

Government Gazette No 33874 (17 December 2010)

**BARGAINING COUNCIL FOR THE BUILDING INDUSTRY (CAPE OF GOOD HOPE): EXTENSION
OF COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Nelisiwe Mildred Oliphant, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Building Industry (Cape of Good Hope) 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 December 2010 and for the period ending 31 October 2013.

SCHEDULE

BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE)

COLLECTIVE AGREEMENT

in accordance with the provisions of the Labour Relations Act, No. 66 of 1995, made and entered into by and between the

Boland Meesterbouers en Verwante Bedrywe Vereniging

Master Builders and Allied Trades' Association, Cape Peninsula

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

Building, Construction and Allied Workers' Union

Building, Wood and Allied Workers' Union of South Africa

Building Workers' Union

National Union of Mineworkers (NUM)

(hereinafter referred to as the "trade unions"), of the other part, being the parties to the Building Industry Bargaining Council (Cape of Good Hope).

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Building and the Monumental Masonry Industries-

(a) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions;

(b) by all employers who are not members of the employers' organisations and by all employees who are not members of the trade unions;

(c) 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. R. 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. R. 171 of 8 February 1957 and R. 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. R. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch but which, prior to 2 March 1962 (Government Notice No. R. 283 of 2 March 1962), fell within the Magisterial District of Bellville;

(d) in the Magisterial Districts of Paarl, Wellington, Stellenbosch, Kuils River (excluding any portions of the last-mentioned two districts which, prior to the publication of Government Notice No. R. 283 of 2 March 1962 fell within the Magisterial District of Bellville), Somerset West [excluding that portion which, prior to 9 March 1973 (Government Notice No. R. 173 of 9 February 1973), fell within the Magisterial District of Wynberg], Strand and Malmesbury (excluding that portion which, prior to the publication of Government Notice No. R. 171 of 8 February 1957, fell within the Magisterial District of Bellville).

(2) Notwithstanding the provisions of sub clause (1), the terms of this Agreement shall apply to-

(a) employees in the Industry undergoing training consistent with the provisions of the Skills Development Act, 1998;

(b) temporary employment services, labour-only contractors, working partners, working directors, principals, contractors and working members of close corporations who do work in the Building Industry.

(3) Notwithstanding the provisions of sub clause (1) (a), the terms of this Agreement shall not apply to-

(a) clerical employees and administrative staff;

(b) university students and graduates in Building Science, and to construction supervisors, construction surveyors and other persons doing practical work in completion of their academic training and to Section 18.2 learners registered in terms of the Skills Development Act;

(c) non-parties in respect of clauses 1 (1) (a) and 19 of this Agreement.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties, or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force until 31 October 2013.

3. INDUSTRIAL ACTION

No person who is subject to the provisions of this Collective Agreement entered into by the parties shall engage or participate in a strike or lockout or any conduct in furtherance of a strike or lockout in respect of any matter regulated by this Agreement for its duration.

4. DEFINITIONS

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

"Act" means the Labour Relations Act, 1995;

"Area A" means the Magisterial Districts of The Cape, Wynberg , Simonstown, Goodwood, Mitchells Plain and Bellville.

"Area B1" means the Magisterial Districts of Kuils River, Somerset West and Strand;

"Area B" means the Magisterial Districts of Paarl, Wellington, Stellenbosch,

"Area C" means the Magisterial District of Malmesbury ;

"artisan" means a person who is registered as such in terms of clause 7 (6) of this Agreement;

"Building Industry" or **"Industry"** means, subject to the provisions of any demarcation determination made in terms of section 76 of the Labour Relations Act, 1956, and without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures and/or making articles for use in the erection, completion or alteration of buildings or 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: Provided that such manufacturing activities shall be limited to the specific manufacturing activities that are mentioned in the following trades or subdivisions thereof, and shall further be limited to the carrying out of such activities by an employer who is associated with his employees for the

purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures for use by him in the conducting of building work, and includes all work executed or carried out by persons therein who are engaged in the following trades or subdivisions thereof, including excavations and the preparation of sites for buildings as well as the demolition of buildings, unless such demolitions were not carried out for the purpose of preparing the sites for building operations but does not include clerical employees and administrative staff, nor the wiring of or installation in buildings of lighting, heating or other permanent electrical fixtures and the installation, maintenance or repair of lifts in the buildings:

Asphalting, which includes covering floors or flat and/or sloping roofs, waterproofing or damp-proofing basements or foundations, whether or not with prepared roll roofing or asphalt sheeting having glazed or unglazed surfaces, whether or not using tar, macadam, Neuchâtel, limmer or any other type of solid or semi-solid asphalt, mastic or emulsified asphalt or bitumen's, applied either hot or cold to such roofs, floors, basements or foundations;

bricklaying, which includes concreting and fixing glass bricks, concrete blocks, slabs or plates, tiling walls and floors, jointing brickwork, pointing, paving, mosaic work, facing work in slate, in marble and in composition, drain laying, slating, roof tiling, cement-caulking earthenware pipes, bituminous work, asphalting and sheeting, and the erecting of prefabricated concrete structures or garden walls and/or boundary walls with posts or slabs;

concrete work, which includes the supervision of concrete being placed in situ and levelling the surfaces thereof;

French polishing, which includes polishing with a brush or pad, and spraying with any composition;

glazing, which includes the cutting and/or fixing of all kinds of glass or other like products into the rebates formed in wooden or metal doors, windows, frames or like fixtures, and all operations incidental thereto;

joinery, which includes the fixing of all wooden fittings and the manufacture of all articles of joinery incidental to such fittings, whether or not the fixing in the building or structure is done by the person making or preparing the article used, including cupboards, kitchen dressers or other kitchen fixtures which accrue to the building as a permanent part thereof;

light-making, which includes the manufacture and/or fixing of lead and/or metal lights and display signs, other than electric lights or signs and glazing related thereto;

masonry, which includes stone-cutting and building (also the cutting and building of ornamental and monumental stonework), concreting and fixing or building pre-cast or artificial stone or marble, paving, mosaic work, pointing, wall and floor tiling, operating a Mall and Biax or similar type of portable spinner and flexible cutting, finishing and other stone working machine, stone-polishing machinery, and sharpening mason's tools, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

metal work, which includes the fixing of steel ceilings, metal windows, metal doors, builder's smith work, metal frames and metal stairs and architectural metal work, together with the manufacture and/or fixing of drawn metal and sheet and extruded metal, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

painting, which includes decoration, paperhanging, glazing, distempering, lime and colour washing, staining, varnishing, graining, marbling, spraying, wall decoration, applying primer and undercoat, enamelling, gliding, lining, stencilling, wax polishing, and woodwork

preservation, and which also includes paint removal, scraping, washing and cleaning painted or distempered walls and washing and cleaning woodwork when such removal, scraping, washing and cleaning are preparatory to any of the said processes;

plastering, which includes modelling, model-making, facing casts to moulds, making and fixing plaster board ceilings and fibrous plaster or other compositions, granolithic, terrazzo and composition floor-laying, composition wall covering and polishing, operating a Mall & Biax or similar type of portable spinner and flexible cutting and finishing machine, pre-cast or artificial stone work, wall and floor tiling, paving and mosaic work, metal lathing, acoustic spraying and all processes incidental to the completion of ceilings and walls, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

plumbing, which includes brazing and welding, lead burning, gas fitting, sanitary and domestic engineering, drain laying, caulking, ventilating, heating, hot and cold water fitting, fire prevention installation and the manufacture and fitting of all sheet metal work, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

shop, office and bank fitting, which includes the manufacture and/or fixing of shop fronts, window enclosures, showcases, counters, screens and interior fittings and fixtures;

steel reinforcing, which includes the making and erecting of shuttering and supervising the bending, placing and fixing in position of steel;

steel construction, which includes the fixing of metal or steel roof sheeting and/or wall cladding, all classes of steel or other metal columns, girders, steel joints or metal in any form which forms part of a building: Provided that the on-site assembly, placing and fixing in

position and erection of the metal or steel framework (excluding metal or steel roof sheeting and/or wall cladding) that is to form part of a building shall be excluded from this definition when such activities are carried out by the employees of an employer who manufactures such metal or steel framework;

woodworking, which includes carpentry and veneer panelling and the polishing and sandpapering of same, woodworking, the manufacture of fixtures to specification for installation in specified buildings and the manufacture of stocks, machining, turning, carving, fixing corrugated iron or asbestos tile, shingling and other roof coverings, sound and acoustic material, cork and asbestos insulation, wood-lathing, composition ceiling and wall covering, plugging walls, covering woodwork with metal and covering metal with woodwork, block and other flooring, including wood, linoleum, rubber composition, asphalt-based floor covering or cork, and the sandpapering of same, operating a Mall and Biax or similar type of portable spinner and flexible cutting, finishing and polishing machine, shuttering and/or preparing forms of moulds for concrete, cork carpeting and any class or kind of linoleum when fixed in any building or structure, and the application of asphaltic saturated felt or fabrics to floors and/or walls and/or roofs, whether or not the fixing in the building or structure is done by the person making or preparing the article used. For the purposes of this definition "structure" means structure in the nature of, or incidental to, a building;

"cleaner" means an employee engaged in general cleaning activities normally and customarily performed in the Building Industry;

"continuous employment" means any period during which an employee has been continuously employed by the same employer, and for this purpose periods of employment with the same employer broken by not more than 60 days from date of termination of employment to re-engagement of the employee owing to the discharge or retrenchment of the

employee by the employer shall be deemed to be continuous service;

"Council" means the Building Industry Bargaining Council (Cape of Good Hope), registered in terms of section 29 of the Act;

"driver" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, "driving a motor vehicle" includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain on duty in readiness to drive; further, for the purposes of this Agreement, a driver shall be classified in one of the following categories:

- (a) Drivers of vehicles which require the driver to be in possession of a Code C1 licence or above;
- (b) drivers of vehicles which require the driver to be in possession of a Code A, A1 or B licence or below;

"employee" means-

- (c) any person, excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any remuneration; and
- (d) any other person who in any manner assists in carrying on or conducting the business of the employer;

"employer" means any person who employs or provides work to 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;

"fixed-term contract" means a contract terminating on a special date stipulated in the contract;

"general worker" means an employee not registered as a labourer, cleaner, driver/plant operator, trainee tradesman, tradesman, artisan, apprentice or security guard in terms of this Agreement;

"industrial action" means any action contemplated in terms of the definition of "strike" and "lockout", respectively, in the Act;

"joinery assembler" means an employee who is registered as a learner Class 3, in terms of clause 7(5) of this Agreement;

"labourer" means a worker who enters employment in the Building Industry for the first time: Provided that once 250 daily, benefits have been earned and recorded by the Council such worker shall automatically be promoted to 'general worker' as defined therein;

"learner" means an employee registered as a learner in terms of clause 7(4) of this Agreement;

"learnership" means a learnership registered with the Construction and Education Training Authority in terms of section 16 of the Skills Development Act, '98 which shall be subject to the regulations known as The Learnership Regulations 2001 published by Government Gazette No. 7043 of 3 April 2001, as amended;".

