

- (a) apply to employees engaged by employers in the categories specified in clauses 7(4), 8(3)(a) and 9(3)(a),(b) of this Agreement as may be amended from time to time; and
- (b) not apply to any employee who at the date of coming into operation of this Agreement is, or thereafter becomes, a participant in or a member of any other fund providing benefits, which fund was in existence on the said date and in

which the employer of that employee was on the said date a participant, or to the employer of that employee during such period only as such other fund continues to operate and both employer and employee participate therein, if in the opinion of the Council the benefits of such other fund are, on the whole, not less favourable than the benefits provided by this Fund: and which in respect of the pension/provident funds, provides solely for payment of benefits on death in which case such fund shall not be deemed to be a pension or provident fund for purposes of this agreement.

- (3) In the event of the expiry of the Main Agreement by the effluxion of time or cessation for any other cause during the currency of this agreement the classes of work and minimum rates of pay prescribed in the said main agreement shall be deemed to be the classes of work and minimum rates of pay for purposes of this Agreement.
- (4) The provisions of clauses 1(1)(a) and (2) of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade unions, who entered into this Agreement.

2. PERIOD OF OPERATION OF AGREEMENT.

This Agreement shall come into operation on a date to be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995 and shall remain in force until 31 May 2012.

3. DEFINITIONS.

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meanings as in the Act, and any reference to an act shall include any amendment of such act ; further, unless inconsistent with the context -

“Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995) ;

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

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

“Area C” means the Magisterial Districts of Barberton, Belfast, Bloemfontein, Bloemhof, Carolina, Christiana, Coligny, Delareyville, Eerstehoek, Ellisras, Groblersdal, Koster, Letaba, Lichtenburg, Lydenburg, Marico, Messina, Pilgrim’s Rest 1 and 2, Phalaborwa, Potgietersrus (only the district north of the MelkRiver), Schweizer-Reneke, Soutpansberg, Swartruggens, Thabazimbi, Ventersdorp, Waterberg, Waterval Boven and Wolmaransstad, and the Municipal Area of Warmbaths;

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

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

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

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

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

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

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

“Area K” means the Province of KwaZulu-Natal, excluding any portions of that area falling within the former self-governing territory of KwaZulu, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 and excluding those Magisterial Districts in the Province of Kwa Zulu- Natal which are included in the definition of “Area J”;

“Area L” means the Magisterial District of East London.

“Building Industry” without in any way limiting the ordinary meaning of the expression, means the industry in which employers and their employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings and structures and/or making articles for use in erecting, completing or altering buildings and structures, whether the work is performed, the material is prepared, or the necessary articles

are made on the sites of the buildings or structures or elsewhere, and includes all work executed or carried out by persons who are engaged in the trades, activities or subdivisions in the Building Industry, including electrical installation, which means electrical fitting and wiring and operations incidental to the activities of an employer in connection with erecting of buildings, including demolishing of buildings;

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

“Electrical Engineering Industry” means the industry concerned with

- (a) the manufacture and/or assembly from component parts of electrical equipment, namely generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical

lighting, heating, cooking, refrigeration and cooling equipment, transformers, furnace equipment, signalling equipment, radio or electronic equipment, including monitors and other equipment utilising the principles used in the operation of radio and electronic equipment, the latter equipment includes, but is not limited to, television and incandescent lamps, and electric cables and domestic electrical appliances, and further includes the manufacture of component parts of the aforementioned equipment,

- (b) subject to paragraph (c) below, the installation, maintenance, repair and servicing of the equipment referred to in paragraph (a) above, but does not include the activities of the Electrical Industry,
- (c) the installation, maintenance, repair and servicing of television sets and monitors, excluding the installation, maintenance, repair and servicing of monitors primarily intended for use in accounting and/or data processing and/or business procedures;

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

- (a) the design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent part of buildings and/or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material is prepared on the site of the buildings or structures or elsewhere,
- (b) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the purpose for which a building and/or structure is used, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere,
- (c) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the construction, alteration, repair and maintenance of buildings and/or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere,
- (d) the design, preparation, erection, installation, repair and maintenance of all electrical equipment not covered by (a), (b) or (c) above, including any wiring, cable jointing and

