
GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 535

26 June 2015

LABOUR RELATIONS ACT, 1995

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

I, **MILDRED NELISIWE 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
2015-06-29 and for the period ending 31 October 2016.


M N OLIPHANT

MINISTER OF LABOUR

09/06/2015

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 (BCAWU)

Building, Wood and Allied Workers' Union of South Africa (BWAWSA)

Building Workers' Union (BWU)

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 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) The Building Industry, as defined hereunder, excluding all electrical activities undertaken in the Magisterial Districts of Bellville, Goodwood, Kuils River, Malmesbury, Paarl, Simonstown, Somerset West, Stellenbosch, Strand, The Cape, Wellington, Wynberg and the Local Municipality of Overstrand.

Handwritten signature and initials

- (d) The manufacture and erection of gravestones and cemetery memorials of all types in the Magisterial Districts of Bellville, Goodwood, Kuils River, Malmesbury, Paarl, Simonstown, Somerset West, Stellenbosch, Strand, The Cape, Wellington, Wynberg and the Local Municipality of Overstrand.
- (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, supervisory staff and administrative staff, unless hourly paid;
 - (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.
 - (c) non-parties in respect of clauses 1(1)(a), 2, 19 and 20 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 2016.

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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. CLAUSE 4: DEFINITIONS

(1) In sub-clause (1), under definitions, include the following new definitions:

“Aluminium Installer/Fixer” means an employee who exclusively works on a construction site as a non-designated Artisan in terms of clause 7(6) of this Agreement and is engaged in all of the following activities:

- a. Using tools of the trade effectively;
- b. Identifying and transferring datum and grid lines;
- c. Setting out and marking out accurately;
- d. Drilling holes at correct centres, plumb and square;
- e. Using correct lengths of plugs and screws;
- f. To accurately and effectively install windows, doors, shop fronts, curtain walls, glass assemblies, glass balustrades, roof tiles, attached correct ironmongery, apply silicone sealant accurately and neatly.

Such an employee shall be registered as an Artisan and shall be remunerated at an Artisan's rate and receive the benefits of an Artisan.

“Aluminium Manufacturing Worker” means an employee registered as a T3, in terms of clause 7 (6) of this Agreement and is engaged in all of the following activities:

- a. Interpreting the working drawing for a particular product including relevant details;
- b. Doing all setting out activities and making up all materials for machining or further processing;

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- c. Processing material with on-programmable machine/tools;
- d. Reporting technical complications and effectively performing his/her function within the production line as prescribed by such working drawing.

“Designated Glazier” means an employee registered as an Artisan and shall be remunerated as an and shall receive the benefits of an Artisan with the Council in terms of clause 7 of this Agreement and is engaged in one or more of the following activities has completed the SAQA requirements for a Designated Glazier:

- a. Performing all the following functions independently as prescribed on the workshop drawings; identify glass; gaskets; beads; cut glass; accurately position packers; glaze windows; glaze shop fronts; glaze curtain walls; glass and assemblies and flush glaze;
- b. Engaged in the final fitting of glass into frames;

“Machine Operator” means an employee who is registered as a T2 in terms of clause 7(6) of this Agreement and is engaged in all of the following activities:

- a. Interpreting the working drawings and details for machining;
- b. Independently setting out and marking up all material for machining and processing;
- c. Independently operating a programmable machine to cut or cut out openings/slots/grooves on materials as per details on working drawings;
- d. Write up formulae for programmable machine;
- e. Performing minor checks and minor machine repair.

“Non-Designated Glazier” means an employee registered as a T2 and shall be remunerated as a T2 and receives the benefits of a T2 with the Council in terms of clause 7(6) of this Agreement and is engaged in all of the following activities but has not completed the requirements for a Designated Glazier:

- a. Performing all the following functions independently as prescribed on the workshop drawings; identify glass; gaskets; beads; cut glass; accurately position packers; glaze windows; glaze shop fronts; glaze curtain walls; glass and assemblies and flush glaze;
- b. Engaged in the final fitting of glass into frames;

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5. CLAUSE 5: LEVELS OF BARGAINING

The Council shall be the sole forum for negotiating all matters pertaining to all Agreements entered into by the Council.