"machine operator" means an employee who is registered as a learner, Class 2, in terms of clause 7(5) of this Agreement;

"manufacturing worker" means an employee who is registered as a learner, Class 4, in

terms of clause 7(5) of this Agreement;

"normal working hours" means the number of hours that a particular employer has contracted with an employee to be worked on any normal working day, but excluding all overtime hours worked on any day;

"normal working day" means any day that a particular employer has contracted with an employee to be a normal working day including public holiday that fall on a normal working day, but excludes all other days that do not fall on a normal working day, that are to be remunerated at overtime rate of pay;

"period determined by the Council" means a period prescribed to be not later than the 20th day of each month in respect of every employee employed by the employer during the preceding month;

"plant operator" means a person operating power-driven plant, and for the purposes of this Agreement, a plant operator shall be classified in one of the following categories:

- (e) Operators of plant which requires the plant operator to be in possession of a Code C1 licence or above;
- (f) operators of plant which requires the plant operator to be in possession of a Code A, A1 or B licence;

"security guard" means any employee who is engaged in protection or safeguarding property and/or premises in any manner, including but not limited to guarding, patrolling, watching over or security property and/or premises;

"skills and education trust" means the Skills and Education Trust, trust deed number IT1029/2001;

"temporary employment service" means any person who, for reward, procures for or provides to a person (hereinafter referred to as the 'client') other persons-

- (g) who render services to, or perform work for, the client; and
- (h) who are remunerated by the temporary employment services;

"wage" means the basic wage prescribed in terms of clause 9(1) of this Agreement in respect of the ordinary hours laid down in clause 8(1): Provided that if an employer regularly pays an employee a wage higher than the basic wage in respect of the ordinary hours, it shall mean such higher amount and the employee shall qualify for the equivalent amount of increase in the basic wage for that category of employee;

- (2) Any person who works for or renders services to any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors are present;
- (a) the manner in which the person works is subject to the control or direction of another person;
 - (b) the person's hours work are subject to the control or direction of another person;
 - (c) in the case of a person who works for an organisation, the person is a member of that organisation;
 - (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months.
 - (e) the person is economically dependent on the other person for whom that person works or renders services;
 - (f) the person is provided with tools of trade or work equipment by the other person; or
 - (g) the person only works for or renders service to one person.

- (3) Sub clause (2) does not apply to any person who earns in excess of the amount determined from time to time by the Minister of Labour in terms of section 6(3) of the Basic Conditions of Employment Act, 1997,
- (4) In this Agreement, unless the context indicates otherwise words importing the singular shall include the plural and vice versa, words importing any gender shall include the other gender and words importing persons shall include partnership and bodies corporate.

5. LEVELS OF BARGAINING

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

6. REGISTRATION OF EMPLOYERS

- (1) Every employer in the Industry to whom this Agreement applies shall register with the Council.
- (2) (a) An employer shall register with the Council by furnishing the required particulars to the Council on the prescribed form and shall warrant thereon that application has been made for registration with the South African Revenue Services for employee tax and value-added tax (if applicable), registration with the Unemployment Insurance Fund and registration under the Compensation for Occupational Injuries and Diseases Act.
- 2(b) The Council may refuse to register any person or legal entity as an employer if such employer or entity consists of substantially the same person or persons as a previously registered person or entity and there remains a debt due to the Council by the previously registered person or entity.
- (3) Every employer shall notify the Council in writing of any change in the particulars furnished on registration or of ceasing operations in the Industry within 14 days of such change or of ceasing operations.
- (4) A certificate of registration signed by either the Chairman or the Secretary of the Council shall be issued to each employer registered.

- (5) An employer who does not pay to the Council the levies and contributions payable by him and his employees each week on the due date as prescribed in this Agreement shall pay interest to the Council at the prime bank rate charged by the Council's bank plus 2%, calculated from the due date of payment.
- (6) An employer shall keep employee records as prescribed by Chapter 4 of the Basic Conditions of Employment Act, 1997, and clauses 10 and 12 of this Agreement.
- (7) The Council shall keep a register of compliant employers which shall be generally made known and be available to other employers on request.
- (8) A newly registered employer shall be entitled to receive from the Council free orientation training on employment legislation, this Agreement and the preparation of wage records and assistance in registering for the National Certificate of Contracting learnership.

**CLAUSE 6A: COMPLIANCE BY EMPLOYERS, SUBCONTRACTING AND
USE OF TEMPORARY EMPLOYMENT SERVICES**

- (1) The Council shall keep a register of employers in good standing and a register of employers not in good standing with the Council which registers shall be generally made known and published and shall be available to any person on request.
- (2) An employer shall be in good standing with the Council for purposes of this clause 6A if: a. the employer is registered as an employer with the Council: and

b. the employer is compliant with all obligations provided for in this Agreement to be fulfilled by an employer.
- (3) No employer ("the subcontracting party") may subcontract any work that falls under the definition of "Building Industry" or "Industry" in clause 4 of this Agreement, to another person who is subject to this Agreement ("the subcontractor"), unless both the subcontracting party and the subcontractor are, at all times during the subcontracting, employers in good standing..

- (4) Regardless of whether or not clause 6A(3) has been complied with, the subcontracting party and the subcontractor are jointly and severally liable if the subcontractor, in respect of any of its employees, contravenes:
- (a). This Agreement or any other Council agreement regulating terms and conditions of employment and/or benefits;
 - (b). A binding arbitration award that regulates or relates to terms and conditions of employment; or
 - (c). The Basic Conditions of Employment Act. No 75 of 1997, as amended from time to time.
- (5) No person may utilize a temporary employment service for work in connection with the Building Industry unless , both the person and the temporary employment service are, at all times during the use of the temporary employment service, employers in good standing with the Council. The provisions of section 198 of the Act, shall apply to any person who enters an agreement to utilize a temporary employment service for work in connection with the Building Industry.

7. REGISTRATION OF EMPLOYEES

- (1) All persons employed in the Building Industry shall be registered with the Council and each employee and the employer of such employee shall be jointly responsible for the registration of the employee with the Council within 60 days of commencement of employment.
- (2) The Council shall issue to each registered employee a Bargaining Council identity card and the employee shall be required to retain that card at all times whilst engaged in work in the Building Industry.
- (3) The Council shall bear the initial costs of the Bargaining Council identity card, but the employee shall be liable for the costs of the replacement of any identity card.

(4) **Learnership:** A registered employer or an employers' organisation acting in terms of a group scheme may employ a person as a learner under a contract of learnership in accordance with the Skills Development Act, 1998, and the Council shall register such person as a learner subject to the following terms and conditions:

- (a) The person has first been registered as a learner by the Construction Education Training Authority (CETA).
- (b) The learner shall be entitled to perform work in a designated trade only once the Council has received from the CETA a valid certificate of registration for the learner in respect such trade.
- (c) For purposes of his learnership, the learner shall be entitled to undergo training with his employer or under the auspices of any accredited training institution.
- (d) Upon successful completion by the learner of the necessary group of credits in respect of a course of training as provided for in sub clause (5) below, the Council shall re-register the learner in the appropriate tradesman category.
- (e) A learner shall be entitled to the payment of wages in accordance with the wage prescribed in terms of clause 9 in respect of the category of tradesman in which he is registered from time to time.

(5) **Tradesman:**

- (a) A learner in a specified category shall be registered as a tradesman in that category in accordance with the following:
 - (i) In respect of Class 4, where he has completed less than 55 per cent of the credits of the prescribed course.
 - (ii) In respect of Class 3, where he has completed 55 to 74 per cent of the credits of the prescribed course,
 - (iii) In respect of Class 2, where he has completed 75 to 99 per cent of the credits of the prescribed course.

- (b) Employers and trade unions shall endeavour to ensure that learners complete their training within the specified time.
- (c) Any person who has been employed outside the registered scope of the Council as a skilled worker, other than an artisan qualified in terms of sub clause 6(b), shall be required to undergo a prior learning assessment with an accredited training provider in order to determine the unit standards in which he is competent and in respect of which he should be credited and, pursuant thereto, shall be registered as a tradesman in a particular category, as follows:

	<i>Proficiency</i>	<i>Class</i>
(i).	Below 55 per cent	4
(ii).	55-74 percent	3
(iii).	75-99 percent	2
(iv).	Completed all credits	Artisan

(6) Artisan:

- (a) An employee shall be registered as an artisan once he has passed the trade test or has completed the number of credits that qualify him to work as an artisan.
- (b) An artisan shall be entitled to the payment of wages in accordance with the wage prescribed for his category in terms of clause 9.
- (c) If at any stage an employer is of the opinion that a registered artisan is not performing his duties to an acceptable level of proficiency, the employer may, at it own cost, require that artisan to undergo a proficiency test, in which case the artisan shall be obliged to undergo such test.

- (7) In this clause, a credit means a credit as defined from time to time under the regulations made under the South African Qualifications Authority Act, 1995.

8. TERMS OF EMPLOYMENT

(1) Ordinary hours of work:

(a) No employee shall ordinarily be required to work more than the following hours:

Category	AREA A		AREA B1,B AND C	
	Daily hours	Weekly hours	Daily hours	Weekly hours
(i). Security guard	9 hours	45 hours	9 hours	45 hours
(ii). Driver	8 hours 45 minutes	42 hours	9 hours	45 hours
(iii). General worker, cleaner and labourer	8 hours 30 minutes	41 hours	9 hours	44 hours
(iv). All other employees	8 hours	40 hours	9 hours	44 hours

(b) With the exception of security guards, who shall be required to work not more than six consecutive days in any week, ordinary hours shall be worked daily between 7:00 and 19:00, Mondays to Fridays.

(2) Intervals:

(a) Every employee shall be entitled to daily meal and/or rest intervals totalling not more than 60 minutes, which shall not form part of ordinary working hours, and shall be at such times as agreed on with his employer.

(b) No employer shall require an employee to work for more than five hours continuously without an interval.

(3)

(a) **Shift work:** An employer may require his employees to work shifts: Provided that no employee shall be required to work more than one 8-hour or 12-hour shift in any period of 24 hours.

(b) **Flexible working hours:** An employer and an employee may contract to work either a compressed working week or to average the hours of work as provided in sections 11 and 12 of the Basic Conditions of Employment Act, 1997.

(4) Overtime:

(a) All time worked in excess of the number of ordinary working hours in one week shall be overtime.

(b) An employer may request, which request shall not be unreasonably rejected, an employee to work, overtime for a period not exceeding three hours daily, from Mondays to Fridays, and not exceeding eight hours on Saturdays or Sundays: Provided that the maximum number of hours' overtime worked in any week shall not exceed the maximum hours' overtime prescribed

in the Basic Conditions of Employment Act: Provided further than an employer and any employee who is required to drive motor vehicles may agree and contract that a maximum of one hour's overtime prior to the commencement or ordinary hours of work and a maximum of one hour's overtime at the conclusion or ordinary hours of work each day be compulsory overtime for the purpose of transporting employees to and from their place of work.

(c) An employee who is engaged in a continuous process of work shall be obliged to work until that process has been completed and shall be paid at overtime rates, if applicable.

(5) Public holidays: The public holidays proclaimed in terms of the Public Holidays Act,

1994, shall be recognized as paid public holidays if they fall on a normal working day:

Provided that the annual holiday payment made by the Council shall be inclusive of payment for all the public holidays that may fall on a normal working day during the three-week annual shutdown.

5A. Notwithstanding anything contained in sub clause (1) to (5) above, security guards are required to work shifts in accordance with the employer's operational requirements: Provided

that no security guard shall be required to work more than 13 hours during a night shift and 11 hours during a day shift.

(6) Annual leave:

- (a) Every employee shall be entitled to annual leave during the annual Building Industry shutdown period, the dates of which shall be determined by the Council not later than 30 June every year.
- (b) Notwithstanding the provisions of paragraph (a), an employee may agree with his employer to work during the annual leave period and shall be paid the basic wage laid down in clause 9(1) for any time worked during such period.
- (c) Security guards and other employees who work during the annual leave period shall, by agreement with their employers, be granted leave equal to the period worked during annual shutdown.

(7) Sick leave: An employee shall be entitled to sick leave in accordance with the provisions of the Sick Pay Fund for the Building Industry and clause 15 of this Agreement, and to payment for the period of such sick leave in terms thereof.