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

(e) the installation and/or maintenance and/or repair and/or servicing of overhead lines and underground cables associated with domestic and/or industrial and/or commercial installations and/or street lighting, and for the purposes of this definition-

(i) **electrical equipment** includes:

(aa) electrical cables and overhead lines, and

(ab) generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, primary and secondary cells and batteries, transformers, furnace equipment, radio sets and allied electrical apparatus, signalling equipment and other equipment utilising the principles used in the operation of radio or electronic equipment,

(ii) design, preparation, erection, installation, repair and maintenance does not include -

(aa) the manufacture, installation, repair and/or maintenance of lifts and escalators,

(ab) the manufacture and/or assembly by the manufacturer of the aforementioned electrical equipment and/or components thereof,

(ac) the wiring of or installation in motor vehicles of lighting, heating or other equipment or fixtures, whether permanent or otherwise,

(ad) the manufacture, repair and servicing of motor vehicle batteries, the manufacture of lead-acid batteries and the repair, maintenance and installation of such batteries when performed by the manufacturers thereof, and

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

Provided that - the Electrical Industry, as defined above, shall not include the Iron, Steel, Engineering and Metallurgical Industry, the Local Authority Undertaking and the Building Industry ;

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

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

“establishment” means any place where the Industry or any part thereof, as herein defined, is carried on, including the place where the employer normally carries on his business and where his wage records are kept.

"Fund year" means the year ending on 31 December ;

“Iron, Steel, Engineering and Metallurgical Industry” means (subject to the provisions of any Demarcation Determinations made in terms of section 76 of the Labour Relations Act, 1956, and section 62 of the Labour Relations Act, 1995), the industry concerned with the production of iron and/or steel and/or the processing and/or recovery and/or refining of metals (other than precious metals) and/or alloys from dross and/or scrap and/or residues; the maintenance, fabrication, erection or assembly, construction, alteration, replacement or repair of any machine, vehicle (other than a motor vehicle) or article consisting mainly of metal (other than precious metals) or parts or components thereof and structural metal work, including steel reinforcement work; the manufacture of metal goods principally from such iron and/or steel and/or other metals (other than precious metals) and/or alloys and/or the finishing of metal goods; the building and/or alteration and/or repair of boats and/or ships, including the scraping, chipping and/or scaling and/or painting of the hulls of boats and/or ships; and general woodwork undertaken in connection with ship repairs, and includes the Electrical Engineering Industry;

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

“Main Agreement” means the Main Collective Agreement of the National Bargaining Council for the Electrical Industry of South Africa as amended and extended from time to time in which wages and other conditions of service are specified;

“member” means an employee for whom membership of the Funds is provided in terms of clauses 7(4), 8(3) and 9(3);

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

“Region A1” means the Magisterial District of Bloemfontein in the Province of the Free State;

“Region A2” means the Magisterial District of Port Elizabeth in the Province of the Eastern Cape;

“Region B” means the Magisterial District of East London in the Province of the Eastern Cape;

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

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

“Rules” means the rules referred to in clauses 7(7)(a), 8(6) and 9(6)(a) of this Agreement.

4. REGISTRATION OF EMPLOYERS.

The provisions of the Main Agreement dealing with the registration of employers in the Industry shall be applicable to this Agreement.

5. DESIGNATED AGENTS.

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

6. EXHIBITION OF AGREEMENT.

Every employer shall keep in his establishment, in a place readily available a legible copy of this Agreement.

