

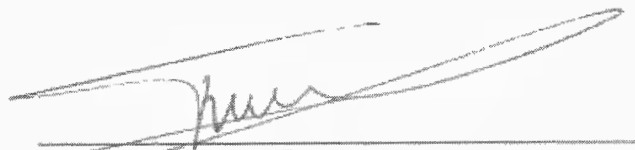
DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 3667

14 July 2023

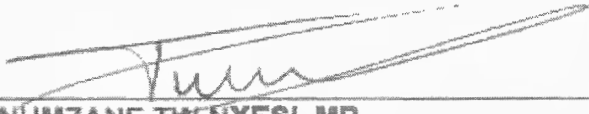
LABOUR RELATIONS ACT, 1995**BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE):
EXTENSION TO NON-PARTIES OF THE MAIN CONSOLIDATED
COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) read with section 32(5) and 32(8) of the Labour Relations Act, 1995, declare that the provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the **Building Industry Bargaining Council (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 the second Monday after the date of publication of this agreement and for the period ending 31 October 2025.


MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 30/06/2023

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWENO KWEZABASEBENZI KA-1995****UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI
EMBONINI YEZOKWAKHA (IKAPA ELIHLE LESETHEMBISO):****UKWELULWA KWESIVUMELWANO SABAQASHI NABASEBENZI
ESIHLANGANISAYO SELULELWA KULABO ABANGEYONA INGXYENYE
YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, uNgqongqoshe Wezemisebenzi NezabaSebenzi, ngokwesigaba 32(2) sifundwa nesigaba 32(5) kanye nesigaba 32(8) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini yezokwakha (Ikapa Elihle Lesethembiso), futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, kusukela ngoMsombuluko wesibili emva kokushicilelwa kwalesisi Vumelwano futhi kuze kube ngumhlaka 31 kuMfumfu 2025.


MNUMZANE TW NXESI, MP
UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI
USUKU: 30/06/2023

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:

CONSOLIDATED EMPLOYER ORGANISATION

(CEO)

MASTER BUILDERS AND ALLIED TRADES' ASSOCIATION BOLAND

(MBA BOLAND)

MASTER BUILDERS AND ALLIED TRADES' ASSOCIATION WESTERN CAPE

(MBA WC)

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

BUILDING WOOD AND ALLIED WORKERS' UNION OF SOUTH AFRICA

(BWAUSA)

BUILDING WORKERS' UNION

(BWU)

NATIONAL UNION OF MINEWORKERS

(NUM)

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

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CHAPTER ONE: SCOPE OF APPLICATION, PERIOD OF APPLICATION, INDUSTRIAL ACTION, LEVELS OF BARGAINING AND DEFINITIONS

1. SCOPE OF APPLICATION

- 1) The terms of this Agreement shall be observed in the Building Industry –
 - 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) as defined hereunder excluding all electrical activities undertaken in the Magisterial Districts of Bellville, Goodwood, Kuils River, Malmesbury, Mitchells Plain, Paarl, Simonstown, Somerset West, Stellenbosch, Strand, The Cape, Wellington, Wynberg and the Local Municipality of Overstrand; and
 - d) as defined hereunder including the manufacture and erection of gravestones and cemetery memorials of all types in the Magisterial Districts of Bellville, Goodwood, Kuils River, Malmesbury, Mitchells Plain, Paarl, Simonstown, Somerset West, Stellenbosch, Strand, The Cape, Wellington, Wynberg and the Local Municipality of Overstrand; and
- 2) Notwithstanding the provisions of sub clause (1), the terms of this Agreement shall apply to -
 - a) employees in the Building 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), the terms of this Agreement shall not apply to –
 - a) clerical employees, supervisory staff and administrative staff, unless hourly paid; and
 - b) university students and graduates in Building Science, and to construction supervisors, construction surveyors and other persons doing practical work in order to complete their academic training; and

- c) non-parties unless the Agreement is extended to non-parties in respect of clauses 45, 46 and 48 of this Agreement.

2. PERIOD OF OPERATION OF AGREEMENT

- 1) This Agreement shall come into operation on the date fixed by the Minister of Employment and Labour as the effective date.
- 2) The Minister of Employment and Labour may extend the operation of the Agreement to non-parties or decline to extend the Agreement to non-parties from the effective date.
- 3) The Agreement shall remain in force until 31 October 2025.