(8) Termination of contract of employment:

- (a) An employer or employee who intends terminating a contract of employment shall give the other party at least one week's written notice of termination of such contract, which notice shall be given before 12:00 on any working day, and shall commence as from 08:00 on the following working day if such contract has been for up to six months, continuous employment and two weeks written notice if such contract has been for longer than six months' continuous employment.
- (b) Notwithstanding the provisions of paragraph (a), either party shall be entitled to terminate the contract of employment without notice by making payment in lieu of the required notice.
- (c) In the event of an employee's absconding, or not making the appropriate payment in lieu of notice, and where the employer has proven such, the employer shall be entitled

to deduct the appropriate notice pay from any moneys due to the employee in terms of the Holiday Fund.

(d) Nothing in this sub clause shall affect the right of an employer or employee to terminate a contract of employment without notice.

(e) A contract of employment shall be terminated automatically if an employee is absent from work without the employer's consent for a continuous period of five working days, unless the employee's absence is due to circumstances beyond his control: Provided that the employer shall investigate the absence of the employee and apply fair procedures to determine if the termination is to be made effective.

(9) Lay-off and suspension:

(a) An employer shall be entitled to lay off an employee temporarily-

(i) on account of inclement weather or

(ii) on account of a shortage of materials, due to circumstances beyond the employer's control: Provided that the employer shall pay the equivalent of two hours' wages for short notice before the lay-off period commences;

(iii) on account of a temporary shortage of work: Provided that one day's written notice shall be given, and that such notice include the reason for the lay-off and the period of the lay-off: Provided further that the employer shall not be liable to pay the employee any remuneration except as specified above during a lay-off:

(b) An employee may be laid off for a continuous period not exceeding 20 working days and if at the end of such period the employer wishes to extend the lay-off period for a further 20 working days the employee shall first be given the option of being retrenched in accordance with the procedure laid down in sub clause (10): Provided that if the employee opts for the second period of lay-off of 20 working days the employer shall commence the retrenchment procedure laid down in sub clause (10) not later than 10

working days before the expiry of the second lay-off period: Provided further that employees shall be entitled to apply for unemployment benefits during the period of lay-off.

- (c) No employer shall unilaterally suspend an employee from work for any period as a disciplinary measure.

(10) Retrenchment:

- (a) An employer who proposes retrenchment shall, not later than ten working days before the proposed date of notice of the termination of any employee's services, provide any of the trade unions of which, to his knowledge, prospective retrenches may be members, with the following information in writing:

- (i) The number of employees who may be retrenched, together with their names, duration of service, Council Holiday Fund numbers, and job categories;
- (ii) the proposed date of retrenchment;
- (iii) the reasons for the proposed retrenchment, including all alternatives which the employer has considered and the reasons for rejecting them;
- (iv) the proposed selection criteria in respect of retrenches;
- (v) the proposed date for consultations with the trade union(s) and/or employee(s) likely to be affected;
- (vi) the proposed severance pay; and
- (vii) the employer's proposals for assistance to retrenches, including the possibility of re-employment.

- (b) In the event of an employee likely to be affected by the proposed retrenchment not being a union member, the information referred to in paragraph (a) shall be forwarded direct to that employee.

- (c) The trade union(s) and/or the employee(s) shall provide the employer with a written response to its retrenchment proposals by not later than three working days before the

proposed date of consultation, which shall include all of its/their proposals in respect of the retrenchment.

- (d) The employer shall attempt to reach consensus with the trade union(s) and/or employee(s) on the retrenchment proposals through consultation: Provided that should consensus not be reached before the expiry of the ten-day period referred to in paragraph (a), the employer shall be entitled to implement its retrenchment proposals.
- (e) The employer shall be entitled to implement its retrenchment proposals at any stage if the trade union(s) and/or employee(s) do not provide written responses or refuse and/or fail to consult with the employer in accordance with this sub clause.
- (f) An employee who is retrenched in terms of this sub clause shall be entitled to severance payment of one week of that employee's current remuneration per completed year of continuous service with his employer:

(11) Performance standard contracts:

- (a) An employer and an employee may enter into a written performance standard contract subject to agreement being reached at least five working days before the task is to commence.
- (b) Remuneration under a performance standard contract shall not be less than the basic wage plus benefits prescribed for the particular category of employee in this Agreement for normal working hours and provided that all statutory provisions for employment contracts, including unemployment insurance, income tax deductions and all provisions of this Agreement shall be observed.

(12) Probationary period: Any probationary period for a contract of employment shall be dealt with in accordance with the act, and the Code of Good Practice, referred to in Schedule 8 of the Act, before termination of employment is to be made

(13) Maternity and family responsibility leave: The provisions of sections 25 and 27 of the Basic Conditions of effective. Employment Act, 1997, shall apply in the Building Industry.

- (14) Leave for trade union activities:** The provisions of section 15 of the Labour Relations Act, 1995, shall apply in the Building Industry.

9. REMUNERATION

(1) Basic wages:

- (a) The basic wages in the Industry shall be as follows:

“For the period 1 November 2010 to 31 October 2011

Category of Employee	Minimum Wage Per Hour			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	13.02	11.48	11.09	9.88
(ii) Cleaner	13.02	11.48	11.09	9.88
(iii) General Worker	20.19	17.81	17.21	15.36
(iv) Tradesmen ,Learner Class 4 and scaffolder	22.14	20.22	19.75	17.73
(v) Tradesmen and Learners Class 3	24.42	23.12	22.79	20.53
(vi) Tradesmen, Learners Class 2 and block layer	33.29	30.41	29.30	26.42
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	27.80	206.04 per day	195.10 per day	174.52 per day
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	20.92	155.08 per day	146.89 per day	129.20 per day
(iv) Artisan	44.59	40.34	39.23	35.17
(x) Security Guard	187.52 per day	153.04 per day	144.37 per day	127.36 per day

“For the period 1 November 2011 to 31 October 2012

Category of Employee	Minimum Wage Per Hour			
	Area A	Area B1	Area B	Area C
	R	R	R	R

(i) Labourer	14.06	13.20	12.37	11.04
(ii) Cleaner	14.06	13.20	12.37	11.05
(iii) General Worker	21.81	20.48	19.19	17.16
(iv) Tradesmen ,Learner Class 4 and scaffolder	23.91	22.85	21.82	19.69
(v) Tradesmen and Learners Class 3	26.37	25.66	24.96	22.66
(vi) Tradesmen, Learners Class 2 and block layer	35.95	34.36	32.46	29.37
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	30.02	245.19 per day	221.44 per day	197.16 per day
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	22.59	184.55 per day	166.72 per day	146.27 per day
(iv) Artisan	48.16	45.83	43.47	39.12
(x) Security Guard	202.52 per day	183.04 per day	164.29 per day	144.36 per day

“For the period 1 November 2012 to 31 October 2013

Category of Employee	Minimum Wage Per Hour			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	15.18	15.18	13.79	12.34
(ii) Cleaner	15.18	15.18	13.79	12.35
(iii) General Worker	23.55	23.55	21.40	19.18
(iv) Tradesmen ,Learner Class 4 and scaffolder	25.82	25.82	24.11	21.86
(v) Tradesmen and Learners Class 3	28.48	28.48	27.33	25.00
(vi) Tradesmen, Learners Class 2 and block layer	38.83	38.83	35.97	32.65
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	32.42	291.78 per day	251.33 per day	222.73 per day
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	24.40	219.6 per day	189.23 per day	165.59 per day
(iv) Artisan	52.01	52.01	48.16	43.53

(x) Security Guard	218.72 per day	218.72 per day	186.96 per day	163.64 per day
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(b) Nothing in this clause shall prevent an employer from paying more than the prescribed basic wage: Provided that no party to this Agreement, nor any employee shall be entitled to embark upon industrial action to compel an employer to pay more than the basic wage prescribed in this Agreement.

(2) **Overtime:** An employee shall be entitled to payment in respect of overtime worked in accordance with clause 8 (4)(a) as follows: Provided that in areas B, B1 and C the first hour of overtime worked Mondays to Thursdays shall be at the basic rate:

Days worked		Multiple of basic wage
(i).	Mondays to Saturdays, inclusive	1 1/2
(ii).	Sundays	2

(3) **Public Holiday:**

- (a) An employee who is not required to work on a public holiday, which would normally be a working day, shall receive his normal daily basic wage in respect of that public holiday.
- (b) An employee who is required to work on a public holiday would normally be a working day shall, in addition to wages paid in terms of paragraph (a), be paid at a rate equal to his ordinary basic wage in respect of all hours worked on that day.
- (c) An employee who is required to work on a public holiday which falls on a Saturday or Sunday shall be remunerated in accordance with normal overtime rates, and shall not be entitled to any additional payment on such a public holiday.

(4) **Shift work;** An employee who works any shift other than the shift during the ordinary hours of work shift shall receive the basic wage payable under sub clause (1), plus 15%: Provided that the provisions of this sub clause shall not apply to security guards.

4A. Notwithstanding anything contained in subclasses (1) to (4) above, if a security guard's shift work includes work on a Sunday or public holiday, payment in respect of such Sunday or public holiday work shall be at the ordinary basic rate, unless it constitutes overtime in accordance with clause 8(4)(a) above in which case payment shall be at a rate of one and one third of the ordinary basic rate.

(5) **Dangerous work:** In addition to the wages prescribed in sub clause (1), an employer shall pay his employee 10% of such wage in respect of each hour or part of an hour during which such employee is engaged in performing dangerous work. For the purpose of this sub clause, "dangerous work" means any work classified as dangerous in any statute, provincial ordinance, municipal by-law or regulation relating to the Building Industry.

(6) **Allowances:**

(a) The basic wage payable in terms of sub clause (1) shall be deemed to include allowances for inclement weather, walking time and transport costs.

(b) An employee who is required to work away from his ordinary place of residence shall be paid a living-away allowance of R77, 00 per day which amount shall be increased annually by the same percentage as the total average increase in basic wages for all categories or the employee shall be provided with suitable accommodation by the employer in respect of each night he is required to spend away from his ordinary place of residence.

(c) Notwithstanding the provisions of sub clause (6)(a) employers shall not be compelled either to provide transport for employees or to pay any additional transport allowance: Provided that if an individual employer deems It necessary for operational or logistical

reasons such employer may negotiate with employees on a specific site regarding transport arrangements or additional transport allowances where no public transport exists on such employees shall be entitled to trade union representation.

10. WAGE PAYMENT PROCEDURE

(1) Payment of wages:

- (a) An employee shall receive payment of his wages at a time and place determined by his employer: Provided that payment shall be made-
 - (i) at weekly, fortnightly or monthly intervals;
 - (ii) in cash, by cheque or by means of electronic bank transfer, as agreed, between the employer and the employee; and
 - (iii) not later than close of business on the final working day of each pay interval.
- (b) With the exception of payment by means of electronic bank transfer, an employee's remuneration shall be paid to him on the site where he is employed, or at the office or workshop of the employer.
- (c) An employee whose services are terminated shall receive payment of the appropriate wage on or before the date of termination of his services.
- (d) Every employer shall provide each of his employees with a payslip indicating the employer's name, the name and occupation of the employee, and the period for which payment is made. The payslip shall indicate the calculation of the employee's gross remuneration, deductions, overtime payments, allowances and net remuneration.
- (e) All payments made in cash shall be enclosed in a sealed envelope.
- (f) An employer shall, at the time of payment of an employee's remuneration, make the requisite benefits payment to the Council via the auto-stamp system.

(2) Deductions from wages: An employer shall be entitled to make deductions from an employee's wages-

- (a) in respect of deductions prescribed in the following clauses:

- (i) 14(4) in terms of the Pension Fund or Provident Fund;
 - (ii) 17(1) in terms of the Council levy;
 - (iii) 18 in terms of trade union subscriptions;
 - (iv) 21 in terms of the WP Building and Allied Trades' Sick Fund;
 - (v) 24(4) in terms of the Medical Aid Fund;
- (b) if he is entitled or required to do so by law; and
- (c) in respect of any other matter, with the employee's written consent.