7. PENSION AND PROVIDENT FUNDS (Regions A, A1, A2 and B only).

- (1) The Fund established under Government Notice 266 of 15 February 1963, and known as the "Electrical Contracting Industry Pension Fund" is hereby continued, and the Fund known as the Electrical Contracting Industry Provident Fund (both hereinafter referred to as the "Fund") is hereby established by the Council.
- (2)(a) The Fund shall, subject to the provisions of subclause (7), consist of moneys accruing from contributions prescribed in subclause (5) of this Clause.
- (b) The Fund shall also consist of moneys standing to the credit of the members of the Fund at the date of this Agreement.
- (3) The objects of the Fund shall be to provide members with benefits upon withdrawal, permanent disability or retirement from the Industry, and beneficiaries of deceased members with death and funeral benefits.
- (4) Membership of the Fund shall be compulsory for all master installation electricians, installation electricians, electrical testers for single phase, electricians, artisans, domestic appliance mechanics, domestic electrical installers, Elconops 3, Elconops 2, Elconops 1, drivers, electrical assistants, general workers, apprentices and learners.
- (5)(a) The total weekly contribution payable to the Fund shall be determined by adding 20 per cent to the prescribed wage of each employee for whom contributions are payable in terms of subclause (4).
- (b) Every employer shall pay 12,5% of the amount determined in subclause (5)(a) above to the Secretary of the Council, 38 Stiemens Street, Braamfontein, Johannesburg, not later than the 15th

day of each month for the preceding month, in respect of such employees together with such form as specified by the Council.

- (c) Every employer shall be entitled to deduct 50% of the contribution referred to in subclause (5)(b) above, from the weekly wages, excluding overtime, of the employee in respect of whom the contribution is made.
 - (d) For the purposes of this clause a week shall constitute not less than three shifts actually worked for one employer in the Industry during any one week from Monday to Friday, (inclusive).
 - (e) Contributions to the Pension and/or Provident Funds for any member shall be remitted for a maximum of three weeks during the member's annual leave period as provided for in the Main Agreement.
 - (f) All contributions received by the Council in terms of this clause shall be paid to Sanlam Employee Benefits.
 - (g) Notwithstanding the provisions of any other clause in this Agreement or the Main Agreement the contributions referred to in subclause (5)(a) shall be based on a working week of 42½ (forty two and one half) hours.
- (6)(a) Benefits payable to a member of the Fund shall be as prescribed in the rules.
- (b) Benefits accruing under the Fund shall not be transferable and may not be ceded or pledged : Provided that any member may nevertheless nominate a beneficiary to receive the proceeds of his policy in the event of his death prior to retirement.
- 7(a) The Fund shall be administered in accordance with Rules approved by the Council. Such rules shall not be inconsistent with this Agreement or the provisions of the Act and a copy of the rules and any amendments thereto shall be lodged with the Director General of Labour.
- (b) In the event of the Council being unable to perform its duties, the Registrar may appoint trustees to perform the Council's functions. The trustees so appointed shall have all the powers vested in the Council for the purpose of this Agreement. Payment (if any) for the services rendered by the trustees shall form a charge against the general funds of the Council.

7. PENSION FUND (Region C only).

- (1) The Electrical Industry KwaZulu Natal Pension Fund and the Supplementary Scheme (hereinafter referred to as the "Pension

Fund” or the “Fund”), originally established in terms of Government Notice No. R2043 of 13 October 1978, are hereby continued. The Pension Fund has been constituted from the amalgamation of the former Electrical Industry (KwaZulu Natal) Pension Fund and the Supplementary Scheme and further established under Government Notice R1407 of 6 November 1998, and known as the Electrical Industry KwaZulu-Natal Pension Fund (hereinafter referred to as the “Fund”) is hereby continued and shall consist of;

- (c) moneys accruing from contributions prescribed in subclause (4) of this Part; and
 - (b) any other sum to which the Pension Fund may be or may become entitled.
- (2) The objects of the Pension Fund shall be to provide members with death and retirement benefits through the Council securing the best conditions possible.
- (3)(a) Membership of the Fund shall be compulsory for the following categories of employees from their dates of engagement :

- Master installations electricians;
- installation electricians;
- electrical testers for single-phase;
- electricians, domestic appliance mechanics and other artisans;
- domestic electrical installers;
- elconops 3
- elconops2
- elconops1
- domestic appliance repairers
- drivers of a vehicle, of which the unladen mass is-
 - (a) less than 3 500 kg;
 - (b) between 3 501 kg and 9 000 kg;
 - (c) 9 001 kg and over;
- apprentice stage 1;
- apprentice stage 2;
- apprentice stage 3;
- apprentice stage 4;
- electrical assistants;
- general workers.