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 or in support of a strike or lockout in respect of any matter regulated by this Agreement for its duration.

4. LEVELS OF BARGAINING

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

5. DEFINITIONS

- 1) Any expressions used in this Agreement which are defined in the Labour Relations Act 66 of 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-
- 2) 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 or any other format of business.

5A: GENERAL DEFINITIONS

"Act" means the Labour Relations Act 66 of 1995.

"Alternative building systems": including all alternative building systems utilized for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures. These systems include, but are not limited to the following type of activities:

- a) Tilt-up construction techniques
- b) Use of Interlocking or self-locking blocks
- c) Hollow core walling technique
- d) Metal containers to form a structure

"Apprenticeship" means a Learner/Apprentice registered with the Construction SETA as an apprentice.

"Area A" means the Magisterial Districts of Bellville, Goodwood, Kuils River, Mitchells Plain, Simonstown, Somerset West, Strand, The Cape, Wynberg.

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

"Area C" means the Magisterial District of Malmesbury.

"Area D" means the Municipal area of Overstrand.

"Asphalting" 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, 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;

"BIBC" means "the Building Industry Bargaining Council (Cape of Good Hope)"

"Block" means a walling unit of which the face dimensions exceed either 300mm in length or 150mm in height.

“Bricklaying” 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, asphaltting and sheeting, and the erecting of prefabricated concrete structures or garden walls and/or boundary walls with posts or slabs;

“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 definitions of the trades and occupations, 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:

“Concrete work” includes the supervision of concrete being placed in situ and levelling the surfaces thereof;

“Contractors” means a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job.

- a) **“Labour only contractor”** means Designating or relating to a form of contracting in which the contractor supplies only the labour for a particular piece of work; (also) designating or relating to a contractor.
- b) **“Main Contractor”** means a general contractor, or prime contractor who is responsible for the day-to-day oversight of a construction site, management of vendors and trades, and the communication of information to all involved parties throughout the course of a building project.

- c) "Sub-Contractors" means a company or person whom a main contractor hires to perform a specific task as part of an overall project and normally pays for services provided to the project.

"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;

"Employee" means 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 worked 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 part of a working day 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.

Excluded from the definition of Employee are:

- e) Independent contractors; and
- f) any person who earns in excess of the amount determined from time to time by the Minister of Employment and Labour in terms of section 6(3) of the Basic Conditions of Employment Act, 1997.

"Employer" means any person, including an independent contractor, 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; including ensuring registration with the BIBC of sub-contractor and their respective sub-contractors and includes any person who carries on an associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Agreement.

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

"Floor laying and wall covering" includes laying and fixing of floors of wood, mosaic, composition, rubber or any other material; sandpapering of same, and the fixing of all types of flooring or wall coverings in tile or sheets, including resilient flooring, linoleum, inlaid linoleum, althoid, asphalt tiles or asphalt-based materials, cork, rubber, carpeting, vinyl and plastic compositions; supervision of artisan's assistants engaged on floor laying and floor and wall covering.

"French polishing" includes polishing with a brush or pad and spraying with any composition.

"General fund" means Council funds excluding Sick Fund, Medical Aid Fund, Tool Fund, Pension Scheme and Provident Fund, Holiday Fund, and Bonus Funds.

"Glazing" 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;

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

"Joinery" 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;

"Masonry" includes stone masonry, 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 portable spinner and flexible cutting, finishing and other stone working machine, stone-polishing machinery, and sharpening mason's tools and drawing, designing and setting out of letters and enrichments; cutting and carving of letters

by hand and pneumatic hammer; final surfacing and finishing of the material whether or not the fixing in the building or structure is done by the person making or preparing the article used;

"Mass-manufacturing section" means that section of the building industry in which activities are carried out in connection with the mass-manufacturing in off-site workshops, using repetitive processes of articles and/or component parts for articles and/or the assembly of articles which are manufactured for use in the erection, completion, renovation, repair, maintenance or alteration of building or structures and include all work executed or carried out by persons in such workshops, excluding clerical employees and administrative staff, who are engaged in the mass manufacture and/or assembly of roof trusses, laminated beams, mouldings, skirting boards, panelling, ceiling boards, hollowcore floor panels, cantilevers, lintels, precast staircases, floor blocks, building *blocks*, including those manufactured from alternative materials, windows / doors / window frames and door frames made of wood, aluminium or other material, kitchen cupboards and other kitchen fittings, partitioning, shop, office and bank fittings and other fixtures which are built in and/or affixed to buildings and structures. This section includes the manufacture of wooden components which includes but is not limited to the cutting and edging of chipboard, laminating chipboard with melamine, or any other type of laminate, the manufacture of post form tops which include, but is not limited to the cutting and edging thereof with melamine.

