GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 356 **17 May 2013**

LABOUR RELATIONS ACT, 1995

MOTOR FERRY INDUSTRY BARGAINING COUNCIL OF SOUTH AFRICA: EXTENSION TO NON-PARTIES OF THE MAIN COLLECTIVE AGREEMENT

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) read with section 32 (3)(b) and (c) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Motor Ferry Industry Bargaining Council of South Africa 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 ……**27 May 2013**…… and for the period ending 31 December 2014.

MN OLIPHANT

MINISTER OF LABOUR

No. R. 356 **17 Mei 2013**

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YOKUTHUTHWA KWEZIMOTO: UKWELULELWA KWESIVUMELWANO ESIYINGQIKITHI SABAQASHI NABASEBENZI KULABO ABANGEYONA INGXENYE YASO

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe Wezabasebenzi ngokwesigaba 32(2) sifundwa nesigaba 32(3)(b) kanye no (c) soMthetho Wobudlelwano Kwezabasebenzi ka-1995, ngazisa ukuthi isiVumelwano phakathi kwabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana Phakathi Kwabaqashi Nabasebenzi Embonini Yokuthuthwa Kwezimoto, ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi ka 1995, esibopha labo abasenzayo, sizobopho bonke abaqashi nabasebenzi kuleyo Mboni kusukela mhlaka. .....**27 Nhlaba 2013**.....kuze kube ngu 31 kuZibandlela 2014.

MN OLIPHANT
UNGQONGQOSHE WEZABASEBENZI

SCHEDULE

MOTOR FERRY INDUSTRY BARGAINING COUNCIL OF SOUTH AFRICA

MAIN COLLECTIVE AGREEMENT

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

SOUTH AFRICAN MOTOR FERRY ASSOCIATION (SAMFA)

Registration number: LR2/6/3/204

(hereinafter referred to as the "Employers" or the "Employers' Association"), of the one part,

and the

SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS' UNION (SATAWU)

Registration number: LR2/6/2/914

and the

TRANSPORT AND ALLIED WORKERS UNION (TAWU)

Registration number: LR2/6/2/130

and the

THOR TRANSPORT ACTION RETAIL AND GENERAL WORKERS UNION (THOR)

Registration number: LR2/6/2/442

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

being the parties to the Motor Ferry Industry Bargaining Council of South Africa

1. SCOPE OF APPLICATION

1.1 The terms of this Agreement shall be observed in the Motor Ferry Industry—

(a) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions, and who are engaged and employed therein, respectively;

(b) in the Republic of South Africa.

1.2 Notwithstanding the provisions of sub clause 1.1, the terms of this Agreement shall apply only to employees for whom minimum wages are prescribed in this Agreement and to the employers of such employees.

1.3 Notwithstanding the provisions of sub clause 1.1, the provisions of this Agreement shall not apply to the owner of only one vehicle who is the permanent driver of his/her own vehicle and the employees employed by such owner, except that an owner-driver who is an employer shall observe the same hours of work and limitations as are specified for an employee.

1.4 Clauses 1.1(a), 2 and 28(1) of this agreement shall not apply to non-parties.

2. PERIOD OF OPERATION OF AGREEMENT

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 Labour Relations Act, 1995, and shall remain in force for a period not longer than up until 31 December 2014.

3. DEFINITIONS

3.1 Unless the contrary intention appears, any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act; any reference to the singular shall include the plural and vice versa; any reference to any gender shall include the other gender, and further unless inconsistent with the context.

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

"**annual leave cycle**" means the period of 12 months' employment with the same employer immediately following

(i) an employee's commencement of employment; or

(ii) the completion of that employee's prior leave cycle, whichever is applicable;

"**Artisan Assistant**" means an employee who, although still under supervision of an artisan, works independently on jobs, but is not held fully responsible for final checking, and who does more complex repairs, uses fault-finding equipment, chooses alternative

ways of carrying out tasks, operates electric and mechanical equipment and may be required to do jobs such as basic welding – is not fully qualified as an artisan, but could over a period of time complete a portfolio of evidence as part of a recognition of prior learning process in order to access a trade test and become qualified;

"**bargaining unit**" means permanent employees in Grades 1 to 6 as per annexure 1 of this agreement;

"**basic wage**" excludes all allowances specified in the agreement, 13th cheque, provident fund contributions and overtime;

"**Branch Claims Administrator**" means a person who receives information regarding damage to or loss from a vehicle belonging to an employer or client. He/She then conducts investigations, compiles reports and makes recommendations to the branch and coordinates the activities around either repairing the damage or replacing the missing parts or selling off the damaged car;

"**Carrier Driver**" means a driver that is engaged in driving a car carrier whether rigid or articulated. He/She receives documentation regarding a consignment of vehicles and inspects the Carrier and vehicles to be loaded, loads and lashes down the vehicles onto the carrier. He/She unloads the vehicles at the destination points, be they a depot harbour dealership or any other establishment and obtains the customer's signoff of the documentation;

"**chassis**" means a vehicle without a body or windscreen which must occasionally be driven by a driver;

"Checker" means a person who does detailed checks of client vehicles for damage and/or missing parts or equipment. It includes the checking and completion of relevant documentation and driving of vehicles for which a code 8 license is required;

"Cleaner" means a person who cleans vehicles, offices and yards and sometimes makes beverages;

"Clerk Filing" means a person who enumerates on and inserts/ retrieves documents into or from relevant files;

"**Council**" means the Motor Ferry Industry Bargaining Council of South Africa;

"**Data Capture Clerk"** means a person who captures relevant information/data in written and/or electronic format;