6. CLAUSE 6: REGISTRATION OF EMPLOYERS

- (1) Every employer in the Industry who falls within the registered scope of the Council shall register with the Council within 14 (fourteen) days of operating within such scope of this agreement.
- (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.
 - (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. Where the Council agrees to such a registration, the registration shall be subject to that person providing a wage guarantee equal to not less than 10 general workers' employment for three months.
- (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 within the period determined by the Council as defined in Clause 4 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 the Agreement published in Government Gazette No. 37415 of 7 March 2014.

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- (7) The Council shall keep a register of registered and compliant employers and registered and not 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.
- (9) (a) The council shall have the right at any time to call upon any employer to submit a return, in a form and manner prescribed by the Council, a schedule of all sub-contractors and the number of employees engaged by the sub-contractors on any project from time to time.
- (b) The council shall without prejudice to any other rights it may have against the employer, apply the guarantee as per clause 2(b), should it be proven that the employer has breached this Collective Agreement three or more times over a 12 month rolling period (Repeat offenders).
- (c)(i) A newly registered employer shall be regarded as being compliant for a period of two weeks which period shall commence from the date of registration with this Council, if the employer is new to the Building Industry.
- (ii) The council shall without prejudice to any other rights it may have to require an employer, who at time of registration has not registered any employees, to submit a wage guarantee as described in clause 2(b) of the Agreement published in Government Gazette No. 37415 of 7 March 2014.

7. CLAUSE 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, including apprentices and learners, with the Council within 20 working 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.

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- (4) Every employee who has registered in terms of this clause shall, upon accepting employment in the industry, produce his/her BIBC identity card to his/her employer and also to any Agent of the Council on request.
- (5) **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.
- (6) **Learner/Apprentice:**
- (a) A learner in a specified category shall be registered as a Trainee in that category in accordance with the following:
 - (i) In respect of Learner T4, where he has completed less than 55 per cent of the credits of the prescribed course.
 - (ii) In respect of Learner T3, where he has completed 55 to 74 per cent of the credits of the prescribed course,
 - (iii) In respect of Learner T2, 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) Subject to the employee agreeing, any person who has been employed within or 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/she is competent and in respect of which he/she should be credited with and, pursuant thereto, shall be registered as a learner in a particular category, as follows:

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<i>Proficiency</i>	<i>Class</i>
(i). Below 55 per cent	Learner T4
(ii). 55-74 per cent	Learner T3
(iii). 75-99 per cent	Learner T2
(iv). Completed all credits and successfully completed a Trade Test	Artisan

(7) **Artisan:**

- (a) An employee shall be registered as an artisan once he has completed and passed the trade test or has completed the number of credits that qualify him to work as an artisan and his employer has requested registration in writing. An artisan shall be entitled to the payment of wages in accordance with the wage prescribed for his category in terms of clause 9.
- (b) 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 its own cost, require that artisan to undergo a proficiency test, in which case the artisan shall be obliged to undergo such test.

- (8) 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 as amended.

8. CLAUSE 8: TERMS OF EMPLOYMENT

- (1) Substitute the table in sub-clause (1)(a) with the following table:

"Category	AREA A		AREA, B, C AND D	
	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, Labourer L1 and Labourer L2	8 hours 30 minutes	41 hours	9 hours	44 hours
(iv). All other employees	8 hours	40 hours	9 hours	44 hours"

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(2) Substitute sub-clause (5) with the following:

“(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 within the annual shutdown period shall be inclusive of payment for all the public holidays that fall within the three-week shutdown period, and, effective from December 2015, shall include payment for the public holiday that falls on the 16th of December, notwithstanding whether or not it falls within the annual shutdown period. Notwithstanding the above, Public Holidays that fall within the annual shutdown period, but is declared after the commencement of the benefit year, will not be included in the annual holiday payment made by the Council.”

9. CLAUSE 9: REMUNERATION

(1) Insert the following sub-clause (2) (c) as follows:

“(2)(c) A labourer (L1) that does skilled work should be paid at least the labourer (L2) rate with benefits”.