"Metal work" includes aluminium and 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;

"Monumental Masonry Industry" means the Industry in which employers and employees are associated for the purpose of making and erecting gravestones and cemetery memorials of all types.

"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 holidays 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;

“Off-site workshop” means any premises which is not situated on a site where building construction activities are being carried out and which are registered or are liable for registration as a ‘factory’ in terms of the provisions of the Occupational Health and Safety Act 85 of 1993 as amended, and on which any activities in connection with the mass-manufacturing of the building industry, using woodworking machines including, but not limited to, portable electric and/or pneumatic tools, are being carried out.”

“Painting” includes decoration, paperhanging, glazing, distempering, lime and colour washing, staining, varnishing, graining, marbling, spraying, wall decoration, applying primer and undercoat, enamelling, gilding, lining, stencilling, wax polishing, and woodwork preservation, using rope access to apply paint 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;

“Paving” means a surface that is constructed by manual or mechanical means utilising pre-manufactured segmental, slab, brick, block or cobble units laid to form a hard surfacing. Areas of application shall be deemed to include all sites requiring such surfacing. This includes, but is not limited to, parking areas, pavements, driveways, pool surrounds, patios, roads and forecourts.

“Period determined by the Council” means a period prescribed to be not later than the 7th day of each month in respect of every employee employed by the employer during the preceding month;

“Plastering” includes moulding, mould-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 portable spinner and flexible cutting and finishing machine, pre-cast or artificial stone work, wall and floor tiling or cladding, 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” 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;

“Principal” means the most important or senior person in an organisation or group.

"Scaffold" means any structure of framework used for the support of persons, equipment and material in elevated positions in connection with building or excavation work.

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

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

"Skilled worker" means a worker who has special skill, training or knowledge which they can then apply to their work. A skilled worker may have attended a college, university, or technical school. Alternatively, a skilled worker may have learned their skills on the job.

"Steel construction" 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;

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

"Structure" includes walls, boundary, garden and retaining walls and monuments.

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

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

"Wage" means the basic wage prescribed in terms of clause 18 of this Agreement in respect of the ordinary hours laid down in clause 19.

"Woodworking" 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 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;

"Working directors" means the director of a private company who is actively engaged in conducting the affairs of the business.

"Working members of close corporations" means the owners of a closed corporation who are the members of the company. Members have a membership interest in the closed corporation and work in/for the business.

"Working partners" means an individual who is a partner of the business and is actively engaged in conducting the affairs of the business.

5B: REGISTERED CATEGORIES OF EMPLOYMENT

"Apprentice 1st year" means an employee who has completed less than 55% of credits applicable to his trade, but has not completed a trade test, but could be regarded as proficient in the relevant trade.

"Apprentice 2nd Year" means an employee who has completed 55%-74% of credits applicable to his trade, but has not completed a trade test, but could be regarded as proficient in the relevant trade.

"Apprentice 3rd Year" and a means an employee who has completed 75%-99% of credits applicable to his trade, but has not completed a trade test, but could be regarded as proficient in the relevant trade.

"Artisan" means a person who is registered as such in terms of clause 17 of this Agreement.

"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;

"General worker" means an employee who is not a Labourer and who operates at a level higher than a Labourer, who has developed specific skills recognised by his employer.

"Labourer" is an employee responsible for cleaning and carrying out various unskilled manual and mechanised tasks, relating to:

- a) the mixing and placing of materials, for incorporation into the final building elements, and in temporary or false works;
- b) all unskilled aspects of work pertaining to the general preparation of construction sites for the erection, alteration to and modification of structures and buildings; and
- c) the unloading, moving, placing and loading of raw materials, plant and equipment and the operation and cleaning of small construction machinery, such as concrete mixers, compactors and concrete vibrating equipment.

"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 of security property and/or premises;

"Tradesman Class 2" means an employee who has completed 75%-99% of credits applicable to his trade, has not completed a trade test, but could be regarded as proficient at this level in the relevant trade.