"**Debriefer**" means a person who briefs or debriefs a Carrier Driver who is departing from or returning to the Depot; He/She provides or obtains full information, documentation and monies to or from the Carrier Driver, as the case may be, and also checks and verifies the information, documentation and inputs and distributes it to the relevant employees or clients;

"**Driver Code 8**" means an employee who drives vehicles requiring a code 8 driver's license. For the purposes of this definition, the expression 'drives vehicles' includes all periods during which he/she is obliged to remain at his/her post in readiness to drive and any time spent by a driver connected with the vehicle;

"**employer**" means any person whosoever in the Motor Ferry Industry who employs or provides work for any person and

remunerates or expressly or tacitly undertakes to remunerate him/her or who permits any person whosoever in any manner to assist him/her in the carrying on or conducting of his/her business or undertaking; and 'employ' and 'employment' have corresponding meanings;

"**establishment**" means any premises in or in connection with which one or more employees are employed in the Motor Ferry Industry;

"**full-time employee**" means a permanent employee who works full-time for at least 8 hours per day and at least 5 days per week for 4.333 weeks per month every month;

"**hourly rate**" means the weekly wage divided by 45;

"**hours of work**" includes all periods of driving and any time spent by a driver, security officer or any other employee on other work connected with the vehicle or the load and all periods during which he is obliged to remain at his/her post in readiness to work when required to do so, but does not include any meal interval or any period in respect of which a subsistence allowance is payable to an employee in terms of clause 6, if during such interval or period the employee does not work other than remaining in charge of the vehicle and its load, if any, or guarding the vehicle and the load, if any;

"**industry**" means the Motor Ferry Industry;

"Large Truck Driver" means a driver, other than a Driver Code 8 or a Carrier driver, who drives large trucks (requiring a code 10 or code 14 drivers license), to dealerships or depots or fitment centres

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"**law**" includes the common law;

"**limited term employee**" means a temporary employee who is employed for a limited period to cover for another employee who is away on extended leave e.g. maternity leave or for a specific project that is required to be done or to cover for an extraordinary workload;

"**Motor Ferry Industry**" means an industry concerned with the transportation of motor vehicles by road, whether by vehicle carrier or own wheels to, from or within vehicle manufacturers premises, harbours, rail sidings, storage yards or depots, vehicle dealerships and third parties and all ancillary or incidental activities to the transportation of motor vehicles. Without limiting the aforegoing, this shall include the receiving despatching, clearing of, or accounting for motor vehicles and repair or maintenance of vehicle carriers within the premises of the employers in the Motor Ferry Industry.

"**new business**" means an enterprise in its first year of operation regardless of the format of the business;

"**night shift**" means a shift where 5,5 or more of the ordinary working hours (overtime excluded) of the shift fall within the period 18h00 to 06h00 the next day and excludes any employees who qualify for and receive a **subsistence** allowance;

"**Operations Clerk**" means a person who receives instructions and vehicle pre-delivery plans and documentation and who issues this to drivers (Code8, Large trucks requiring a code 10 or 14 driving license and Carrier drivers) for delivery. He/she collects and checks

post-delivery documentation to ensure it has been correctly completed;

"Operations Coordinator or Team Leader" means a person who coordinates and gives instructions to a team of Code 8 Drivers to carry out inspections and to move vehicles into line for loading or to storage or to a dealer. He/She also ensures that relevant documentation is correctly signed off and returned to the office. He/she sometimes drives a small passenger bus to collect drivers who have delivered vehicles to various destinations;

"ordinary hours of work" means the ordinary hours of work prescribed in clause 8 or, if by agreement between an employer and the employee, the latter works a lesser number of ordinary hours, such lesser hours;

"overtime" means the time that an employee works during a day or a week in excess of the ordinary hours of work;

"owner driver" means an employer who is the owner or part-owner or leaseholder or renter of and who himself/herself drives a motor vehicle in transporting motor vehicles for hire or reward;

"part-time employee" means an employee not working full-time but who is employed on a permanent basis, and who is only required to work a fixed and limited number of hours per day, per week or per month;

"parties" means the parties to this Agreement;

"permanent employee" means an employee employed by an employer on a permanent indefinite term;

"**Pilot Driver**" means a driver of a small passenger carrying vehicle (such as a Siyayaya bus) who picks up drivers who have delivered cars on behalf of customers;

"**Pump Attendant** "means a person who pumps fuel into vehicles, takes tanks readings and records and reconciliates fuel usage;

"**Receptionist**" means a person who operates a telephone switchboard, greets and welcomes and directs visitors. He/She also assists with general administrative duties;

"**relief employee**" means an employee, other than the employee of a temporary employment service or a limited term employee, who is employed by the same employer on not more than 14 days per month and not more than 120 days in a 12 month period. Any reference to a casual employee in this Agreement shall be deemed to be a reference to a "relief employee";

"**remuneration**" for the purposes of severance pay, means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person;

"**Sangoma**" means a person who has been trained and qualified as a Sangoma and who is properly recognised in the community as such;

"**severance pay**" means payments to which employees are entitled in terms of clause 24 of this agreement if they are dismissed due to operational requirements;

"**shift**" this means any consecutive period of work, in the course of a working day that has been set by the employer for the execution of all work activities delegated to an employee, but shall not be deemed to include any period of overtime. Provided that each public holiday, each Sunday on which an employee is required to work, each Saturday on which an employee works at least nine hours, or each working day of absence on leave or sick leave, family responsibility leave, study leave, or on the instruction of the employer, as specified in the Agreement, shall be computed as one shift per day;