- (b)(i) Membership of the Fund shall be compulsory for all electrical assistants, general workers and Elconops 1 after 13 weeks service in the Industry: Provided that if an employee can supply proof of previous employment in this Industry, contributions to the Fund shall commence from the date of engagement.

- (ii) However, during the first 13 weeks service, the employees shall be covered for death benefits, the cost of which shall be borne by the employer.
- (c) Any employer may, in respect of his employees employed in the Industry whose wages are not specified in the Main Agreement but who otherwise comply with the provisions of the Agreement, by mutual agreement, apply to the Fund to accept contributions from himself and such employees (or any of them) in accordance with the provisions of subclause 4 of this Part. Upon receipt of such application, the Council may agree to receive contributions from that employer and the provisions of the Agreement shall thereupon mutates mutandis apply to the employer and the employees concerned and be observed by them as though clause 1 of Part 1 applied.
- (4)(a) The Council shall determine and advise every employer of the weekly amount payable to the Pension Fund in respect of each category of employee, which amount shall be calculated at the undermentioned percentage of the prescribed wage payable in terms of the Main Agreement, taken to the next higher 10 cents:

Contribution at percentage of prescribed weekly wage :14%.

In respect of electrical assistants, general workers and Elconops 1 in the first 13 weeks of service in the Industry, the Council shall determine and advise every employer of the weekly amount payable in respect of the death benefit cover.

- (b) Every employer shall pay the amount determined in terms of subclause (a) to the Council in respect of such employees: Provided that the employer may deduct 40 per cent of the amount payable from the remuneration of such employees.
- (c) The amount payable each month in terms of this clause shall be forwarded to the Secretary of the Council, 320 Smit Street, Durban 4000, by not later than the 15th day of the month immediately following, together with a statement in such form as may from time to time be specified by the Council.
- (d) Contributions calculated in accordance with the provisions of subclause (4)(a) may, at the discretion of the employer, be deducted from the earnings of those employees falling under the provisions of subclause (3)(e) of this Part at their written request: Provided that such employees are receiving a wage that is more than the specified minimum payable to a general worker as scheduled in the Main Agreement.

- (e) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid calculated at the rate of 1.75% cent per month or part thereof from such 15th day until the day upon which payment in cash is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.
- (5)(a) Benefits payable to a member of the Pension Fund shall be as specified in the rules of the Fund for which provision is made in clauses 6,7,8, 9 and 10 of the said rules.
- (b) Benefits accruing under the Pension Fund shall not be transferable and may not be ceded or pledged: Provided that any member may nevertheless nominate a beneficiary to receive the proceeds of his policy in the event of his death prior to retirement.
- (6) The Pension Fund shall be administered in accordance with rules approved by the Council. Such rules shall not be inconsistent with this Agreement or the provisions of the Act and a copy of the rules and any amendments thereto shall be lodged with the Director-General of Labour.
- (7) 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 trustees to perform the Council's functions.
The trustees so appointed shall have all the powers vested in the Council for the purposes of this Agreement. Payment (if any) for the services rendered by the trustees shall form a charge upon the general funds of the Council.

8. PENSION AND PROVIDENT FUNDS (Region D only).

- (1) The Electrical Contracting Section (Cape) Provident Fund and the Electrical Contracting Section (Cape) Pension Fund (hereinafter referred to as the "Pension and Provident Funds: or the "Fund") originally established on 20 March 1997 in terms of Government Notice No. R431 and 3 December 1971 in terms of Government Notice No. R2169 respectively, is hereby continued and shall consist of -
 - (a) moneys accruing from contributions as prescribed in this Agreement; and
 - (b) any other sum to which the Fund may be or may become entitled.