"Tradesman Class 3" means an employee who has completed 55%-74% of credits applicable to his trade, has not completed a trade test, but could be regarded as proficient at this level in the relevant trade.

"Tradesman Class 4" means an employee who has completed less than 55% of credits applicable to his trade, has not completed a trade test, but could be regarded as proficient at this level in the relevant trade.

5C: TRADES AND OCCUPATIONS

"Alternative building systems Installer 2" means an employee registered and remunerated as a Tradesman Class 4, who is able to perform activities associated with alternative building systems.

"Alternative building systems Installer 3" means an employee registered and remunerated as a Tradesman Class 3, who is able to perform activities associated with alternative building systems.

"Aluminium Installer/Fixer" means an employee is registered and remunerated as a non-designated Artisan in terms of clause 17 of this Agreement and who exclusively works on a construction site as 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.

"Aluminium Manufacturing Worker" means an employee registered and remunerated as a Tradesman Class 3 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;
- c) Processing material with on-programmable machine/tools;
- d) Reporting technical complications and effectively performing his function within the production line as prescribed by such working drawing.

“Assistant floor layer” means an employee registered and remunerated as a Tradesman Class 2 and who works under the supervision of a floor layer.

“Banksman” means an employee who is registered as a Tradesman Class 4 and who demonstrates an integrated practical and theoretical grounding in Crane Operations, inspecting and evaluating lifting gear, preparing and slinging regular loads, as well as communicating during crane operations.

“Block layer” means an employee who is registered as a Tradesman Class 2 and who is engaged in the laying of blocks as defined in this Agreement, on any type of construction, or the laying of paving slabs, precast concrete channels and kerbs.

“Bricklayer” means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who engages in bricklaying and related works to lay bricks, pre-cut stones and other types of building blocks in mortar to construct and repair walls, partitions, arches and other structures.

“Carpenter” means an employee who is registered as such with the Council in terms of clause 17 of this Agreement and who cuts, shapes, assembles, erects, maintains and repairs various types of structures and fittings made from wood and other materials.

“Carpet fitter” means an employee who is registered as a Tradesman Class 2 and who, under the supervision of a carpet layer, is engaged in one or more of the following activities:

- a) Fixing of all types of carpet wall coverings, excluding gauging, panelling, marking out and setting out;
- b) Laying and/or fixing and/or fitting and/or stretching of all types of carpeting, excluding marking out and setting out.

“Carpet layer” means an employee who is registered as a Tradesman in the Class related to the Tradesman proficiency level 2, 3 or 4, and who is engaged in one or more of the following activities: The laying and/or fixing and/or fitting and/or stretching of all types of carpeting and carpet wall coverings, including the supervision of employees engaged in carpet fitting and the fitting of carpet wall coverings, and of general workers;

“Ceiling and/or partition worker” means an employee who is registered as such with the Council and who, under the supervision of an Artisan, is engaged in one or more of the following activities: all

operations connected with the fixing of metal partition grids, excluding plumbing and levelling; all operations connected with the suspension of metal ceiling grids, excluding levelling; applying dry-wall tape and jointing compound; cutting and fitting of ceiling panels to metal grid systems; fitting dry-wall sheets; fitting partitions panels; fitting pre-cut glass; fitting skirting, glazing beads and cover strips; operating a compressed air nailing machine; operating a spray gun to apply glue or plaster mix; square cutting, using an aluminium cut-off saw; using a drilling machine; using a dry-wall screwdriver.

"Clerical worker" means an hourly paid worker receiving benefits applicable to Tradesman Class 3.

"Designated Glazier" means an employee registered and remunerated as an Artisan with the Council in terms of clause 17 of this Agreement and is engaged in one or more of the following activities and 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;

"Driver code EC1 and above" means an employee who is registered as a Tradesman Class 2 and who operates an articulated heavy motor vehicle (heavy motor vehicle drawing a trailer[s]).

"Floor layer" means an employee who is registered as a Tradesman in the Class related to the Tradesman proficiency level 2, 3 or 4, and who is engaged in one or more of the following activities: laying and fixing of all types of floor or wall coverings, including wood, composite rubber, resilient flooring, linoleum, asphalt tiles, or asphalt based materials, cork, rubber, vinyl, and plastic composition or any other similar material excluding carpeting, and supervising of assistant floor layers and general workers.