"**Stock Controller**" means a person who extracts, inputs, reconstructs, and distributes electronic stock data and reports regarding vehicles to employees, dealerships and clients. This includes physical stock taking activities and compiling and completing of reconciliation reports;

"**substantive issues**" means all issues involving cost and affecting the wage packet of employees;

"**temporary employment service**" means any person who, for reward, procures for or provides to a client other person(s)-

(i) who render services to, or perform work for, the client; and

(ii) who are remunerated by the temporary employment service;

"**union member**" means a paid up member as defined in a union's Constitution;

"**Vehicle Controller**" means a person who extracts and inputs electronic and manual data regarding the whereabouts and other

information regarding a Car Carrier or any other vehicle involved in deliveries for a client. It includes:

(i) communicating and liaising with drivers of such vehicles and relevant branch staff to ensure that the dispatch plan is correctly implemented and the coordination, receipt of information and the giving of instructions incidental to the achievement of the plan; and

(ii) the visual monitoring of vehicles by satellite or other means;

"**Vehicle Inspector**" means a person who checks interior and exterior of vehicles for damage or losses;

"**wage**" means the amount of money payable to an employee as a basic wage in respect of his/her ordinary hours of work as specified in clause 5: Provided that, if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in clause 5 it means such higher amount;

"**wage register**" means the record required to be kept by employers in terms of clause 33;

"**working day**" means any period of ordinary hours of work, overtime, meal intervals and rest intervals falling within a single 24-hour cycle and shall be deemed to commence from the time at which an employee starts his/her tour of duty;

"**Workshop Assistant**" means an employee who checks and changes tyres, carries out minor repairs, on basic equipment under

supervision, using limited tools and manual equipment and also assists in cleaning the work area and workshop;

"**Yard Supervisor**" means a person who coordinates daily operations and activities of drivers and yard staff in the depots. This includes the parking and documentation of incoming vehicles in parking bays, yard housekeeping, managing yard space, participating in SARs and customs inspections, as well as carrying out mothballing procedures for vehicles in long term storage;

"**year**", in respect of an employee, means any period of employment in the Industry extending over a period of 252 completed shifts;

3.2 The Council shall be the body responsible for the administration of this Agreement and may, for the guidance of employers and employees, issue interpretations and rulings not inconsistent with the provisions thereof or of the Act.

4 REGISTRATION OF AND PARTICULARS TO BE FURNISHED BY EMPLOYERS

4.1 Every employer or owner-driver who has not already done so in pursuance of a previous agreement of the Council, and every employer or owner-driver who enters the Industry, shall within one month of the date of coming into operation of this Agreement or within one month of entering the Industry, as the case may be, furnish the Council with a statement in the form of Annexure 2 specified for this purpose by the Council, indicating—

4.1.1 the full names of any directors, members, partners or the proprietor and the name under which the business is carried on,

together with his/her physical business address and post office box number, if any;

4.1.2 the names, identification numbers and addresses of all persons covered by this Agreement, as well as the date or year of birth wherever possible.

4.2 On receipt of the particulars referred to in clause 4.1 the Council shall issue to the employer a certificate of registration.

4.3 Every registered employer shall notify the Council within 30 days, in writing, of any changes in the particulars furnished by him on registration.

4.4 Whenever an employer engages or dismisses an employee or whenever an employee leaves the service of an employer, such employer shall notify the Council accordingly, in writing, in the form of Annexure 4, not later than the 15th day of the next succeeding month.

4.5 An employer shall, upon termination of the contract of employment of any of his/her employees, furnish such employee with a certificate of service in the form of Annexure 3. A copy of this certificate shall be forwarded by the employer to the Council not later than the 15th day of the month succeeding the termination of the employee's contract of employment.

5. WAGES

5.1 Minimum Wage – No full-time employee shall, be paid a basic weekly wage, in respect of ordinary working hours, at a rate less than that set out below for a person of that grade. The minimum such rate for each job grade[1] at which wages shall be paid by an employer in respect of ordinary working hours to his/her employees shall be as follows from the date of coming into operation of this agreement and for the period ending 31 December 2013:

Grade	Minimum Rate
1	R996.00 per week
2	R1068.00 per week
3	R1141.00 per week
4	R1254.00 per week
5	R1335.00 per week
6	R1519.00 per week

All employees who are not full time shall be paid pro rata by calculating the hourly or daily rate of payment, as applicable, and multiplying this rate by the number of hours or days worked, as applicable.

[1] See Annexure 1 for the list of jobs in each grade

5.2 Wages and Conditions of Employment shall not be negotiated more than once a year, thereafter unless agreed otherwise.

6. ALLOWANCES

6.1 **Long Service Allowance** - all permanent employees shall receive a service allowance equal to 1% of their basic wage multiplied by the number of years of uninterrupted completed service with the employer up to a maximum of 10 years' service.[2] The allowance shall be paid on either a weekly or monthly basis.

6.2 **Subsistence and Travelling (S&T) Allowance** - An employee who is required to be out of town between 23h00 and 04h00 shall be paid S&T of R121 in 2013. This comprises a night out allowance of R32.17 and a meal allowance of R29.62 per meal (breakfast, lunch and supper).

6.3 **Chassis Allowance** - Where an employee is required to drive a chassis the employee shall be paid (in addition to any wage or overtime to which the employee may be entitled) an allowance of 19 cents per kilometer.

6.4 **Acting Allowance** - Whenever an employee acts in a job that is normally paid at a rate higher than that at which the employee is normally paid, the employee shall be entitled to receive the higher rate of pay for the period in which the employee acts in such position.