11. STORAGE AND PROVISION OF TOOLS

- (1) Every artisan, learner or apprentice shall be required at all times to be in possession of such tools as are necessary to perform the designated category of work in respect of which he is registered, and shall further be required to maintain such
- (2) Every employee shall be required to provide his own toolbox, which is capable of being securely locked, for storage tools in good working order and condition at all times. of his tools when not in use.
- (3) An employer shall provide a suitable place to store an employee's toolbox at each site, and shall ensure that such place is locked at all times. This provision shall not apply to jobbing work.

12. BENEFITS

- (1) Every employee who works the full contracted number of normal working hours on a normal working day or who is entitled to be off duty on a public holiday that falls on a normal working day shall be entitled to receive benefits in terms of this Agreement, and shall for the purposes of this Agreement be deemed to be an eligible employee: Provided that an employee who works for an employer on any normal working day, but is prevented from working the full normal working hours owing to circumstances beyond his control, or for any good reason accepted by his employer, shall also be deemed to be an eligible employee in respect of that

day: Provided further that an employee who has been laid off in terms of sub clause 8(9) shall not be entitled to benefits.

- (2) An employer shall purchase benefits in the prescribed manner from the Council for the purpose of making the contributions prescribed in this Agreement in respect of eligible employees.
- (3) The Council shall retain each eligible employee's benefits record, and the benefits so purchased by the employer shall be indicated on the employee's payslip.
- (4) An employee who contracts to work compressed working weeks of less than five normal working days shall be entitled to benefits for five days for each compressed working week that is worked.

13. HOLIDAY FUND

- (1) The Holiday Fund is hereby continued and shall continue to be administered by the Council for the purpose of providing eligible employees with leave pay for the annual leave period in terms of clause 8(6). Moneys contributed to the Fund by employers shall be invested as provided for in terms of section 53(5) of the Act.
- (2) An employer shall contribute to the Holiday Fund and Bonus Fund on behalf of an eligible employee in respect of each normal working day that the employee remains in his employ ("a contribution day"), an amount which shall be calculated as follows:

"For the period 1 November 2010 to 31 October 2011

Category of Employee	Holiday Fund Amount per day				Bonus Fund Amount per day			
	Area A	Area B1	Area B	Area C	Area A	Area B1	Area B	Area C
	R	R	R	R	R	R	R	R
(i) Labourer	7.84	6.92	6.68	5.95	6.54	5.76	5.57	4.96
(ii) Cleaner	7.84	6.92	6.68	5.95	6.54	5.76	5.57	4.96

(iii) General Worker	12.16	10.73	10.37	9.25	10.14	8.94	8.64	7.71
(iv) Tradesmen ,Learner Class 4 and scaffolder	13.01	11.88	11.61	10.42	10.84	9.90	9.67	8.69
(v) Tradesmen and Learners Class 3	14.35	13.59	13.39	12.07	11.96	11.32	11.16	10.05
(vi) Tradesmen, Learners Class 2 and block layer	19.57	17.87	17.22	15.53	16.31	14.89	14.35	12.94
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	17.16	14.13	13.38	11.97	14.30	11.77	11.15	9.97
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	12.91	10.63	10.07	8.86	10.76	8.86	8.39	7.38
(iv) Artisan	26.21	23.71	23.06	20.67	21.84	19.76	19.21	17.23
(x) Security Guard	13.78	11.24	10.61	9.36	11.48	9.37	8.84	7.80

“For the period 1 November 2011 to 31 October 2012

Category of Employee	Holiday Fund Amount per day				Bonus Fund Amount per day			
	Area A	Area B1	Area B	Area C	Area A	Area B1	Area B	Area C
	R	R	R	R	R	R	R	R
(i) Labourer	8.47	7.95	7.45	6.65	7.06	6.63	6.21	5.54
(ii) Cleaner	8.47	7.95	7.45	6.65	7.06	6.63	6.21	5.55
(iii) General Worker	13.14	12.34	11.56	10.34	10.95	10.28	9.63	8.62
(iv) Tradesmen ,Learner Class 4 and scaffolder	14.05	13.43	12.82	11.57	11.71	11.19	10.69	9.65
(v) Tradesmen and Learners Class 3	15.50	15.08	14.67	13.32	12.92	12.57	12.23	11.10
(vi) Tradesmen, Learners Class 2 and block layer	21.13	20.20	19.08	17.26	17.61	16.83	15.90	14.39
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	18.53	16.81	15.18	13.52	15.44	14.01	12.65	11.27
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	13.94	12.65	11.43	10.03	11.62	10.55	9.53	8.36
(iv) Artisan	28.31	26.94	25.55	23.00	23.59	22.45	21.29	19.16
(x) Security Guard	14.88	13.45	12.07	10.61	12.40	11.21	10.06	8.84

“For the period 1 November 2012 to 31 October 2013

Category of Employee	Holiday Fund Amount per day				Bonus Fund Amount per day			
	Area A	Area B1	Area B	Area C	Area A	Area B1	Area B	Area C
	R	R	R	R	R	R	R	R
(i) Labourer	9.15	9.15	8.31	7.44	7.62	7.62	6.92	6.20
(ii) Cleaner	9.15	9.15	8.31	7.44	7.62	7.62	6.92	6.20
(iii) General Worker	14.19	14.19	12.89	11.55	11.82	11.82	10.74	9.63
(iv) Tradesmen ,Learner Class 4 and scaffolder	15.18	15.18	14.17	12.85	12.65	12.65	11.81	10.71
(v) Tradesmen and Learners Class 3	16.74	16.74	16.06	14.70	13.95	13.95	13.39	12.25
(vi) Tradesmen, Learners Class 2 and block layer	22.82	22.82	21.14	19.19	19.02	19.02	17.62	15.99
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	20.01	20.01	17.23	15.27	16.67	16.67	14.36	12.73
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	15.06	15.06	12.98	11.35	12.55	12.55	10.81	9.46
(iv) Artisan	30.57	30.57	28.31	25.58	25.47	25.47	23.59	21.32
(x) Security Guard	16.07	16.07	13.74	12.02	13.39	13.39	11.45	10.02

(3) Every employer shall pay the contribution to the Council within the period determined by the Council for such purposes.

(4) The Council shall determine a date before the commencement of the annual leave period in terms of clause 8(6) upon which eligible employees shall receive payment of the amount standing to their credit in the Holiday Fund: Provided that no payment shall be made from the Holiday Fund-

(a) in respect of benefits issued by an employer after 31 October each year, which benefits shall be deemed to have been issued during the following year;

(b) in respect of benefits for more than 225 days in any single year ending on 31 October of that year;

- (c) if an employee fails to claim the value of the benefits within six months of the commencement of the annual leave period, unless the Council in its discretion decides otherwise, in which event the value of the benefits shall accrue to the general funds of the Council;
- (d) in respect of deductions made in respect of an employee's Holiday Fund entitlement in terms of clause 8(8)(c);
- (e) subject to the provisions of sub clause (5), prior to the date determined by the Council in terms of this clause.

- (5) In the event of an eligible employee's death, all amounts to his credit in the Holiday Fund shall be paid to his duly appointed nominee, if any. Should no nominee survive the employee, or should a surviving nominee fail to claim payment within 12 months of the date of the employee's death, the amount to his credit shall be paid into his estate.
- (6) Subject to the provisions of sub clause (5), the amount standing to an employee's credit in the Holiday Fund shall not be transferable, and any employee who attempts to assign, transfer, cede, pledge or lend any benefits contribution shall forfeit the value to the general funds of the Council.
- (7) Notwithstanding the expiry or cancellation of this Agreement, the Council shall continue to administer the Holiday Fund until such time as it is liquidated or transferred to any other fund created for the purpose of providing annual leave pay to employees.
- (8) In the event of the Council being wound up or dissolved, the Holiday Fund shall continue to be administered by a committee appointed for such purpose by the parties before the winding up or dissolution of the Council, which committee shall consist of an equal number of employer and employee representatives. In the event of such committee being unable to carry out its duties for any reason, the parties shall appoint a trustee or trustees to carry out the duties of the committee and such trustees shall have the same powers as the committee for this purpose.

(9) In the event of there being no Council in existence at the time of expiry of this Agreement, the Holiday Fund shall be liquidated by the committee or trustee appointed in terms of sub clause (8).

(10) In the event of the liquidation of the Holiday Fund in terms of subclasses (7) or (8) the moneys remaining after the payment of all claims against the Holiday Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council. In the event of the Council having been wound up before the liquidation of the Holiday Fund the moneys remaining shall be distributed equally among the parties to the Council immediately prior to its dissolution.

14. PENSION/PROVIDENT FUND

(1)(a) The Building Industry Pension Scheme (WP) (the "Pension Fund") and the Building Industry Provident Fund (Western Province) (the "Provident Fund") are hereby continued and shall continue to be administered by the Council in accordance with the provisions of the Act for the purpose of providing pensions to employees in respect of whom contributions are made in terms of this clause.

(b) Every employee for whom a contribution is required in the table in sub clause (3) below shall be a member of either the Pension Fund or the Provident Fund, subject always to the rules of the said funds.

(2) For the purpose of achieving the objects of this clause, the Council shall be entitled to enter into any agreements it deems fit and shall further be entitled to make rules in respect of the operation and administration of any fund established in terms of this clause, which may be amended from time to time.

(3) An employer shall contribute the following amounts to the Pension Fund or the Provident Fund, as the case may be, on behalf of each eligible employee in respect of each contribution day:

“For the period 1 November 2010 to 31 October 2011

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	8.54	-	-	-
(iii) General Worker	13.24	11.68	11.29	10.07
(iv) Tradesmen ,Learner Class 4 and scaffolder	14.17	12.94	12.64	11.35
(v) Tradesmen and Learners Class 3	15.63	14.80	14.59	13.14
(vi) Tradesmen, Learners Class 2 and block layer	21.31	19.46	18.75	16.91
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	18.68	15.38	14.57	13.03
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	14.06	11.58	10.97	9.65
(iv) Artisan	28.54	25.82	25.11	22.51
(x) Security Guard	15.00	12.24	11.55	10.19

“For the period 1 November 2011 to 31 October 2012

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	9.22	-	-	-
(iii) General Worker	14.31	13.43	12.59	11.26
(iv) Tradesmen ,Learner Class 4 and scaffolder	15.30	14.62	13.96	12.60
(v) Tradesmen and Learners Class 3	16.88	16.42	15.97	14.50
(vi) Tradesmen, Learners Class 2 and block layer	23.01	21.99	20.77	18.80

(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	20.17	18.31	16.53	14.72
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	15.18	13.78	12.45	10.92
(iv) Artisan	30.82	29.33	27.82	25.04
(x) Security Guard	16.20	14.64	13.14	11.55

“For the period 1 November 2012 to 31 October 2013

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	9.96	-	-	-
(iii) General Worker	15.45	15.45	14.04	12.58
(iv) Tradesmen ,Learner Class 4 and scaffolder	16.52	16.52	15.43	13.99
(v) Tradesmen and Learners Class 3	18.23	18.23	17.49	16.00
(vi) Tradesmen, Learners Class 2 and block layer	24.85	24.85	23.02	20.90
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	21.79	21.79	18.77	16.63
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	16.40	16.40	14.13	12.36
(iv) Artisan	33.29	33.29	30.82	27.86
(x) Security Guard	17.50	17.5	14.96	13.09

- (4) Every employer shall further deduct a contribution from the remuneration of each eligible employee in respect of each contribution day, which shall be calculated as follows:

For the period 1 November 2010 to 31 October 2011

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	8.01	-	-	-
(iii) General Worker	12.42	10.95	10.58	9.44
(iv) Tradesmen ,Learner Class 4 and scaffolder	13.28	12.13	11.85	10.64
(v) Tradesmen and Learners Class 3	14.65	13.87	13.67	12.32
(vi) Tradesmen, Learners Class 2 and block layer	19.97	18.25	17.58	15.85
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	17.51	14.42	13.66	12.22
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	13.18	10.86	10.28	9.04
(iv) Artisan	26.75	24.20	23.54	21.10
(x) Security Guard	14.06	11.48	10.83	9.55

“For the period 1 November 2011 to 31 October 2012

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	8.65	-	-	-
(iii) General Worker	13.41	12.60	11.80	10.55
(iv) Tradesmen ,Learner Class 4 and scaffolder	14.35	13.71	13.09	11.82
(v) Tradesmen and Learners Class 3	15.82	15.40	14.98	13.59
(vi) Tradesmen, Learners Class 2 and block layer	21.57	20.62	19.48	17.62
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	18.91	17.16	15.50	13.80

(viii) Drivers of all other vehicles that require a code A, A1 or B licence	14.23	12.92	11.67	10.24
(iv) Artisan	28.90	27.50	26.08	23.47
(x) Security Guard	15.19	13.73	12.32	10.83

“For the period 1 November 2012 to 31 October 2013

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	-	-	-	-
(ii) Cleaner	9.34	-	-	-
(iii) General Worker	14.48	14.48	13.16	11.79
(iv) Tradesmen ,Learner Class 4 and scaffolder	15.49	15.49	14.47	13.12
(v) Tradesmen and Learners Class 3	17.09	17.09	16.40	15.00
(vi) Tradesmen, Learners Class 2 and block layer	23.30	23.30	21.58	19.59
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	20.42	20.42	17.59	15.59
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	15.37	15.37	13.25	11.59
(iv) Artisan	31.21	31.21	28.90	26.12
(x) Security Guard	16.40	16.40	14.02	12.27

(5) Every employer shall pay the above contributions to the Council within the period determined by the Council.