10. CLAUSE 13: HOLIDAY FUND

Substitute the tables in clause 13 with the following tables:

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"From the date of coming into operation of this agreement to 31 October 2015

Category of Employee	Holiday Fund Amount per day				Bonus Fund Amount per day			
	Area A	Area B	Area C	Area D	Area A	Area B	Area C	Area D
	R	R	R	R	R	R	R	R
(i) Labourer L1	11.21	10.98	10.28	9.76	8.85	8.67	8.11	7.71
(ii) Labourer L2	13.29	13.02	12.18	11.57	10.49	10.28	9.61	9.13
(iii) General Worker	17.31	16.94	15.83	13.92	13.67	13.37	12.50	10.99
(iv) Learner T4, manufacturing worker, waterproofing worker and scaffolder	18.51	18.26	17.28	16.58	14.62	14.41	13.65	13.09
(v) Learner T3, clerical worker and joinery assembler	20.42	20.29	19.43	18.79	16.12	16.02	15.34	14.83
(vi) Learner T2, machine operator, non-designated glazier, assistant floor layer, carpet fitter and block layer	27.84	27.39	25.90	24.81	21.98	21.62	20.45	19.59
(vii) Drivers/Plant operators of motor vehicles that require a code C1 license including crane drivers	24.40	23.55	21.61	20.28	19.27	18.59	17.06	16.01
(viii) Drivers/plant operators of all other vehicles that require a code A, A1 or B license	18.37	17.73	16.17	15.13	14.50	14.00	12.76	11.95
(ix) Artisan (including a roofer, carpet layer, floor layer, ceiling and/or partition erector, designated glazier, leading hand/junior foreman/supervisor)	37.29	36.68	34.60	33.11	29.44	28.96	27.32	26.14
(x) Security Guard	19.60	18.88	17.19	16.06	15.47	14.91	13.57	12.68"

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"For the period 1 November 2015 to 31 October 2016

Category of Employee	Holiday Fund Amount per day				Bonus Fund Amount per day			
	Area A	Area B	Area C	Area D	Area A	Area B	Area C	Area D
	R	R	R	R	R	R	R	R
(i) Labourer L1	12.08	12.09	11.49	11.06	9.54	9.54	9.07	8.74
(ii) Labourer L2	14.32	14.32	13.62	13.11	11.31	11.31	10.75	10.35
(iii) General Worker	18.61	18.61	17.65	16.11	14.69	14.69	13.94	12.72
(iv) Learner T4, manufacturing worker, waterproofing worker and scaffolder	19.90	19.91	19.15	18.58	15.71	15.71	15.12	14.67
(v) Learner T3, clerical worker and joinery assembler	21.96	21.97	21.39	20.90	17.33	17.33	16.89	16.50
(vi) Learner T2, machine operator, glazier, assistant floor layer, carpet fitter and block layer	29.93	29.93	28.72	27.84	23.63	23.63	22.68	21.98
(vii) Drivers/Plant operators of motor vehicles that require a code C1 license including crane drivers	26.23	26.23	24.36	23.23	20.71	20.71	19.23	18.34
(viii) Drivers/plant operators of all other vehicles that require a code A, A1 or B license	19.75	19.75	18.26	17.38	15.59	15.59	14.41	13.72
(ix) Artisan (including a roofer, carpet layer, floor layer, ceiling and/or partition erector, designated glazier, leading hand/junior foreman/supervisor)	40.08	40.08	38.40	37.19	31.65	31.65	30.31	29.36
(x) Security Guard	21.07	21.07	19.44	18.47	16.64	16.64	15.34	14.59"