"Joiner" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who cuts, shapes, assembles, erects, maintains and repairs various types of structures and fittings made from wood and other materials.

"Joinery assembler" means an employee who is registered as a Tradesman Class 3.

"Leading hand/junior foreman" means an hourly paid person in a supervisory position receiving benefits applicable to an Artisan.

"Machine Operator" means an employee who is registered as a Tradesman Class 2 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.

"Manufacturing worker" means an employee who is registered as a Tradesman Class 4.

"Non-Designated Glazier" means an employee who is registered as a Tradesman Class 2, who 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;

"Painter" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who prepares surfaces of buildings and other structures for painting and applies protective coatings to manufactured items or structures.

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

- a) Registered as a Driver, this person must be in possession of a Code C1 licence or above; operators of plant which requires the plant operator to be in possession of a Code A, A1 or B licence;

- b) Registered as a Tradesman Class 2, "Crane drivers" has proven competencies as per the Driven Machinery Regulations Code C41 (tower crane top slewing) or Code C42 (tower crane bottom slewing).

"Plasterer" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who installs, maintains and repairs plasterboard in buildings and applies decorative and protective coverings of plaster, cement and similar material to the interiors and exteriors of structures.

"Plumber" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who assembles, installs, repairs and maintains pipe systems, fittings and fixtures for water, gas, drainage, sewerage systems, and hydraulic and pneumatic equipment.

"Roofer" means an employee who is registered as a Tradesman Class 2 and who is responsible for the setting out of a roof from drawings or otherwise, who determines the positions of battens, slates, tiles, sheets and other roofing materials, including shingles, thatch, etc. who may fix flashings, gutters and downpipes to roofs, who is in charge of and supervises the work of others engaged in roof construction.

"Scaffold erector" means an employee who is registered as a Tradesman Class 4 and is able to identify, erect and dismantle all types of scaffolding systems according to SANS 10085.

"Stonemason" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who cuts and shapes hard and soft stone blocks and slabs for the construction and maintenance of stone structures and monumental masonry and carve designs and figures in stone.

"Tiler" means an employee who is registered as an Artisan with the Council in terms of clause 17 of this Agreement and who installs, maintains and repairs flooring, and covers floors walls and other surfaces with tiles or mosaic panels for decorative and other purposes.

"Tower care operator" means an employee who is registered as a Tradesman Class 2 and is a "crane driver" with proven competencies as per the Driven Machinery Regulations for:

- a) Code C41 (tower crane top slewing) or
b) Code C42 (tower crane bottom slewing)

“Waterproofing worker” means an employee remunerated as a Tradesman Class 4 and who is engaged in one or more of the following activities: Waterproofing and damp proofing of all horizontal, sloping or vertical surfaces (including all types of tanking) with all types of roofing membranes, sheetings and liquid or semi-liquid or mastic coatings; Applying protective paint and/or coating to waterproofing surfaces; All other work in connection with waterproofing and damp proofing.

CHAPTER TWO: GENERAL DUTIES OF EMPLOYERS AND SUB-CONTRACTING PARTIES

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) calendar days of operating within the scope of this Agreement.
- 1) An employer shall register with the Council by furnishing the required particulars to the Council on the prescribed form and shall provide evidence that an application has been made for registration with the South African Revenue Services relating to tax and value-added tax (if applicable), registration with the Unemployment Insurance Fund and registration under the Compensation for Occupational Injuries and Diseases Act, 1993.
- 2) The Council may refuse to register an employer with the Council if that employer is substantially the same employer as a previously registered employer who remains indebted to the Council. Where the Council agrees to register such an employer, the registration shall be subject to that employer providing a wage guarantee that equates to the wages of 10 (ten) general workers' employment for 3 (three) months and at the discretion of Council.
- 3) Every employer shall notify the Council in writing of any change in the particulars furnished on registration or of the ceasing operations in the Industry within 14 (fourteen) days of such change or of the ceasing operations.
- 4) A certificate of registration signed by either the Chairperson or the Secretary of the Council shall be issued to each registered employer. A newly registered employer shall receive free orientation training from the Council relating to employment legislation, this Agreement and the preparation of wage records.
- 5) The Council shall have the right at any time to call upon any employer to submit a report on any project or site, in a form and manner prescribed by the Council, relating to all sub-contractors that

are utilised by the employer, details of the employees utilised by the sub-contractor and the category of employment.