[2] For example, an employee who has 5 years' uninterrupted completed service with the employer shall receive an allowance of 5% on his / her weekly or monthly basic wage. With each additional year of completed service the service allowance will go up by 1% until the maximum of 10% is reached. Thereafter, the service allowance remains at 10%.

6.5 **Loading and Lashing Allowance** -The employers will pay carrier drivers R300.00 per week from the coming into operation of this agreement. The allowance will not be paid in respect of any period or periods that the driver is not at work due to absence on annual leave, or sick leave in excess of one week. The parties agree that there will be no negotiations on this allowance before the 2014 negotiations.

6.6 **Night Allowance**- Employees required to work a shift system will be paid a night allowance of 10% of the basic wage rate. This allowance will be applicable to any hours worked between 18h00 and 06h00 each day. Where there is another agreement with an employer concerning night allowance that is superior to this clause then the superior agreement of that employer will apply to that employer's employees.

6.7 **Malaria Medication**- Malaria medication will be supplied at no cost to drivers when engaged in cross border trips.

7. PAYMENT OF REMUNERATION

7.1 Employees other than relief employees: Wages, payments for overtime, allowances and all other payments due to an employee shall be paid in cash weekly by the employer during the ordinary hours of work of the employee on the usual pay day of the establishment, or, with the written consent of the employee, monthly in cash or by cheque during the ordinary hours of work of the employee or by direct deposit into an account designated by the employee on the usual pay day of the establishment, or on termination of employment if this takes place before the usual pay day.

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7.2 All such payments shall be accompanied by a statement showing-

7.2.1 the employer's name and address;

7.2.2 the employee's name or his/her number on the payroll and his/her category;

7.2.3 the number of ordinary hours of work worked by the employee;

7.2.4 the number of overtime hours worked by the employee;

7.2.5 the employee's wage;

7.2.6 details of any other payments arising out of the employee's employment;

7.2.7 details of any deductions made;

7.2.8 the actual amount paid to the employee; and

7.2.9 the period in respect of which payment is made, and the envelope or the statement on which such particulars are shown, shall become the property of the employee.

7.3 All deductions shall be in accordance with and in terms of the provisions of the Basic Conditions of Employment Act 75 of 1997, as amended.

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8. HOURS OF WORK

8.1 The ordinary hours of work of an employee shall not exceed 45 hours in any week. Regular daily shift commencement times shall be regulated by individual employers.

8.2 Meal intervals: An employer shall not require or permit an employee to work for longer than five hours continuously without a meal interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work and such interval shall not form part of the ordinary hours of work or overtime: Provided that the period of five hours may be extended to not more than seven hours for the purpose of loading or unloading a vehicle: Provided further that -

8.2.1 such interval may be reduced to not less than half an hour by written agreement between an employer and his/her employee;

8.2.2 periods of work interrupted by intervals of less than one hour, except when proviso 8.2.1 or 8.2.5 applies, shall be deemed to be continuous;

8.2.3 if such interval is longer than one hour, any period in excess of one and quarter hours shall be deemed to be time worked;

8.2.4 only one such interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work; and

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

8.3 Rest intervals: An employer shall not require or permit an employee to work so that he/she has less than nine consecutive hours for rest in any period of 24 hours, calculated from the time the employee commences work on any day.

8.4 An owner-driver who is an employer shall observe the same hours of work and limitations as are prescribed herein for an employee.

8.5 Compressed working week: Employers may by agreement schedule and require employees to work up to 12 hours a day, inclusive of meal intervals, without overtime pay.

8.6 Averaging of hours of work: Ordinary hours of work and overtime may be averaged over a period of up to four months by collective agreement.

9. REST DAYS FOR LONGHAUL CARRIER DRIVERS

9.1 Some long distance carrier drivers currently working a 14 day duty are entitled to a rest period of 60 hrs.

9.2 Should a 14 day duty end after 12h00 on a Wednesday, the 60 hours off commences when the tour ends and will run until 24h00 on Friday night. Any part of the rest period of 60 hours which has not expired by 24h00 on Friday night shall be the unexpired part of the rest period.

9.3 In the circumstances mentioned in clause 9.2 above, any unexpired part of the rest period which is to run between 24h00 on Friday night and 24h00 on Sunday night will not be calculated as forming

part of the 60 hour rest period. This means that from 24h00 on Sunday night the unexpired part of the 60 hour rest period, if any, will continue to run until it is completed.

9.4 When the total period including the 60 hour period plus the Saturday and Sunday ends, the long distance carrier driver will be required to report for duty for the purpose of commencing his/her next 14 day tour of duty.

9.5 Long distance carrier drivers will, as at present, not be paid for the rest period on Saturday and Sunday. They will only be paid for time off taken during the week, being from 24h00 on Sunday night until 24h00 on a Friday.

9.6 The above arrangements are voluntary and long distance carrier drivers may opt to report for duty after 60 hours rest.

9.7 If a long distance carrier driver wishes to take the extra time off over a weekend (between 24h00 on a Friday night and 24h00 on a Sunday night) as contemplated above, he/she shall give at least 5 (five) working days notice before the end of the 14 day tour of duty to a designated person of the employer. If the driver is unable to contact the designated person in due time for example because he/she is out of cell phone range or has insufficient air time but he/she nevertheless wishes to take the extra rest days the employer will make reasonable efforts to accommodate such requests. In all other circumstances it will be assumed that the driver does not want to take the extra days off. A written record of those employees taking such time off will be kept.

9.8 Employers shall be entitled to schedule drivers' tours of duty so that the operational requirements of the employer are not disrupted to

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the extent that there are insufficient drivers to carry out planned trips.