- (2) The objects of the Fund shall be to provide members with death and retirement benefits.
- (3)(a) Electrical assistants, general workers, Elconops 1 and drivers, or persons admitted to membership of the Provident Fund under rule 3 and who continue to be members in terms thereof, under the age of 65 years, who are employed in the Electrical Contracting Section of the Electrical Contracting and Servicing Industry (Cape) shall be members of the Provident Fund.
- (b) Master installation electricians, installation electricians, electrical testers for single phase, electricians, artisans, emerging electrical installers, apprentices, Elconops 3 and Elconops 2 or persons admitted to the Pension Fund under rule 3 and who continue to be members in terms thereof, under the age of 65 years, who are employed in the Electrical Contracting Section of the Electrical Industry shall be members of the Pension Fund.
- (4)(a) Each employer shall each week deduct from the wages of his employees who are members of the Pension and the Provident Funds an amount equivalent to 7,5% of the actual wages earned, excluding overtime. To the amount thus deducted the employer shall add an equal amount and forward to the Secretary of the Council, 31 Cook Street, Parow, Cape Town, 8001, not later than the 15th day of each month for the month preceding, the total sum together with such form as may be specified by the Management Committee from time to time.
- (b) For the purposes of this subclause a week shall constitute not less than three shifts actually worked for one employer in the Industry during any one week from Monday to Friday (inclusive).
- (c) Contributions to the Pension and/or Provident Funds for any member shall be remitted for a maximum of three weeks during the member's annual leave period as provided for in clause 16(1) of the Main Agreement.
- (d) All contributions received by the Council in terms of this subclause shall be paid to Absa Consultants and Actuaries.
- (5)(a) Benefits payable to a member of the Pension and the Provident Funds shall be as specified in the rules.
- (b) Any benefits accruing under either the Pension or the Provident Funds shall not be capable of being ceded or pledged: Provided that a member may nevertheless, nominate a beneficiary to

receive the proceeds of his policy in the event of his death prior to retirement.

- (6)(a) The Pension and the Provident Funds shall be administered by the Management Committee appointed in terms of subclause (6)(c), in accordance with the rules approved by the Council. Such rules shall not be inconsistent with this agreement or the provisions of the Act and a copy of the rules and any amendments thereto shall be lodged with the Director-General of Labour.
 - (b) In the event of the dissolution of the Council or in the event of it ceasing to function during the currency of this agreement, the Funds shall continue to be administered by the Management Committee. In the event of the Management Committee being unable or unwilling to perform its duties the Council shall approach the Labour Court in terms of section 59 of the Act as soon as is reasonably practicable after the expiration of the agreement in place at that time. The Management Committee so appointed shall have all the powers vested in the Council for the purposes of this agreement. Payment (if any) for the services rendered by the Management Committee or the liquidators shall form a charge upon the general funds of the Council.
 - (c) The Council shall appoint the Management Committee from among the representatives of the employers and the employees on the Council or their alternates.
 - (d) The Management Committee appointed in terms of the preceding subclause shall consist of an equal number of representatives of employers and employees and shall function as the Council may determine.
 - (e) An alternate may be appointed by the Council for each member of the Management Committee under the same terms and conditions as such member.
 - (f) The provisions of the Council's constitution relating to the election of a chairperson and a vice-chairperson, their period of office and the calling and the conduct of meetings of the Council shall mutates mutandis apply in the case of the Management Committee.
- (7)(a) Subject to the general direction of the Council and to the terms of this clause, the Management Committee shall have full control of the affairs of the Fund and its administration.
 - (b) The Management Committee shall have power to -

- (i) engage staff to assist in the administration of the Fund, and to fix their remuneration and define their duties;
 - (ii) empower its chairperson and/or vice-chairperson and its secretary or another official to sign jointly on behalf of the Fund any agreements and contracts which it has approved;
 - (iii) take steps to enforce payment of contributions of any sum due to the Fund.
- (8) The Management Committee shall cause minutes to be kept of proceedings of all meetings and copies of such minutes to be transmitted to the Council.