- 6) Newly registered employers must ensure full compliance with this Agreement within (2) two weeks of registration. This grace period is only available to an employer who is a new entrant into the Building Industry.
- 7) A newly registered employer shall be regarded as being compliant for a period of 2 (two) weeks which period shall commence from the date of registration with this Council if the employer is new to the Building Industry.

7. 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 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 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 (this includes the provision of temporary employment services) that falls under the definition of "Building Industry" or Industry" in clause 5 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 sub clause (3) above has been complied with-
 - a) section 200B of the Act applies to a subcontracting party who, by or through a subcontractor, intends or the effect of doing so is or has been to directly or indirectly defeat the purposes of this Agreement
 - b) the subcontracting party and the subcontractor (or the temporary employment service) are jointly and severally liable if the subcontractor, in respect of any of its employees, contravenes:

- i) This Agreement or any other Council agreement regulating terms and conditions of employment and/or benefits;
 - ii) A binding arbitration award that regulates or relates to terms and conditions of employment; or
 - iii) The Basic Conditions of Employment Act. No 75 of 1997, as amended from time to time.
- 5) Notwithstanding the provisions of sub-clause 4, any person determining whether a contravention has occurred, must have consideration for the guidelines and principles established by the Compliance Committee in respect of this clause, as envisaged by clause 56(2)(b) of this Agreement, and published from time to time.
- 6) No person may utilize a temporary employment service or Labour Broker 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 or Labour Broker for work in connection with the Building Industry.

8. REGISTRATION OF EMPLOYEES

- 1) All persons employed in the Building Industry shall be registered with the Council and the employer of such an employee shall be responsible for the registration of the employee, including apprentices and learners, with the Council within 10 (ten) working days of commencement of employment, provided that all provisions of this Agreement are applicable from the later of the first day of employment or from the effective date of this Agreement including, but not limited to, minimum wages and employee benefit contributions.
- 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 Council identity card, but the employee may be liable for the costs of the replacement of the card.
- 4) Every employee who has been registered in terms of this clause shall, upon accepting employment in the Industry, produce his BIBC identity card to his employer and also to any Agent of the Council on request.

9. 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, 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 the following information in writing (payment advice or payslip) on each day that the employee is paid:
 - i) The employer's name and physical address;
 - ii) the employee's name, occupation and registered category of employment in terms of this Agreement;
 - iii) the period for which the payment is made;
 - iv) the employee's remuneration in money;
 - v) the amount and purpose of any deduction made from the remuneration including contributions to the Council stipulating each contribution separately;
 - vi) the actual amount paid to the employee;
 - vii) the employee's rate of remuneration and overtime rate;
 - viii) the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;

- ix) the number of hours worked by the employee on a Sunday or public holiday during that period; and
 - x) a calculation of the employee's gross remuneration, deductions, overtime payments, allowances and net remuneration.
- e) All payment advices, payslips and 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 benefit code system by the 7th of the month following the month for which the payment was due.

2) Deductions from wages:

- a) An employer shall be entitled to make deductions from an employee's wages in respect of deductions prescribed in the following clauses:
- i) 31(13) and (14) in terms of the Pension Fund or Provident Fund;
 - ii) 43(1) in terms of the Council levy;
 - iii) 46 in terms of trade union subscriptions; and
 - iv) 33(3) in terms of the Medical Aid Fund;
- b) if the employer is entitled or required to do so by law;
- c) if there was an error made in the payment to the employee by the employer or by the Council; and
- d) in respect of any other matter, with the employee's written consent.

10. RECORD KEEPING

- 1) **Written particulars of employment:** An employer must supply an employee, when the employee commences employment, with the following particulars in writing—
- a) the full name and address of the employer;
 - b) the name, occupation and registered category of employment in terms of this Agreement and a brief description of the work for which the employee is employed;