11. CLAUSE 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) The Council hereby establishes an Exemptions Body constituted of the Compliance Committee appointed by the Council to consider all applications for exemptions of the Council's Collective Agreement.
- (3) Any person subject to the constitution/agreement may apply for exemption.
- (4) 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 sub-clauses of the Agreement from which exemption is required;
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- (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.
- (5) Upon receipt of a valid application by the Council it shall immediately refer the application to the Exemptions Body which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- (6) The authority of the Council is to consider applications for exemptions and grant exemptions.
- (7) The Exemption Body shall decide on an application for exemption within 30 days of receipt thereof.
- (8) In considering the application, the Exemptions Body shall take into consideration all relevant factors, which may include, but shall not be limited to, the following exemption criteria:
- (a) The period for which the exemption is sought.
 - (b) The number of employees affected and how many of such employees are members of a registered trade union.
 - (c) The written and verbal substantiation provided by the applicant
 - (d) Be accompanied by relevant supporting data and financial information.
 - (e) the terms of 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 employer must consult with the workforce, through a trade union representative or, where no trade union is involved, with the workforce itself, and must include the views expressed by the workforce in the application.
 - (h) Where the views of the workforce differ from that of the employer, the reasons for the views expressed must be submitted with the application.
 - (i) An application for exemption shall not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document. Where an agreement between the employer and the workforce is reached, the signed written agreement must accompany the application
 - (j) If the nature of the relief sought dictates, the application shall be accompanied by a plan reflecting the objectives and strategies to be adopted to rectify the situation giving rise to the application and indicating a time frame for the plan.
 - (k) The applicant's past record (if applicable) of compliance with the provisions of this agreement, its amendments and Exemptions Certificate.
 - (l) any precedent that might be set;
 - (m) it is fair to both the employer, its employees and other employees in the sector;
 - (n) it does not undermine this Agreement;
 - (o) reporting requirements by the applicant and monitoring and re-evaluation processes; and
 - (p) it will make a material difference to the viability of a business;
 - (q) it will assist with unexpected economic hardship occurring during the currency of the Agreement

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and will save unnecessary job losses.

(r) the interest of the industry as regards:

- (i) unfair competition;
- (ii) collective bargaining;
- (iii) potential for labour unrest;
- (iv) increased employment;

(s) the interest of employees' as regards:

- (i) exploitation;
- (ii) job preservation;
- (iii) sound conditions of employment;
- (iv) possible financial benefits;
- (v) health and safety;
- (vi) infringement of basic rights

(t) the interest of the employer as regards:

- (i) financial stability;
- (ii) impact on productivity;
- (iii) future relationship with employees' trade union;
- (iv) operational requirements

(u) any special circumstance that exist;

(10) In the event of the Exemptions Body granting, partially granting or refusing to grant an application, the applicant shall be informed of the decision and the reasons for the decision within 14 normal working days and non-parties shall have the right to appeal in writing against the decision to the Independent Body within 14 days from the date of being informed of the outcome. Such an appeal shall be fully reasoned.

(11) In terms of section 32(3)(e) of the Act, the Council hereby establishes an independent body to be known as the "Independent 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.

(12) No representative, office bearer, or official of the Council, trade union or employers' organisation party to the Council may be a member or participate in the deliberations of the Independent Exemptions Board.

(13) The Council may also refer any application for exemption directly to the Independent Exemptions Board. The Independent Exemptions Boards decision regarding the granting or denying of the exemption will be final and both the applicant and the Council will be bound to the decision of the Independent Exemption Board.

(14) The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Independent Exemptions Board which shall as soon as possible and **not later than 30 days** hear and decide the matter with reference to the exemption criteria set

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out in sub clause (9) 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 Independent 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.

- (15) When the Independent Exemptions Board decides against granting an exemption or part of an exemption requested it shall advise the applicant(s) within 14 normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.
- (16) Once the Exemptions Board has granted an exemption or the Independent Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant(s) within 14 normal working days of the date of the decision, clearly specifying-
- (a) the full name of the applicant(s) or enterprise concerned;
 - (b) the trade name; the provisions of the Agreement from which exemption has been granted;
 - (c) the period for which then exemption shall operate;
 - (d) the date of issue and from which the exemption shall operate;
 - (e) the condition(s) of the exemption granted; the area in which the exemption applies
 - (f) the reporting requirements by the applicant and the monitoring and re-evaluation processes.
- (17) The Exemptions Body or Independent Exemptions Body shall;
- (a) retain a copy of the certificate
 - (b) forward the original certificate to the Secretary of the Council; and
 - (c) a copy of the exemption certificate is sent to the applicant
- (18) An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at his establishment.
- (19) Unless otherwise specified in the certificate of exemption, any exemption from this Agreement shall be valid only in the region of the Council in which the application was made.

Signed at Bellville on this 20th day of February 2015



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Chairman



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Secretary

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