(6) (a) Subject to an eligible employee's right to nominate a beneficiary to receive any amounts which may become due in terms of the Pension Fund or Provident Fund in the event of his death before retirement, any pension benefits accruing to an employee in

terms of this Agreement shall not be transferable, and may not be ceded or pledged.

(b) . When an employee fails to qualify for death, disability, and/or funeral benefits in terms of the Pension Fund and/or the Provident Fund because an employer has failed to pay contributions owing by it in respect of the employee's membership, such employer shall be liable to pay to such employee or his beneficiary an amount of money equal to the death, disability and/or funeral benefits that would have been payable to the employee under the rules of the applicable fund had the contributions been paid by the employer.

(7) In the event of the Council's being dissolved, wound up or ceasing to operate during the currency of this Agreement, the parties shall appoint a trustee or trustees before such dissolution, winding up or ceasing to operate to perform the functions of the Council set out in this clause, and such trustees shall have all the powers vested in the Council for this purpose.

15. SICK PAY FUND

- (1) The Sick Pay Fund for the Building Industry ("the Fund"), is hereby continued and shall continue to be administered by the Council for the purposes of recompensing employees during periods of absence from work due to incapacity, and paying gratuities to employees in the event of permanent disability, in accordance with the rules of the Fund.
- (2) The fund shall be administered by the Council in accordance with the rules which it may make from time to time for this purpose ("the Rules"), and all moneys of the Fund shall be administered, invested and paid out in accordance with the Rules. Copies of the Rules shall be available for inspection at the offices of the Council.

(3) Every employer shall contribute to the Fund in respect of each normal working day that an eligible employee remains

in his employ, an amount which shall be calculated as follows:

“For the period 1 November 2010 to 31 October 2011

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	1.33	1.18	1.14	1.01
(ii) Cleaner	1.33	1.18	1.14	1.01
(iii) General Worker	2.07	1.83	1.76	1.57
(iv) Class 4 and scaffolder	2.21	2.02	1.98	1.77
(v) Class 3	2.44	2.31	2.28	2.05
(vi) Class 2 and block layer	3.33	3.04	2.93	2.64
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	2.92	2.40	2.28	2.04
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	2.20	1.81	1.71	1.51
(iv) Artisan	6.24	5.65	5.49	4.92
(x) Security Guard	2.34	1.91	1.80	1.59

“For the period 1 November 2011 to 31 October 2012

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	1.44	1.35	1.27	1.13
(ii) Cleaner	1.44	1.35	1.27	1.13
(iii) General Worker	2.24	2.10	1.97	1.76

(iv) Class 4 and scaffolder	2.39	2.29	2.18	1.97
(v) Class 3	2.64	2.57	2.50	2.27
(vi) Class 2 and block layer	3.60	3.44	3.25	2.94
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	3.15	2.86	2.58	2.30
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	2.37	2.15	1.95	1.71
(iv) Artisan	6.74	6.42	6.09	5.48
(x) Security Guard	2.53	2.29	2.05	1.80

“For the period 1 November 2012 to 31 October 2013

Category of Employee	Amount per day			
	Area A	Area B1	Area B	Area C
	R	R	R	R
(i) Labourer	1.56	1.56	1.41	1.27
(ii) Cleaner	1.56	1.56	1.41	1.27
(iii) General Worker	2.41	2.41	2.19	1.97
(iv) Class 4 and scaffolder	2.58	2.58	2.41	2.19
(v) Class 3	2.85	2.85	2.73	2.50
(vi) Class 2 and block layer	3.88	3.88	3.60	3.26
(vii) Drivers/Plant operators of motor vehicles that require a code C1 licence, per day or above	3.40	3.40	2.93	2.60
(viii) Drivers of all other vehicles that require a code A, A1 or B licence	2.56	2.56	2.21	1.93
(iv) Artisan	7.28	7.28	6.74	6.09
(x) Security Guard	2.73	2.73	2.34	2.05

- (4) An employee shall receive payment in the amount set out in the table below in respect of each working day, including public holidays, that he is absent owing to illness or injury in a cycle of 365 calendar days:

Normal working days absent	Class of employee	% of minimum basic wage prescribed in clause 9(1)
1st-10th	All employees	75%
11th-130th	All employees	33%

- (5) Subject to the Rules of the Fund, an employee shall not be entitled to sick pay-
- (a) until 130 consecutive days' contributions have been made to the Fund in respect of such employee: Provided that contributions interrupted by a period of unemployment or a change of employer shall be deemed to be consecutive;
 - (b) for more than 130 days in any 365-day cycle, calculated from the first day in respect of which the employee is entitled to sick pay;
 - (c) if he is absent from work owing to an accident compensatable under the Compensation for Occupational Injuries and Diseases Act, 1993;
 - (d) if his absence from work is related to the use of alcohol or illegal drugs, or he is incapacitated through sickness owing to his own negligence or misconduct;
 - (e) if he fails to observe the instructions of a medical practitioner, or has in the opinion of that practitioner aggravated his condition or retarded his recovery through his own actions;
 - (f) if he suffers from an injury for which a third party is liable to pay or does pay compensation to him;
 - (g) while he undergoes treatment prescribed by any person other than a registered medical practitioner;

- (h) if he fails to provide the Council with any relevant information which it may require;
 - (i) if he is found by the Council to be fit to resume his employment or to be permanently disabled, in which event he shall cease to be entitled to sick pay from a date fixed by the Fund for this purpose; and
 - (j) at any time when the amount to the credit of the Fund drops below R100 000,00 and until such time as the amount to the credit of the Fund exceeds R500 000,00.
- (6) The Fund shall be entitled to recover any amount paid to an employee-
- (a) in consequence of false information furnished to the Fund or on behalf of such employee; and
 - (b) if the employee fails to notify the Fund timeously of any change in his circumstances which could lead to the amount of the benefits being reviewed or withdrawn, in which event the Fund may claim from the employee any money overpaid to him.
- (7) In the case of any employee taking maternity leave, the Fund shall pay that employee 33% of her current wages for a maximum period of 120 days.
- (8) The Fund shall continue to pay employer contributions to the Holiday Fund and the Building Industry Medical Aid Fund on behalf of an employee during a period of one or more consecutive days in any pay week that the employee receives sick pay in terms of this clause.
- (9) In the event of the expiration of this Agreement, the dissolution or winding up of the Council or a cessation of its operations, the provisions of clause 13(7), (8) and (9) relating to the Holiday Fund shall apply equally to this Fund.

16. AUDIT AND ACCOUNTING

The Council shall ensure that proper books of account and records are kept in respect of each of the Funds administered by it, and that an annual audit of each of the Funds is performed in accordance with the provisions of the Act and the Council's Constitution.

17. EXPENSES OF THE COUNCIL

1. Every employer shall deduct an amount as reflected in the table below per normal working day from the wages of each eligible employee and shall add an equal amount to the amount so deducted

Category of Employee	Amount per day		
	1 November 2010 - 31 October 2011	1 November 2011 - 31 October 2012	1 November 2012 - 31 October 2013
	R	R	R
All Employees	1.19	1.29	1.39
All Employers	1.19	1.29	1.39

2. Every employer shall pay the contributions referred to in sub clause (1) to the Council within the period determined by the Council.
3. The contribution paid to the Council in terms of this clause shall be utilized for the purpose of meeting its general expenses, and shall be administered in accordance with the provisions of the Council's Constitution.

18. TRADE UNION SUBSCRIPTIONS

Trade unions may opt for either one of the following mechanisms, in each case deductions of trade union subscriptions may

be authorized only by the affected employee, in writing:

- a.

- (i) Each trade union shall be entitled to approach each employer in the Industry direct for the purpose of establishing stop-order facilities for the deduction of trade union subscriptions.
- (ii) Every employer who grants such facilities shall be entitled to deduct a negotiated administration fee for the subscriptions so collected.

OR

b.

- (i) Every employer shall deduct an amount of not more than 1 % of the normal working day wage of an employee who is a member of a registered trade union and for whom wages are prescribed in clauses 9 of this Agreement.
- (ii) An employer shall pay the amounts deducted by him in terms of paragraph (b) (i) to the Council within the period determined by the Council.
- (iii) Each month the Council shall pay over to the trade unions all moneys so collected by the employers in terms of paragraph (b) (ii), less a collection fee of 2,5% on gross subscriptions which amounts shall accrue to the general funds of the Council.

19. SPECIAL MEMBERSHIP LEVY: EMPLOYERS

- (1) Each member of an employers' organisation shall pay a membership levy to that employers' organisation in respect of each employee employed by such member entitled to benefits in terms of this Agreement.
- (2) An employers' organisation shall be entitled to use the facilities of the Council for the collection of such levies, in which event the Council shall be entitled to an administration fee of 2,5% of the subscriptions so collected.

20. BUILDING INDUSTRY SKILLS AND EDUCATION TRUST

- (1) Every employer shall pay to the Council the contribution prescribed by the Skills and Education Trust.
- (2) The Council shall be entitled to deduct a 2,5% collection fee from the amounts received in terms of this clause, and shall pay the remainder to the Skills and Education Trust.

21. WESTERN PROVINCE BUILDING AND ALLIED TRADES' SICK FUND

Trade unions may opt for either one of the following mechanisms. In each case deductions of Sick Fund contributions may be authorized only by the affected employee in writing:

(a)

- (i) Each trade union shall be entitled to approach each employer in the Industry direct for the purpose of establishing stop-order facilities for the deduction of trade union sick fund subscriptions in respect of its consenting members.
- (ii) Every employer who grants such facilities shall be entitled to deduct an administration fee of 2,5% of the subscription so collected.

(b) OR

- (i) Every employer shall deduct an amount equal to 0,4% of the normal working day wage of an employee who is a member of a registered trade union and for whom wages are prescribed in clause 9 of this Agreement.
- (ii) Each month the Council shall pay over to the Western Province Building and Allied Trades' Sick Fund all moneys so collected by the employers in terms of paragraph (b)(i) less a collection fee of 2,5% on gross subscriptions, which amount shall accrue to the general funds of the Council.