- c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
 - d) the date on which the employment began;
 - e) the employee's ordinary hours of work and days of work;
 - f) the employee's wage or the rate and method of calculating wages;
 - g) how frequently remuneration will be paid;
 - h) any deductions to be made from the employee's remuneration;
 - i) the leave to which the employee is entitled;
 - j) the period of notice required to terminate employment, or if employment is for a specific period, the date when employment is to terminate with a justification for temporary employment in terms of section 198B of the Act, where applicable;
 - k) any period of employment with a previous employer that counts towards the employee's period of employment;
 - l) A description of the Council;
 - m) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- 2) When any matter listed in subsection (1) changes—
- a) the written particulars must be revised to reflect the change; and
 - b) the employee must be supplied with a copy of the document reflecting the change.
- 3) If an employee is not able to understand the written particulars, the employer must ensure that it is explained to the employee in a language and in a manner that the employee understands.
- 4) Written particulars in terms of this section must be kept by the employer for a period of three years after the termination of employment.
- 5) **Keeping of records:** Every employer must keep a record containing at least the following information:
- a) the employee's name and occupation;

- b) the time worked by each employee;
 - c) The remuneration paid to each employee;
 - d) the registration category of each employee in terms of this Agreement;
 - e) the identity number or other available identification number; and
 - f) any other information prescribed by any law.
- 6) No person may make a false entry in a record maintained in terms of sub clause (5).

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 the storing 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. SHELTER AND ABLUTION FACILITIES

- 1) At any site where the building operations are being carried out employers shall provide suitable accommodation (refer to clause 25 for overnight accommodation) in terms of the construction regulations-
 - a) to serve as shelter for employees during wet weather; and/or
 - b) 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.
 - c) 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.

- d) 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.
- 2) 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.

13. NOTICE BOARD

Every employer and all employers working in partnership shall, wherever building operations are being carried out, display in a conspicuous place, accessible to the public, a notice- board of a size not less than 60 cm by 45 cm or a notice board approved by the Council showing clearly the name and trading name of the company or partnership and address of such employer or partnership in letters not less than 75 mm high, provided that subcontractors may use letters not less than 50mm high.

14. HEALTH AND SAFETY

- 1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.
- 2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-
 - a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
 - b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
 - c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
 - d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced,

processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;

- e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;
 - f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
 - g) enforcing such measures as may be necessary in the interest of health and safety;
 - h) ensuring that work is performed, and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and
 - i) causing all employees to be informed regarding the scope of their authority as contemplated in this section.
- 3) Every employee shall at work-
- a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;
 - b) as regards any duty or requirement imposed on his employer, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;
 - c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;
 - d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and
 - e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer,

or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

- 4) No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety.
- 5) An employee will only be permitted on site if wearing protective clothing as provided by the employer.
- 6) No employer shall in respect of anything which he is in terms of this section required to provide or to do in the interest of the health or safety of an employee, make any deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person.

CHAPTER THREE: CATEGORIES OF EMPLOYMENT

15. GENERAL PROVISIONS

- 1) All Employees shall be registered as defined in clause 5 and receive the benefits and wages associated with the categories of employment.
- 2) Employers must contact the Council on the first day of employment to establish the employee's registered category.

16. LEARNER/APPRENTICESHIP

- 1) A Learner/Apprentice is a registered employer or an employers' organisation acting in terms of a group scheme may employ a person as a Learnership/Apprentice under a contract of Learner/Apprenticeship in accordance with the Skills Development Act, 1998 as amended, and the Council shall register such person as a Learner/Apprentice subject to the following terms and conditions:
 - a) The person has been registered as a Learner/Apprentice by the Construction Education Training Authority (CETA).

- b) The Learner/Apprentice 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/Apprentice in respect of such trade.
 - c) For purposes of his Learner/Apprenticeship, the Learner/Apprentice 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/Apprentice of the necessary group of credits in respect of a course of training as provided for by the Quality Council for Trades and Occupations (QCTO), the Council shall register the Learner/Apprentice in the appropriate tradesman category.
 - e) A Learner/Apprentice shall be entitled to the payment of wages in accordance with the wage prescribed in terms of clause 18 in respect of the category of tradesman in which he is registered from time to time.
- 2) An Apprentice in a specified category shall be registered as follows:
- a) As an Apprentice (1st year), where he has completed less than 55 percent of the credits of the prescribed course;
 - b) As an Apprentice (2nd year), where he has completed 55 to 74 percent of the credits of the prescribed course; and
 - c) As an Apprentice (3rd year), where he has completed 75 to 99 percent of the credits of the prescribed course.
- 3) Employers and trade unions shall endeavour to ensure that Learner/Apprentices complete their training within the specified time.
- 4) 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 clause 17, 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 with and, pursuant thereto, shall be registered as a Learner/Apprentice in a particular category, as follows:

| Proficiency Level | Class |
|-----------------------|--|
| Below 55 percent | 1) Learner/Apprentice 2) Year 1/Tradesman 3) Class 4 |
| 55-74 percent | 1) Learner/Apprentice 2) Year 2/Tradesman 3) Class 3 |
| 75-99 percent | 1) Learner/Apprentice 2) Year 3/Tradesman 3) Class 2 |
| Completed all credits | Artisan |

17. ARTISANS

- 1) 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.
- 2) An artisan shall be entitled to the payment of wages in accordance with the wage prescribed for his category in terms of clause 18.
- 3) 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.