10. FURTHER SPECIFIC PROVISIONS FOR LONG DISTANCE CARRIER DRIVERS

10.1 PAYMENT FOR REST PERIOD

Where the 60 hour rest period or any part thereof, falls on a weekday (Monday to Friday) the Long distance carrier driver will receive a proportional payment based on 22.5 (twenty two and a half) ordinary hours. Where the rest period or any part thereof falls on a Saturday or Sunday the long distance carrier driver will not receive any payment in respect of that period.

10.2 PAYMENT FOR OVERTIME

Long Distance Carrier Drivers will be paid one and one-half times their normal hourly rate for each hour of overtime worked.

10.3 PAYMENT FOR SATURDAY WORK

Long Distance Carrier Drivers will be paid one and one-half times their normal hourly rate for every hour worked on a Saturday.

10.4 PAYMENT FOR SUNDAY WORK AND PUBLIC HOLIDAYS

Long Distance Carrier Drivers will be paid double their normal hourly rate for every hour worked on a Sunday or a Public Holiday.

10.5 GENERAL

There will be one driver per carrier operating for 9 ordinary hours per day and, in order to meet the operational requirements of

manufacturers, overtime work will be necessary each day. An employer shall not require or permit an employee to work more than 90 hours in any week, inclusive of ordinary hours of work, overtime hours and hours worked on a Sunday or paid holiday. Single long distance carrier drivers will have to stop for sleeping purposes during the hours of 23h00 and 05h00 unless otherwise agreed. During this period S&T will be payable.

Long Distance Carrier Drivers will be paid per hour and payment will be made weekly or monthly (to be decided by each Long Distance Carrier Driver and advised to management).

11. SHORT TIME

11.1 In the event of short time being contemplated by an employer, it will immediately notify, in writing, the applicable recognised union (if any), the elected shop stewards at that branch as recognised by the employer (if any), as well as any employees affected by the contemplated short time of:

11.1.1 the need to implement short time;

11.1.2 the date and time of such implementation; and

11.1.3 the reasons why the short time is necessary.

11.2 When an employer is confronted with a situation that may necessitate short time, that employer shall give at least 48 hours notice thereof and must first consult with the union/s where their members could be affected. The consultation process envisaged between the parties must be a meaningful endeavor to find solutions to the problem. This requirement will not apply where

short time worked is for legitimate causes, such as a national or similar disaster.

11.3 During any period of short time, the employer shall not utilise the services of a temporary employment service in the positions of the employees who are on short time.

11.4 Before implementing any short time, the employers will place employees potentially affected by the implementation of short time in positions where that work is being performed by temporary employment services providing such employees are able to perform that work.

12. LEAVE

12.1 All employers shall grant an employee 15 working days leave in respect of each annual leave cycle.

12.2 All full-time permanent employees will receive the following additional annual leave:

12.2.1 Employees who have 6 consecutive years of completed service with the employer, will accrue one additional day's leave during the 7th year of service;

12.2.2 Employees with 7 consecutive years of completed service with the employer will accrue an additional 2 working days' leave during the 8th year of service;

12.2.3 Employees with 8 consecutive years of completed service with the employer will accrue an additional 3 working days' leave during the 9th year of service;

12.2.4 Employees with 9 consecutive years of completed service with the employer will accrue an additional 4 working days' leave during the 10th year of service;

12.2.5 Employees with 10 consecutive years of completed service with the employer will accrue an additional 5 working days' leave during the 11th year of service;

12.3 All Employees with more than 10 consecutive years of completed service with the employer will consequently receive 5 extra working days leave during the 12th and subsequent years of service.

12.4 Where an employer closes down its operation completely or partially for the December / January holiday period employees who are not required to work shall take their leave during such period.

13. FAMILY RESPONSIBILITY LEAVE

13.1 Employees who have been employed by an employer for longer than four months and who work for at least four days a week for that employer are entitled to family responsibility leave as follows:

13.1.1 during each annual leave cycle, three days paid leave and two days unpaid leave when the employee's child is born or when the employee's child or spouse is sick; and

13.1.2 three days paid leave and two days unpaid leave in the event of the death of the employee's spouse or life partner; or the

employee's parent, parent-in-law, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

13.2 For a day's paid family responsibility leave, an employee will receive the wage the employee would ordinarily have received for work on that day and on the employee's usual payday. An employee may take family responsibility leave in respect of the whole or part of a day.

13.3 All new employees will submit a list of names of the agreed family members. Should this list change, employees must immediately inform their management in writing of the changes. Family Responsibility leave will not be granted for anyone except in relation to the names on this list.

13.4 Before an employee will receive any payment for family responsibility leave, the employee must provide reasonable proof of the event for which leave was required.

13.5 An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.

14. SICK LEAVE

14.1 In this sub-clause "sick-leave cycle" means the period of 36 months of employment with the same employer immediately following –

(a) an employee's commencement of employment; or

(b) the completion of such employee's previous sick- leave cycle.

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14.2 During every sick-leave cycle, an employee shall be entitled to an amount of paid sick leave equal to the number of days he/she would normally work during a period of six weeks.

14.3 Notwithstanding paragraph 14.2, during the first six months of employment, an employee shall be entitled to one day's paid sick leave for every 26 days worked.

14.4 During an employee's first sick-leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of paragraph 14.2 by the number of days' sick leave taken in terms of paragraph 14.3.

14.5 Subject to clause 14.6, an employer shall pay an employee for a day's sick leave –

14.5.1 the wage the employee would ordinarily have received for work on that day; and

14.5.2 on the employee's usual payday.