22. GENERAL

(1) ***Exhibition of Agreement :***

- (a) The parties agree that the English version of this Agreement shall determine the meaning and the intention of the parties and the translations in Afrikaans and Xhosa shall be made available by the Council for inspection by any person during working hours at the offices of the Council.
- (b) Any person may acquire a copy of this Agreement by paying to the council the sum of R5,00.
- (c) Each party to this Agreement shall receive two free copies of the Agreement and Constitution.

(2) ***Value added tax (VAT):*** All monetary values quoted in this Agreement are exclusive of value added tax.

(3) ***Shelter and ablution facilities:***

- (a) At any site where the building operations are being carried out employers shall provide suitable accommodation-
 - to serve as shelter for employees during wet weather; and/or
 - to serve as a change room: Provided that the provisions of this sub clause shall not apply to jobbing work and on sites where fewer than ten employees are employed or where the circumstances peculiar to the site or the nature of the work in progress do not permit of accommodation for a change room.
- (b) Such accommodation may be any lockable shed, room or similar place constructed of walls and a roof composed of concrete, brickwork, wood, iron or any combination thereof or any other material approved by the Council and the whole to be so constructed as to provide a place for employees to change their clothes, to wash and to take shelter.

- (c) Such accommodation may include clothes lockers or similar lock-up facilities in which employees can safely store changes of clothing and other personal possessions while at work.
- (d) An employer shall provide proper and adequate sanitary accommodation on each job, which shall at all times be maintained in a hygienic and proper condition, and shall further conform to the legislation of the local authority in whose area the job is situated.

Trade union access : Officials of trade union parties shall in the ordinary course of their duties have access to

building sites and workshops during working hours, but shall not be allowed to interfere with the continued performance of work

by any employee, or approach any employee without the prior consent of the employer or his duly authorized representative, which consent shall not unreasonably be withheld.

Protective clothing: An employer shall supply to employees protective clothing in accordance with the requirements of the Occupational Health and Safety Act.

23. EXEMPTIONS

- (1) 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.
- (2) All applicants 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 subclasses of the Agreement from which exemption is required; and
 - (c) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives, and the responses resulting from such consultation, either in support of or against the application, are to be included with the application.

- (3) The Secretary of the Council shall place the applications for exemption on the agenda of the next Council meeting, for decision.
- (4) Applications for exemption referred to the Council shall be considered by the Council in accordance with the exemption criteria set out in sub clause (11) hereof, and the applicant(s) shall be advised, in writing, of the Council's decision within 14 normal working days following the meeting at which the applications were considered.
- (5) Any non-party to which this Agreement has been extended in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of this Agreement-
- (6) In terms of section 32 of the Act, the Council hereby establishes an independent body to be known as the "Exemption Board" to hear and decide any appeal brought against-
 - (a) the Council's refusal of a non-party's application for exemption from the provisions of this Agreement;
 - (b) the withdrawal of such an exemption by the Council.
- (7) Within 14 consecutive days after having been advised of the Council's decision regarding an application for exemption, the non-party who feels aggrieved by the Council's decision may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal shall be fully reasoned.
- (8) The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board which shall as soon as possible hear and decide the matter with reference to the exemption criteria set out in sub clause (11) hereof and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting: Provided that the Exemptions Board may defer a decision to a following meeting if additional motivation, information or verbal representations are considered necessary to decide on the application for exemption.
- (9) Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant(s) within 10 normal working days of the date of the decision, clearly specifying-

- (a) the terms of the exemption; and
 - (b) the reporting requirements by the applicant and the monitoring and re-evaluation processes.
- (10) When the Exemptions Board decides against granting an exemption or part of an exemption requested it shall advise the applicant(s) within 10 normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.
- (11) **Exemption criteria:** The Exemptions Board 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 and the petitions for or against granting the exemption as provided by employers or employees who will 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 is not created by the exemption;
 - (f) the effect of the exemption on any employee benefit fund or training provision in relation to the alternative comparable 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 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.

(1) The Building Industry Medical Aid Fund ("the Fund") is hereby continued and shall continue to be administered by the Council in terms of the Act for the purposes of-

- (a) assisting members in regard to the cost of medical services incurred by them or their dependants, as may be provided in the rules of the Fund;
- (b) taking such measures as the Council deems necessary for the prevention of sickness and for the improvement and promotion of health amongst members and their dependants;
- (c) contracting with any medical practitioner, hospital, nursing home, convalescent home or other similar institution, person or authority in respect of medical services; and
- (d) meeting the cost of such arrangements and the medical expenses of members or their dependants as provided in the rules of the Fund.

(2) The Fund shall be managed by the Council in accordance with the Rules which it may make from time to time for this purpose ("the Rules"), and all moneys of the Fund shall be administered, invested and paid out in accordance with the Rules, copies of which shall be available for inspection at the offices of the Council. The Council shall appoint auditors to audit the books of account of the Fund annually.

(3) An employee who is eligible in terms of the Rules to become a member of the Fund shall contribute half of the total contribution and his employer shall contribute the remaining half of the contribution for each normal working day that the employee remains in his employ, which contribution shall be as follows:

Category of Employee	Amount per day		
	1 November 2010 - 31 October 2011	1 November 2011 - 31 October 2012	1 November 2012 - 31 October 2013
	R	R	R
Artisan Member Employee	17.28	18.66	
Employers Portion Per Artisan	17.28	18.66	

- (4) Every employer shall deduct a contribution from the remuneration of each eligible employee in respect of each contribution day and the employer shall add to it an equal amount.
- (5) Every employer shall pay the above contributions to the Council within the period determined by the Council for such purpose.
- (6) In the event of the expiration of this Agreement, the dissolution or winding up of the Council or a cessation of its operations, the provisions of clause 13(7), (8) and (9) relating to the Holiday Fund shall apply equally to this Fund.

25. RESOLUTION OF DISPUTES

- (1) **Procedure to enforce compliance with this Agreement** : The Council shall take all reasonable steps necessary to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached then the following procedure shall apply to enforce compliance:
 - (a) The Secretary of the Council shall appoint a designated agent to investigate the alleged breach.
 - (b) If, upon completion of the investigation, the designated agent has reason to believe that this Agreement has been breached, the agent may endeavour to secure compliance with the Agreement through conciliation.
 - (c) At the end of the conciliation process the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.
 - (d) Upon receipt of the report, the Secretary of the Council may-
 - (i) require the designated agent to make further investigations; or
 - (ii) impose a compliance order and a penalty in terms of sub clause 25 (1) (m); or

- (iii) refer the matter to arbitration in terms of this Agreement if the respondent party does not consent to the compliance order or the penalty, in which case the respondent party may be ordered to pay the costs of the process; or
 - (iv) take such other steps as he may deem reasonable:
- (e) If the Secretary to the Council decides to refer the matter for arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this Agreement.
- (f) The Secretary, in consultation with all parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Secretary of the Council shall serve notice of the date, time and venue of the arbitration on all parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
- (i) give evidence;
 - (ii) call witnesses;
 - (iii) question the witnesses of any other party;
 - (iv) address the concluding arguments to the arbitrator;
 - (v) be represented by a legal practitioner or co-employee or an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
- (i) To determine whether there has been a breach of this Agreement.
 - (ii) To make any appropriate award that gives effect to the Collective Agreement and to ensure compliance therewith.
 - (iii) To determine the appropriate form of and the procedure to be followed at the arbitration proceedings.
 - (iv) To make any order as to costs that he deems appropriate.

(v) To make an award in the absence of a party who is alleged to have breached the Agreement, if-

(aa) such party fails to appear in person or to be represented at the arbitration proceedings;

(ab) proof is presented that such party has been notified of the proceedings: Provided that notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party-

(A) by registered mail to such party's last-known address and 14 days have elapsed since such notification has been mailed; or

(B) by fax transmission to such party's last-known fax number; or

(C) by hand delivery to such party's last-known business or residential address;

(ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this Agreement.

(vi) To vary, rescind or amend any arbitration award made by him or any arbitrator on good cause shown and without limiting the generality hereof the arbitrator shall have this power if-

(aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;

(ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;

(ac) the award was granted as a result of a mistake common the parties to the proceedings.

(j) Any award made by the arbitrator, together with any reasons, shall be served on all interested parties by the Council.

(k) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.

(l) The provisions of this procedure shall stand in addition to any other legal remedy which the Council may apply to enforce a collective agreement.

(m) (i) the arbitrator finds that any party to the dispute has failed to comply with a provision of any of the Council's Collective Agreements which are binding on that party, then the arbitrator may, in addition to any other appropriate order, impose a penalty on the non-compliant party in accordance with paragraph (N)(vi) below;

(iii) the maximum penalty that an arbitrator may impose for a failure to comply with a provision of a Collective Agreement-

(aa) not involving a failure to pay an amount due to an employee/party in terms of any provision, shall be the penalty determined in terms of Table One; or

(ab) involving a failure to pay an amount due to an employee/party, shall be the greater of the amount determined in terms of Table One or Table Two:

TABLE ONE	
No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs.

A previous failure to comply in respect of the same provision	R200 per employee in respect of provision whom the failure to comply occurs.
A previous failure to comply in respect of the same provision within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs.
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs.
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs.

TABLE TWO

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order.
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order.
A previous failure to comply in respect of the same	75% of the amount due,

provision within the previous 12 months or two previous failures to comply in respect of the same provision with-in three years	including any interest owing on the amount at the date of the order.
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order.
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order.

(n) A cost award by an arbitrator may include the following costs or any costs which in the opinion of the arbitrator should be awarded:

- (i) Fee of the arbitrator including travelling and accommodation;
- (ii) venue costs;
- (iii) administration fee of the Council;
- (iv) costs of issuing subpoenas;
- (v) representative's fee which is to be taxed by the Labour Court;
- (vi) cost of the designated agent or other staff of the Council who have to attend the arbitration.

Procedure for the resolution of disputes about the application or interpretation of this

Agreement:

Any person who falls within the registered scope of the Council may refer a dispute about the interpretation or application of this Agreement to the Council for resolution in terms of this Agreement.

If a dispute is so referred to the Council, it shall attempt to resolve the dispute-

- (i) through conciliation; and
- (ii) if the dispute remains unresolved after conciliation, the Council shall appoint an arbitrator to arbitrate the dispute. The powers of the arbitrator shall be the same as in sub clause (1) (i) above.

The Secretary of the Council may apply to have an arbitration award made an order of the Labour Court in terms of section 158 (1) of the Act.

Notwithstanding, the provisions of the clause the Council may utilise section 33A of the LRA 1995 (as amended) in conjunction with annexure "A" (Rules for conciliating and arbitrating disputes in the Building Industry Bargaining Council) to monitor and enforce compliance with its collective agreement and to conciliate and arbitrate LRA 1995 disputes.

26. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS

(1) A designated agent appointed by the Minister in terms of section 33 (1) of the Act to attempt to resolve a dispute or to investigate any alleged contravention and for purposes of routine inspection to enforce compliance with this Agreement may-

- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
- (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute to appear before the designated agent to be questioned or to produce that book, document or object;
- (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
- (d) at any reasonable time, but only after obtaining the necessary written authorisation-

- (i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being there;
- (ii) examine, demand and production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
- (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;

(e) inspect, and retain a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.

(2) A subpoena issued for any purpose in terms of sub clause (1) shall be signed by the Secretary of the Bargaining Council and shall-

- (a) specifically require the person named in it to appear before the designated agent;
- (b) sufficiently identify the book, document or object to be produced; and
- (c) state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in sub clause (1) (d)-

(a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, and then only on the application of the designated agent setting out under oath or affirmation the following information:

- (i) The nature of the dispute;
- (ii) the relevance of any book, document or object to the resolution of the dispute;
- (iii) the presence of any book, document or object on the premises; and
- (iv) the need to enter, inspect or seize the book, document or object; and

(b) in all other cases, may be given by the Secretary of the Council.