9. EXEMPTIONS.

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

substantiation, information or verbal representations are considered necessary to decide on the application for exemption.

- (7) Once the Council has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.
- (8) When the Council decides against granting an exemption or part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason or reasons for not granting an exemption.
- (9) Exemption criteria -
The Council shall consider all applications for exemption with reference to the following criteria :
 - a) The written and verbal substantiation provided by the applicant;
 - b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
 - c) the terms of the exemption;
 - d) the infringement of basic conditions of employment rights;
 - e) the fact that a competitive advantage may not be created by the exemption;
 - f) the effect of the exemption on any employee benefit fund or training provision in relation to the alternative comparative bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability;
 - g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Electrical Industry;
 - h) any existing special economic or other circumstances which warrant the granting of the exemption;
 - i) reporting requirements by the applicant and monitoring and re-evaluation processes; and

- j) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.
- (10) In terms of section 32 of the Act, the Council hereby establishes an Independent Appeal body to hear and decide as soon as possible, any appeal brought against-
- (a) the Council's refusal of an application for exemption from the provisions contained in this Agreement;
 - (b) the withdrawal of such exemption by the Council.
- (11) The Secretary shall, upon receipt of a written application for an appeal, forward the application together with the original application for exemption and all supporting documents to the Independent Appeal body for a decision.
- (12) The Independent Appeal body shall consider all applications with reference to the criteria set out in subclause (9) above and shall ensure that the applications are not in conflict with the primary objects of the Act.

11. INTERPRETATION, APPLICATION OR ENFORCEMENT.

- (1) Any dispute arising which relates to the interpretation, application or enforcement of this Agreement shall be processed in terms of this clause.
- (2) A party wishing to lodge such a dispute shall notify the Council in writing, setting out the details of the dispute and having served a copy of such notification on all other parties to the dispute. Proof of such service shall be provided to the Council, and may include service by fax, hand or registered post. The Council shall arrange a meeting of the parties to the dispute within 10 working days of the dispute having been referred in terms of this clause, unless otherwise agreed between the parties.
- (3) If the dispute is not resolved at the meeting referred to in subclause (2) above, it shall be referred to arbitration in terms of this clause, unless otherwise agreed between the parties. Arbitration in terms of this clause shall be of an expedited nature and the Council shall appoint an arbitrator who is available to commence the arbitration within 10 working days and the arbitration shall take place accordingly.

The arbitrator shall be granted the power to determine the procedure to be followed at the arbitration and to regulate any other matter incidental thereto.

The arbitrator shall normally be required to make a determination within 5 working days of the completion of the hearing.

- (4) Subject to subclause (3) any arbitration in terms of that clause shall be in accordance with clause 29.

12. CONCILIATION.

- (1) Any referral to conciliation in terms of this dispute procedure shall be referred in terms of this clause. Subject thereto, any conciliation proceedings shall be regulated by the Act.

- (2) The Council shall establish a panel of conciliators, to whom matters shall be allocated at the discretion of the Secretary of the Council: Provided that -

(a) in the event of the Council having a direct interest in any dispute being processed, it shall be conciliated by a member of the panel who is independent of the Council; and

(b) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.

- (3) Any conciliator appointed in terms of this clause shall have the powers granted to a commissioner who is empowered to conciliate in terms of the Act.

Any conciliator so appointed shall determine a process to attempt to resolve the dispute, which may include -

(a) mediating the dispute; or

(b) conducting a fact-finding exercise; or

(c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.

- (4) In any conciliation proceedings, a party to the dispute may appear in person or be represented by a representative of his choice.

- (5) By not later than the end of the 30-day period calculated from the appointment of the conciliator, or any further period agreed between the parties, the conciliator shall provide all parties to the dispute with a copy of a certificate stating whether or not the dispute has been resolved : Provided that the conciliator may prior to the expiry of this period confirm that conciliation has failed, in the event that he believes no further purpose would be gained by continuing with the process.