14.6 Proof of incapacity:

14.6.1 An employer shall not be required to pay an employee in terms of this clause 14 if such employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, at the request of the employer, does not produce a medical certificate stating that he/she was unable to work for the duration of his/her absence on account of sickness or injury.

14.6.2 The medical certificate shall be issued and signed by a medical practitioner or any person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

15. SANGOMA LEAVE

15.1 Subject to clause 15.2 below employers shall recognize Sangomas (traditional healers) for the purposes of sick leave.[3] Sangoma leave will only be recognised where the employee gives the employer prior notice of his/her intention to consult a Sangoma.

15.2 In cases where a medical certificate would be required in the normal course of events and the employee has complied with clause 15.1 above then the employee is required to provide a satisfactory letter from the Sangoma he/she has consulted, that states that the employee is incapacitated due to illness, gives the nature of the illness and specifies the period of time for which the employee is booked off.

15.3 The number of days paid sick leave is as per clause 14 above.

[3] This means that if employees decide to visit a Sangoma rather than a doctor and are booked off sick by the Sangoma, then this will be regarded by the employers in the same manner as a sick leave certificate.

16. MATERNITY LEAVE

16.1 During an employees first year of service the employee shall be entitled to four consecutive month's unpaid maternity leave.

16.2 After completion of one year's uninterrupted service with an employer, employees shall be entitled to up to 6 month's maternity leave, of which 3 months will be paid at one third the employee's basic wage and 3 months unpaid. [4]

17. STUDY AND EXAMINATION LEAVE

All employees will receive 3 days study and exam leave per approved subject per annum.[5] Approval is within the sole discretion of management but may not be unreasonably withheld.

18. VACANCIES AND PROMOTION

Employers shall advertise any vacancies at the relevant workplace, and employees applying to fill such vacancies will be considered on merit.

19. PROVIDENT FUND

Should an employer have one or more retirement funds that employer shall require that its employees either be members of one of such funds or of the SATAWU National provident fund. Where an employee is a member of any of the aforementioned retirement funds the employer of such employee shall contribute to the retirement or provident fund an amount equivalent to at least 10% of the

[4] Employers will assist pregnant employees with claiming UIF from the Department of Labour
[5] Application must be made to the respective management

employee's basic pay. An employee shall contribute at least 8.5% of the employee's basic pay to the retirement or provident fund.

An employer shall be entitled to deduct from an employee who is a member of any of the aforementioned retirement funds the employee's contribution of 8.5% of the employee's basic pay. The employee's contribution, once deducted, together with the employer's contribution shall be paid over to the relevant fund by the employer by no later than the fifth day of each month or in terms of the rules of the relevant fund.

20. 13th CHEQUE

Employees who are in employment on 1st December and who have been employed for the previous 12 months will receive a thirteenth cheque equivalent to 4.333 weeks pay with their December pay. Employees who have been employed for less than 12 months will receive a pro rata thirteenth cheque.

21. TAX DEDUCTION 13th CHEQUE

The PAYE tax due in respect of 13th cheques will be deducted monthly in equal installments from employees' salaries in the period prior to December. Employees will receive a separate pay slip in respect of their 13th cheque payment.

22. TERMINATION OF EMPLOYMENT

22.1 An employer or an employee, may terminate the contract of employment only on written notice of not less than –

22.1.1 one week, if the employee has been employed for 6 months or less;

22.1.2 two weeks, if the employee has been employed for more than 6 months but not more than one year;

22.1.3 four weeks, if the employee has been employed for more than one year.

22.2 Nothing contained in clause 22.1above shall effect:

22.2.1 the right of an employer or an employee to terminate the contract of employment without notice for any cause recognised by law as sufficient; or

22.2.2 any agreement between an employer and an employee that provides for a period of notice of equal duration on both sides of longer than one week, two weeks or four weeks, as the case may be: Provided that if an agreement has been entered into in terms hereof, the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

23. PAYMENT INSTEAD OF NOTICE

23.1 Instead of giving an employee notice in terms of clause 22 above, an employer may pay the employee the remuneration the employee would have received, if the employee had worked during the notice period.

23.2 If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the remuneration referred to in clause 23.1 unless the employer and employee agree otherwise.

24. SEVERANCE PAY

All employees who are dismissed due to operational requirements and whom are entitled to severance pay will be paid Severance Pay of 1.4 weeks basic pay per year of continuous service, subject to permanent employees with more than 6 (six) months' continuous service whom will be paid Severance Pay of 1.4 weeks basic pay per year of continuous service with a pro-rata severance payment for any part years' service. During a retrenchment process in a company a union recognised as a collective bargaining agent may enter into ad hoc negotiations with the respective employer at plant level to improve the severance payments of its members.

25. EXPENSES OF THE COUNCIL

25.1 The expenses of the Council shall be met in the following manner:

25.1.1 An amount equivalent to R15 per month shall be deducted by an employer from the wage of every employee in employment within the bargaining unit. To this amount so deducted the employer

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shall add R30 per month for each employee and pay the total amount, not later than the twentieth day of each month, following that to which it relates, into the General fund bank account.

25.1.2 An owner-driver shall contribute R6 per month in respect of himself/herself as driver and/or owner.

25.2 An employer shall, when remitting the amounts payable in terms of clause 25.1, also submit to the Secretary of the Council at the same address, by not later than the twentieth day of the following month, a monthly return with the particulars in the form specified by the Council for this purpose (including each employee's full names surname, date of birth and identification number).