- (4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The appointed person shall issue a receipt for any book, document or object seized in terms of sub clause (1).
- (6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (7) The appointed person shall pay the specified witness fee to each person who appear before him in response to a subpoena issued.
- (8) A person shall be in contempt of the designated agent-
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
 - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
 - (c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;
 - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to sub clause (6);
 - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
 - (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
 - (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an

(h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during investigation or improperly anticipates the designated agent's recommendations; those proceedings;

(i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.

(9) The designated agent may refer any contempt to the Labour Court for an appropriate order.

(10) A designated agent may decline to investigate and follow up on a complaint made by an employee who reports the dispute to the Council more than 17 weeks after the dispute arose: Provided that the employer of the complainant shall be assessed for the full period of non-compliance including interest and penalties as prescribed in this Agreement.

(11) A designated agent may decline to investigate and follow up on a complaint made by a trade union if the trade union has not attempted first to resolve the alleged dispute directly with the employer party to the alleged dispute.

27. COMPLIANCE COMMITTEE

(1) The Council shall nominate a subcommittee to be known as the "Compliance Committee" that will be responsible for the effective investigation and enforcement action in respect of non-compliance with this Agreement.

(2) The Compliance Committee shall-

(a) establish guidelines and principles covering all aspects of the enforcement of this Agreement, which are acceptable to the parties to this Agreement and which shall provide fair, cost-effective, unbiased and corruption free enforcement of this Agreement;

(b) actively monitor and ensure that the guidelines and principles so established are adhered to by the agents of the Council;

(c) provide open communication in regard to the actions of the Council or the Compliance Committee with all employers and employees interested in these actions;

- (d) investigate positive methods for promoting compliance especially amongst informal sector employers and employees and including the lobbying of all persons and institutions responsible for the preparation of tender documents to provide for compulsory compliance with this Agreement by the employers who are successful in winning such tenders;
- (e) provide for quick and cost-effective conciliation or arbitration of disputes between the Council and employers or employees.

28. NEGOTIATIONS BY AREA

If amendments to this Agreement specifically affect area B and area C the negotiation of such amendments shall be between the employers and the employees representing area B and area C.

Signed at Bellville this 4th day of October 2010

R. H. M. JOHNSON

for the Master Builders' and Allied Trades' Association, Western Cape

D STRAUS

for the Boland Meesterbouers en Verwante Bedrywe Vereniging

R. C. DAMON

for the Building Workers' Union

P HLENGISA

for the National Union of Mineworkers (NUM)

T. NTSOMI

for the Building, Wood and Allied Workers' Union of South Africa

J BROWN

For the Building Construction and Allied Workers Union

ANNEXURE A

RULES FOR CONCILIATING AND ARBITRATING DISPUTES IN THE BUILDING INDUSTRY

BARGAINING COUNCIL

(RULES)

ARRANGEMENT OF RULES

PART A: SERVING AND FILING DOCUMENTS

1. Council addresses at which documents must be filed
2. How to calculate time periods
3. Who must sign documents
4. How to serve documents on other parties
5. How to prove that a document was served in terms of the Rules
6. How to file documents with the Council
7. Documents and notices sent by registered post

8. How to seek condonation for documents delivered

PART B: CONCILIATION OF DISPUTES

9. How to refer a dispute to the Council for conciliation

10. What notice the Council is to give of a conciliation hearing

11. Council may seek to resolve a dispute before a conciliation hearing

12. What happens if a party fails to attend or is not represented at a conciliation hearing

13. How to determine whether or not a Council commissioner may conciliate a dispute

14. Issuing of a certificate in terms of section 135(5) of the Act

15. Conciliation proceedings may not be disclosed

PART C: CON-ARB

16. Conduct of con-arb in terms of section 191 (5A) of the Act

PART D: ARBITRATIONS

17. How to request arbitration

18. When parties may be directed to file statements

19. When parties may be directed to hold a pre-arbitration conference

20. What notice the Council is to give of an arbitration hearing

21. How to determine whether or not a commissioner may arbitrate a dispute

22. How to postpone an arbitration

PART E: RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS

23. Who may represent a party at the Council

24. How to join or substitute parties to proceedings

25. How to correct the citation of a party

26. When the Council may consolidate disputes

27. Disclosure of documents

28. What happens if a party fails to attend proceedings in rights disputes

29. What happens if a party fails to attend proceedings in interest disputes

PART F: APPLICATIONS

30. How to bring an application

31. How to apply to vary or rescind arbitration awards or rulings

32. How to refer a dismissal dispute to the Labour Court

PART G: PRE-DISMISSAL ARBITRATIONS

33. How to request a pre-dismissal arbitration in terms of section 188A of the Act

PART H: GENERAL

34. Unrepresented applicants without postal addresses and fax numbers

35. Condonation for failure to comply with the Rules

36. Recordings of Council proceedings

37. How to have a subpoena issued

38. Payment of witness fees

39. Taxation of bills of cost

40. What words mean in these Rules

PART A

SERVING AND FILING DOCUMENTS

1. *Council addresses at which documents must be filed*

- (1) The addresses, telephone numbers and telefax numbers of the offices of the Council are listed in Schedule 1.

- (2) Documents may be filed with the Council only at those addresses or telefax numbers listed in Schedule 1.

2. *How to calculate time periods*

- (1) For the purpose of calculating any period of time in terms of these Rules-

- (a) a day means any day of the week including Saturdays, Sundays and public holidays, but excludes the days from the 16th of December to the 7th of January, both days inclusive.

Example 1

Rule 7 refers to seven days of the date the document was posted. If the document was posted on a Friday then the seven days would include the next Saturday and Sunday.

Example 2

Rule 7 refers to seven days of the date the document was posted. If the date of postage was on a Friday, the 12th of December, the first four days would be counted (the days before the 16th) and final three days would be counted from 7th of January, in other words the period would run from the 12th of December to the 10th of January.

- (b) the first day is excluded and the last day is included, subject to sub rule (2).

Example 3

Rule 10 refers to a 14 days' notice period for conciliation. If notice was faxed on Thursday 10 October, the conciliation must be scheduled on Friday 25 October or any day thereafter.

- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or any day between 16 December and 7 January.

3. Who must sign documents

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

4. How to serve documents to other parties

- (1) A party must serve a document on the other parties to a dispute-
 - (a) by handing a copy of the document to-
 - (i) the person if that person is a party to the dispute;
 - (ii) a person authorized in writing to accept service on behalf of the party to the dispute;
 - (iii) a person who appears to be at least 16 years old and in charge of the party's place of residence, business or employment;
 - (b) by faxing or telexing a copy of the document to that party;
 - (c) by sending a copy of the document by registered post or telegram to the last-known address of the party or to an address chosen by the party to receive service.

5. How to prove that a document was served in terms of the Rules

- (1) A party must prove to the Council that a document was served in terms of these Rules, by providing the Council or a council commissioner with the following:
 - (a) A copy of proof of mailing the document by registered post to the other party;
 - (b) a copy of the telegram or telex communicating the document to the other party;
 - (c) a copy of the telefax transmission report indicating the successful transmission of the whole document to the other party; or

(d) if a document was served by hand-

- (i) a copy of a receipt by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
- (ii) a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.

(2) If proof of service in accordance with sub rule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.

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

6. *How to file documents with the Council*

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

- (a) by handing the document in at an office of the Council;
- (b) by sending a copy of the document by registered post to the Council; or
- (c) by faxing the document to the Council.

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

- (a) the document is handed to the office of the Council;
- (b) a document sent by registered post is received by the Council; or
- (c) the transmission of a fax is completed.

7. *Documents and notices sent by registered post*

Any document sent by registered post is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

8. *How to seek condonation for documents delivered late*

(1) This rule applies to any document, including a referral or an application, delivered outside of a time period prescribed in the Act or these Rules.

- (2) A party must apply for condonation, in terms of rule 30, when delivering the document to the Council.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
 - (a) The degree of lateness;
 - (b) the reasons for the lateness and degree of fault;
 - (c) the referring party's prospects and succeeding with the referral and obtaining the relief sought against the other party;
 - (d) any prejudice to the other parties; and
 - (e) any other relevant factors.

PART B

CONCILIATION OF DISPUTES

9. *How to refer a dispute to the Council for conciliation*

- (1) A party must refer a dispute to the Council for conciliation by completing the Council's referral form and serving it on the Council.
- (2) The referring party must-
 - (a) sign the referral form;
 - (b) attach written proof that the referral form was served on the other parties to the dispute;
 - (c) if the referral form is filed late, attach an application for condonation in accordance with rule 8.
- (3) The Council must refuse to accept a referral document until sub rule (2) hereof has been complied with.

10. *The notice the Council is to give of a conciliation hearing*

The Council must give the parties at least 14 days' written notice of a conciliation hearing, unless the parties agree to a shorter period of notice.

11. *Council may seek to resolve a dispute before a conciliation hearing*

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

12. *What happens if a party fails to attend or is not represented at a conciliation hearing*

If a party to a dispute fails to attend in person or to be represented at a conciliation hearing, the Council commissioner may deal with it in terms of rule 22.

13. *How to determine whether or not Council commissioner may conciliate a dispute*

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

14. *Issuing a certificate in terms of section 135 (5) of the Act*

A certificate issued in terms of section 125 (5) of the Act stating that the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the commissioner during the conciliation process.

15. *Conciliation proceedings may not be disclosed*

(1) Conciliation proceedings must be treated as private and confidential and conducted without prejudice. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree to this in writing.

(2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation.

PART C

CON-ARB

16. Conduct of con-arb In terms of section 191 (5A) of the Act

- (1) The Council must give the parties at least 14 days' written notice that a matter has been scheduled for con-arb in terms of section 191 (5A) of the Act.
- (2) A party that intends to object to a dispute being dealt with in terms of section 191 (5A) must serve a written notice on the Council and the other party, at least seven days prior to the scheduled date in terms of sub rule (1).
- (3) Sub rule (2) does not apply to a dispute concerning-
 - (a) the dismissal of an employee for any reason related to probation; or
 - (b) an unfair labour practice relating to probation.
- (4) If the respondent party fails to appear or to be represented at a hearing schedule in terms of sub rule (1),
the Council commissioner must conduct the con-arb on the date specified in the notice issued in terms of
sub rule (1) or adjourn the proceeding until a later date.
- (5) Sub rule (4) applies irrespective of whether or not a party has lodged a notice of objection in terms of sub rule (2).
- (6) The provisions of the Act and these Rules that are applicable to conciliation and arbitration, respectively apply, with the changes required by the context, to con-arb proceedings.
- (7) If the arbitration does not commence on the dates specified in terms of the notice referred to in sub rule (1), the Council must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 20.

PART D

ARBITRATIONS

[Part D does not apply to arbitrations in respect of failure to comply with the provisions of a collective agreement in terms of section 33A (4) of the Act]

17. How to request arbitration

- (1) A party may request the Council to arbitrate a dispute by delivering a document in the form of Annexure LRA7.13 ("the referral document").
- (2) The referring party must-
 - (a) sign the referral document in accordance with rule 3;
 - (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 5; and
 - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 8.
- (3) The Council must refuse to accept a referral document until sub rule (2) has been complied with.
- (4) This rule does not apply to con-arb proceedings held in terms of section 191 (5A).

18. When parties may be directed to file statements

- (1) The Council or a Council commissioner may direct-
 - (a) the referring party in an arbitration to file a statement of case within a specified time period; and
 - (b) the other parties to file an answering statement within a specified time period.
- (2) A statement in terms of sub rule (1) must-
 - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
 - (b) be filed within the time period specified by the Council or the Council commissioner.

19. When parties may be directed to hold a pre-arbitration conference

The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub rule 18

- (2) above if directed to do so by the Secretary of the Council.

20. *What notice the Council is to give of an arbitration hearing*

The Council must give the parties at least 14 days' written notice of an arbitration hearing, unless the parties agree to a shorter period.