26. EXEMPTIONS BY THE COUNCIL

26.1 Applications by both parties and non-parties for exemption from any of the provisions of this Agreement shall comply with the following requirements-

26.1.1 The applicant must negotiate with the respective unions (or employees in the absence of a recognised union) in an attempt to reach consensus regarding the application.

26.1.2 If consensus is reached, an agreement signed by the Employer and Union or affected Employee/s (in the absence of a recognised Union) must be attached in support of the application.

26.1.3 If no agreement is reached, the Union or affected Employee/s (in the absence of a recognised union) must be given the *opportunity* to

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sign the application indicating its/their lack of agreement whereafter the applicant shall be entitled to forward the application to the Council's exemption committee at the following address for consideration: **Motor Ferry Bargaining Council, Postal Address: Postnet Suite 553, Private Bag x113 Melville 1209, Johannesburg or Physical Address: Tokiso Dispute Settlement (Pty) Ltd, The Atrium 10th Floor, 41 Stanley Avenue, Milpark, Tel (011) 853 6327, Fax 086 638 4179, Email Sumayya@tokiso.com .**

26.2 The application will be considered by the relevant body at its regular meeting and will make a decision in writing, giving written reasons therefore.

26.3 If any party, including the applicant, the union or an Employers Association which is party to the Council is dissatisfied with the decision, then that party may appeal to the Independent Appeal Board.

26.4 The Applicant must notify the Council in writing of its intention to appeal within 14 days. He/She must then submit an appeal in writing enclosing whatsoever documentation and any other information in support of the appeal as soon as possible by post or telefax to the Independent Appeal Board but by no later than 90 days of written receipt of refusal by the Council, failing which the right of appeal will fall away. A copy of the exemption appeal letter, documentation and any other information submitted must be supplied to the other party.

26.5 All the appeal documentation must then be sent to the Independent Appeal Board by no later than 60 days after the relative agreement has been signed by the two parties or the union (or employee/s in the absence of a recognised union) have been given an opportunity

to sign the application indicating disagreement, whichever the case may be.

26.6 In the event of an appeal, any party may submit further written representations to the Independent Appeal Board. Any such written representations must be sent to the other parties who will be given an opportunity to submit their own further written representations. In this latter event, the appellant must also receive a written copy of the counter-representations.

26.7 In considering the application, the Independent Appeal Body shall take into consideration all relevant factors, which may include, but shall not be limited to, the following criteria:

26.7.1 The applicant's past record (if applicable) of compliance with the provisions of Council's Collective Agreements and Exemption Certificates;

26.7.2 any special circumstances that exist;

26.7.3 any precedent that might be set;

26.7.4 the interests of the Industry as regards-

26.7.4.1 unfair competition;

26.7.4.2 collective bargaining;

26.7.4.3 potential for labour unrest;

26.7.4.4 increased employment;

26.7.5 the interests of employees' as regards-

26.7.5.1 exploitation;

26.7.5.2 job preservation;

26.7.5.3 sound conditions of employments;

26.7.5.4 possible financial benefits;

26.7.5.5 health and safety;

26.7.5.6 infringement of basic rights;

26.7.6 the interests of the employer as regards–

26.7.6.1 financial stability;

26.7.6.2 impact of productivity;

26.7.6.3 future relationship with employees' trade union;

26.7.6.4 operational requirements.

26.8 The Independent Appeal Board will meet and consider the matter using whatever procedures it deems fit and will deliver a final decision within 10 days of receiving all the documentation.

26.9 The Independent Body established by Council in terms of section 32 of the Labour Relations Act of 1995 shall consist of a panel of 2 independent experts appointed by the Council to consider appeals against the refusal by Council's Exemption Body to grant exemptions or the withdrawal of an exemption by the Council. The

Independent experts shall be South African citizens with no less than 5 years experience in dispute resolution. The independent experts must also be knowledgeable about the labour market, conditions of employment and exemption processes.

27. EXHIBITION OF AGREEMENT AND NOTICES

27.1 An employer shall keep available on the premises in which he/she operates or at the usual place for the payment of wages, readily accessible to his/her employee(s), a legible copy of this Agreement in toto, and in two official languages.

27.2 An employer shall affix and keep affixed in a like manner a notice specifying the day of the week and the time and place at which wages will ordinarily be paid weekly. If the wages are paid at more than one place, the notice shall specify the places.

28. AGENTS TO THE COUNCIL

28.1 One or more persons shall be appointed by Council as agent(s) to assist in enforcing the terms of Council's Collective Agreements.

28.2 The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council.

28.3 A designated agent shall have all the powers contained in the relevant sections of section 33(1A) (a) and schedule 10 of the Act.

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29. MEDICAL SCHEME

29.1 The agreed medical scheme provider will be solely responsible for the running of the scheme, its administration and for the handling of any queries and/or complaints of members of the scheme employed by employers in the Industry. Employers' only role and responsibility in the scheme will be to pay over the premiums deducted from members' salaries or wages to the agreed Fund.

29.2 The decision to join the medical fund will be voluntary.

29.3 Employers will pay 50% of the monthly premiums for an employee, his or her spouse, if there is one, and the balance of the dependants, if there are any subject to a maximum of 3 children who are under the age of 21.

29.4 Any changes to the subscriptions (monthly premiums) and/or rules of the medical scheme which have a cost implication will need to be agreed by both parties to the Bargaining Council before they can be implemented.

29.5 Any additional costs, including any increases to the annual subscription value with existing or a new medical service provider must be expressly agreed to between the parties in writing.

29.6 A union member employed outside the bargaining unit who is paid on a cost to company basis, may join the medical plan and choose any option. This is subject to such members paying for the full contribution out of their salary package.