21. *How to determine whether a Council commissioner may arbitrate a dispute*

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

22. *How to postpone an arbitration*

- (1) The Council must postpone an arbitration without the parties appearing if-
 - (a) all the parties to the dispute agree in writing to the postponement; and
 - (b) the written agreement for the postponement is received by the Council more than seven days prior to the scheduled date of the arbitration; and
 - (c) there are compelling reasons to postpone.
- (2) Any party may apply in terms of rule 30 to postpone an arbitration by serving an application on the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

PART E

RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS

23. *Who may represent a party at the Council*

- (1) A party to the dispute may appear in person at any proceedings before the Council or be represented by-
 - (a) a legal practitioner;
 - (b) a member, official or office bearer of a registered trade union of which the party was a member at the time the dispute arose;

- (c) an official or office bearer of a registered employers' organisation, or registered employer federation of which the party was a member at the time the dispute arose;
 - (d) a director, employee, trustee or partner in a partnership of that party;
 - (e) another party to the dispute if proceedings are brought or opposed by more than one party.
- (2) Notwithstanding sub rule (1)(a), if the dispute is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or incapacity, the parties are not entitled to be represented by practising lawyers in the proceedings unless-
- (a) the Council commissioner and the other parties consent;
 - (b) the Council commissioner concludes that it is unreasonable to expect the party to deal with the dispute without legal representation, after considering-
 - (i) the nature of the questions of law raised by the dispute;
 - (ii) the complexity of the dispute
 - (iii) the public interest; and
 - (iv) the comparative ability of the opposing parties or their representatives to deal with the dispute.

24. *How to join or substitute parties to proceedings*

- (1) The Council or a Council commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same questions of law or fact.
- (2) A Council commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- (3) A Council commissioner may make an order in terms of sub rule (2)-
 - (a) of the Council commissioner's own accord;

- (b) on application by a party; or
 - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (4) An application in terms of this rule must be made in terms of rule 30.
- (5) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that person for an existing party, and a Council commissioner may make such order or give appropriate directions as to the further procedure of the proceedings.
- (6) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (7) Subject to any order made in terms of sub rules (2) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

25. *How to correct the citation of a party*

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

26. *When the Council may consolidate disputes*

The Council or a Council commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

27. *Disclosure of documents*

Any party may request a Council commissioner to make an order requiring any other party to the dispute to disclose
all relevant documents.

28. *What happens if a party fails to attend proceedings in rights disputes*

- (1) In a rights dispute, if a party to the dispute fails to attend or be represented at any proceedings before the Council, and that party-

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

29. *What happens if a party fails to attend proceedings in interest disputes*

- (1) In an interest dispute, if a party to the dispute fails to attend the conciliation hearing or be represented at the hearing, and that party-
- (a) had referred the dispute to the Council, a Council commissioner may extend the conciliation period for another thirty days and notify the parties of the extension in writing; or
 - (b) had not referred the dispute to the Council, the Council commissioner may immediately issue a certificate stating that the dispute remains unresolved.
- (2) A Council commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub rule (1).

PART F

APPLICATIONS

30. *How to bring an application*

- (1) An application must be brought on notice to all persons who have an interest in such application.

- (2) The party bringing the application must sign the notice of application and must state-
- (a) the title of the matter;
 - (b) the case number assigned to the matter by the Council;
 - (c) the relief sought;
 - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
 - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within 14 days after the application has been delivered to it;
 - (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e);
 - (g) a schedule is included listing the documents that are material and relevant to the application.
- (3) The application must be supported by an affidavit that must clearly and concisely set out-
- (a) the names, description and addresses of the parties;
 - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail enable any person opposing the application to reply to the facts;
 - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
 - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 8; and
 - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.

(4)

- (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 14 days from the day on which the application was served on that party.
 - (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub rules (2) and (3), respectively.
- (5)
 - (a) The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it.
 - (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (6) The Council commissioner may permit the affidavits referred to in this rule to be replaced by a written statement.
- (7) In an urgent application, the Council or a Council commissioner may-
 - (a) dispense with the requirements of this rule; and
 - (b) grant an order only against a party that has had reasonable notice of the application.
- (8)
 - (a) The Council must allocate a date for a hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.
 - (b) The Council must notify the parties of the date, time and place of the hearing of the application.
 - (c) Applications may be heard on a motion roll on a day determined by the Council.
- (9) Notwithstanding this rule, the Council or a Council commissioner may determine an application in any manner it deems fit.

31. How to apply to vary or rescind arbitration awards or rulings

- (1) An application for the variation or rescission of an arbitration award or ruling must be made within 14 days of the date on which the application became aware of-
 - (a) the arbitration award or ruling; or
 - (b) a mistake common to the parties to the proceedings.
- (2) A ruling made by a Council commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

32. How to refer a dismissal dispute to the Labour Court

- (1) An application in terms of section 191 (6) of the Act to refer a matter to the Labour Court, must be made within 14 days of the dispute being certified unresolved in conciliation.
- (2) Notwithstanding sub rule (1), a party that requests arbitration may not thereafter make an application in terms of section 191 (6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.
- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of section 191 (8) within 14 days of receiving the objection.

PART G**PREDISMISSAL ARBITRATIONS****33. How to request a pre-dismissal arbitration in terms of section 188A of the Act**

- (1) An employer requesting the Council to conduct a pre-dismissal arbitration, must do so by delivering a completed referral form to the Council.

- (2) The employee must sign the referral form consenting to pre-dismissal arbitration. If an employee has consented in terms of section 188A(4)(b)1, the referral form does not have to be signed by the employee, but a copy of the contract containing the consent must be attached to the form.
- (3) When filing the referral form, the employer must pay the prescribed fee to the Council.
Payment of the fee may only be made by-
 - (a) bank guaranteed cheque; or
 - (b) electronic transfer into the bank account of the Council.
- (4) Within 14 days of receiving a request in terms of sub rule (1) and payment of the prescribed fee, the Council must notify the parties to the pre-dismissal arbitration when and where the pre-dismissal arbitration will be
- (5) Unless the parties agree otherwise, the Council must give the parties at least 14 days' notice of the held.
commencement of the pre-dismissal arbitration.
- (6) The Council will be required to refund a fee paid in terms of sub rule (3), only if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub rule (4).

PART H

GENERAL

34. *Unrepresented applicants without postal addresses and fax numbers*

- (1) An unrepresented applicant who intends to refer a dispute to the Council and who does not have a postal address or fax number must hand-deliver the referral form to the Council.
- (2) If a referral form is received by hand delivery by an unrepresented applicant, the Council must provide the applicant with a case number and written instructions to

contact the Council by telephone or in person, within seven days of the date of referral, in order for the Council to notify the applicant of the details of the hearing.

- (3) The administrator who notifies the applicant of the hearing in terms of sub rule (2) must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- (4) The record made in terms of sub rule (3) will constitute proof that the applicant was notified of the hearing.

35. *Condonation for failure to comply with the Rules*

The Council or a Council commissioner may condone any failure to comply with the time frames in these Rules, on good cause shown.

36. *Recordings of Council proceedings*

- (1) The Council must keep a record of-
 - (a) any evidence given in an arbitration hearing;
 - (b) any sworn testimony given in any proceedings before the Council; and
 - (c) any arbitration award or ruling made by a Council commissioner.
- (2) The record may be kept by legible handwritten notes or by means of an electronic recording.
- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of sub rule (2), on payment of the costs of the transcription.
- (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Council.
- (5) The transcript of a record certified correct in terms of sub rule (4) will be presumed to be correct, unless the Labour Court decides otherwise.

37. *How to have a subpoena issued*

- (1) Any party who requires the Council or a Council commissioner to subpoena a person in terms of section 142 (1) of the Act, must file a completed subpoena form, requesting a

subpoena together with a written substantiation setting out why the evidence of the person to be subpoenaed is necessary.

- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of sub rule (1) must be filed with the Council at least 10 days before the arbitration hearing, or as directed by the Council commissioner hearing the arbitration.
- (4) The Council or a Council commissioner may refuse to issue a subpoena if-
 - (a) the party does not establish why the evidence of the person is necessary;
 - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
 - (c) the Council or a Council commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must-
 - (a) be served on the witness subpoenaed by the person who has requested the subpoena or by the sheriff, at least seven days before the scheduled date of the arbitration;
 - (b) if so directed by the Council, be accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142 (7) of the Act and the witnesses' reasonable travel costs.
- (6) Sub rules 4(c) and 5(b) do not apply if the Council, in terms of section 142(7)(c), has waived the requirement for the party to pay witness fees.

38. *Payment of witness fees*

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the Gazette in terms of section 142 (7) of the Act.
- (2) The witness fee must be paid by-
 - (a) the party who requested the Council to issue the subpoena; or
 - (b) the Council, if the issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c).
- (3) Notwithstanding sub rule (1), the Council commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

39. Taxation of bills of cost

- (1) The basis on which a Council commissioner may make an order as to costs in any arbitration is regulated by section 138 (10) of the Act.
- (2) The Secretary of the Council may appoint taxing officers to perform the functions of a taxing officer in terms of these Rules.
- (3) The taxing officer must tax any bill of costs for services in connection with proceedings in the Council, on Schedule A of the prescribed Magistrates' Courts tariff, in terms of the Magistrates' Courts Act, No. 32 of 1944, unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that in the taxing officer's opinion is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation must complete a referral form requesting taxation and must satisfy the taxing officer-
 - (a) of that party's entitlement to be present at the taxation; and
 - (b) that the party liable to pay the bill has received notice of the date, time and place of the taxation.

(6) Notwithstanding sub rule (4), notice need not be given to a party-

(a) who failed to appear or to be represented at the hearing; or

(b) who consented in writing to the taxation taking place in that party's absence.

(7) Any decision by a taxing officer is subject to review by the Labour Court.

40. ***What words mean in these Rules***

Any expression in these Rules that is defined in the Labour Relations Act 2, 1995 (Act No. 66 of 1995), has the same

meaning as in that Act and-

o "**Act**" means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of that Act;

"**con-arb**" means proceedings held in terms of section 191(5A) of the Act, where an arbitration commences immediately after certifying that the dispute remains unresolved in conciliation;

"**Council**" means the Building Industry Bargaining Council registered in terms of section 29 of the Act;

"Council commissioner" means an individual appointed by the Council to resolve disputes;

"**deliver**" means serve on other parties and file with the Commission;

"**dispute of interest**" means any dispute concerning a matter of mutual interest; excluding any dispute

that a party has the right to refer to arbitration or to the Labour Court under the Act, a collective

agreement or an arbitration agreement.

"**dispute of right**" means a legal claim of which a party in the employment relationship is entitled by virtue

of the employment contract, a collective agreement, a statute or the common law;

"Director" means the Director of the Commission appointed in terms of section 118 of the Act, and

includes any person delegated by the Director to perform any of the functions of the Director;

"file" means to lodge with the Council in terms of rule 6;

"Labour Court" means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

"party" means any party to proceedings before the Council;

"legal practitioner" means a practicing advocate, a practicing attorney and a candidate attorney;

"public holiday" means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No.

36 of 1994). These currently include-

- 1 January, New Year's Day
- 21 March, Human Rights Day
- Easter Friday and Monday
- 27 April, Freedom Day
- 1 May, Worker's Day
- 16 June, Youth Day
- 9 August, National Women's Day
- 24 September, Heritage Day
- 16 December, Day of Reconciliation
- 25 December, Christmas Day
- 26 December, Day of Goodwill,

- o and any public holiday declared as such in terms of section 2A of the Public Holidays Act, 1994.

"Rules" means these rules;

"Secretary" means the secretary of the Council;

"serve" means to serve in accordance with rule 4 and "service" has a corresponding meaning; and

"taxing officer" means any competent person appointed by the Secretary in terms of rule 32.

SCHEDULE 1

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