29.7 Any union member within the bargaining unit who wishes to exercise a different option from that currently provided for may do

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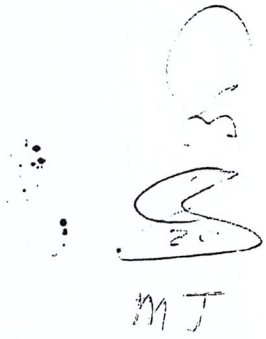
so on the basis that such employee pays for any additional costs him or herself.

30. STUDY GRANT SCHEME

Employees wishing to study towards education higher than ABET level 4 (Grade 8/Std 6) will be eligible for the study grant scheme. On approval of an application for such a grant the employer concerned will pay up to 50% of the cost of the education fees for that particular year to the educational service provider. The amount paid to the service provider will however be repayable to the respective employer by the employee if the employee is unsuccessful with the requirements for passing that year. The same scheme will also be applicable for employees wishing to study towards a transport qualification through a Technikon or University or to a person with less than ABET 4 where that person wishes to study towards a relevant qualification such as a trade test as a diesel mechanic or trade school.

31. DISHONOURED CHEQUES

Whenever an employer pays any sum of money that is due to the Council in terms of this Agreement in any manner other than in cash, and such payment is dishonoured for any reason whatever, then and in such event a penalty shall be payable by the employer to the Council in its sole discretion, which penalty shall be equal to 1.5 percent of the amount of the purported payment. Any penalty due to the Council in terms of this clause shall be payable on demand.



32. ENFORCEMENT/LEGAL COSTS

Whenever it becomes necessary or expedient for the Council to institute proceedings in any competent forum for the recovery of any amount of money deducted by an employer from any monies due to an employee but not paid over to the Council, then and in such event the debtor shall be liable for all costs incurred by the Council in recovery of the amount due, including costs on attorney and client scale in the event of a legal practitioner having been instructed by the Council to collect the amount.

33. TIME AND WAGE REGISTERS

33.1 Every employer shall in respect of each place where he conducts business, keep available for inspection, an up-to-date record of the earnings paid to and the time worked by each of its employees to which this agreement applies. All entries shall be of a permanent nature and non-erasable.

33.2 Every employer shall retain the completed record referred to in 33.1 for a period of three years subsequent to the date of the last entry in it.

33.3 Every employer shall upon the commencement of employment of every employee, enter into the record referred to in clause 33.1-

33.3.1 the full first names, surname and identity number of the employee;

33.3.2 the class of his/her employment; and

33.3.3 the date of commencement of his/her employment.

34. INTEREST CLAUSE

Whenever any amount payable to the Council in terms of this Agreement is not paid on the due date, interest shall be payable on such amount or on any such lesser amount as may remain unpaid, calculated from the due date of payment at the rate applied by the Reserve bank at the time.

35. PROFESSIONAL DRIVING PERMIT

35.1 Drivers shall be responsible for completing all administrative formalities and ensuring that their Professional Driving Permits are timeously renewed.

35.2 Employers shall refund drivers the prescribed fees for renewal of a driver's Professional Driving Permit and the cost of a medical certificate and fingerprinting if officially required, on the driver's furnishing a receipt of proof of payment.

35.3 In the event of a driver leaving employment of his/her own accord within six months of the date of renewal of his/her Professional Driving Permit, the employer shall be entitled to recover a pro rata amount of the fee paid by means of a deduction from the employee's wage/leave pay.

36. PARTICIPATION IN TRANSPORT EDUCATION AND TRAINING AUTHORITY

Employers shall participate in the Transport, Education and Training Authority ('TETA'). The Chairperson of the Council shall be seconded to represent the Council on TETA.

37. CROSS BORDER EXPEDITING FEES

Employers shall be responsible for the direct payment of 'expediting' fees to agreed contracted agents upon approval by the employer to assist the driver in crossing borders.

38. LEVELS AND PROCEDURE FOR BARGAINING IN THE INDUSTRY

38.1 The industry negotiating committee shall be the sole forum for the purposes of negotiating conditions of employment in the Motor Ferry industry and any other matters, which seek to improve the remuneration of employees. Apart from the normal annual wage demands made at industry level, no demands relating to Conditions of Employment and / or any other matters, which seek to improve the remuneration of employees, shall be submitted to an individual employer or employers organisation during the currency of an agreement between an individual employer or employers organisation and a union.

38.2 A union or its members shall not declare a dispute, initiate, instigate or take part in any industrial action, including a strike against an employer or employers organisation if the matter giving rise to such a dispute or industrial action involves a

dispute (or alleged dispute) with an employer or employers organisation relating to the issues contemplated in clause 39.

39. RESOLUTION OF DISPUTES

39.1 Disputes about the interpretation, application or enforcement of this Agreement shall be resolved in accordance with the provisions of Labour Relations Act 66 of 1995, as amended.

39.2 Any other disputes shall be dealt with as per the dispute resolving mechanisms in the Labour Relations Act No 66 of 1995, as amended.

39.3 Arbitration

39.3.1 If any dispute is or may be referred to arbitration in terms of the Labour Relations Act, the Basic Conditions of Employment Act or the Employment Equity Act, there shall be no industrial action in connection with any such issue.

39.3.2 Any such arbitration envisaged in 39.3.1 above will be conducted in terms of the arbitration procedure (see Annexure 5).

Signed at Johannesburg, for and on behalf of the parties to the Council, this 12 th day of February 2013.

Chairman of the Council

Signed by M J. MOJELA

Vice-Chairman of the Council

Signed by Z COSTHUIZEN

Secretary of the Council

Signed by

L C PACK.

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