- 4) 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.
- 5) The registered trades are as defined in clause 5.

CHAPTER FOUR: MINIMUM WAGES, WAGE AND BENEFIT PARITY

18. MINIMUM BASIC WAGES

- 1) Basic Wages: The basic wages in the Industry shall be as set out in this clause.
- 2) From the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Minimum Wage Per Hour |
|---------------------------------|------------------------------|
| Labourer | R34.70 |
| General Worker | R45.11 |
| Tradesman Class 4 | R49.11 |
| Tradesman Class 3 | R54.17 |
| Tradesman Class 2 | R73.84 |
| Drivers/Plant operators code C1 | R61.64 |
| Drivers code A, A1 or B | R46.41 |
| Artisan | R98.90 |
| Security Guard | R415.90 per day |
| Apprenticeship Year 1 | R34.62 |
| Apprenticeship Year 2 | R49.46 |
| Apprenticeship Year 3 | R74.19 |

- 3) For the period 1 November 2023 to 31 October 2024 the wages applicable shall be increased on 01 November by the CPI percentage + 1% (as at the 1st of July 2023 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 4) For the period 1 November 2024 to 31 October 2025 the wages applicable from 1 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 5) Nothing in this clause shall prevent an employer from paying more than the prescribed basic wage.
- 6) No Party to this Agreement, nor any employee, shall be entitled to embark upon industrial action in order to compel an employer to pay more than the basic wage prescribed in this Agreement.
- 7) If an employer regularly pays an employee a wage higher than the basic wage in respect of the ordinary hours, the prescribed basic wage 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 on 1 November each year.
- 8) The basic wage payable in terms of sub clause (2) shall be deemed to include allowances for inclement weather, travelling time and transport costs.

CHAPTER FIVE: TERMS OF EMPLOYMENT

19. ORDINARY HOURS OF WORK

- 1) No employee shall ordinarily be required to work more than the following hours:

| Category | Area A | | Areas B, C and D | |
|----------------------------|--------------------|---------------------|------------------|--------------|
| | Daily Hours | Weekly Hours | Daily Hours | Weekly Hours |
| Security Guard | 9 hours | 45 hours | 9 hours | 45 hours |
| Driver | 8 hours 45 minutes | 43 hours 45 minutes | 9 hours | 45 hours |
| Labourer General Worker | 8 hours 30 minutes | 42 hours 30 minutes | 9 hours | 45 hours |
| All other employees | 8 hours | 40 hours | 9 hours | 45 hours |

- 2) With the exception of security guards, who shall be required to work not more than 6 (six) consecutive days in any week, ordinary hours shall be worked daily between 7:00 and 19:00, Mondays to Fridays.

20. OVERTIME

- 1) An employee shall be entitled to payment in respect of overtime worked in accordance with this clause as follows: Provided that in Areas B, C and D the first hour of overtime worked Mondays to Thursdays shall be at the basic rate if the work is performed on a construction site and not in a closed shop or controlled workshop environment:

| Days worked | Multiple of basic wage |
|---------------------------------|-------------------------------|
| Mondays to Saturdays, inclusive | 1 ½ |
| Sundays | 2 |

- 2) All time worked in excess of the number of ordinary working hours on any day shall be overtime.
- 3) An employer may request, which request shall not be unreasonably rejected, an employee to work overtime for a period not exceeding 3 (three) hours daily, from Mondays to Fridays, and not exceeding 8 (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;
- 4) Subject to sub clause (3) above, an employer and any employee who is required to drive motor vehicles may agree and contract that a maximum of 1 (one) hour's overtime prior to the commencement or ordinary hours of work and a maximum of 1 (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, subject to the requirement for an employee to transport workers being included in a separate agreement between employer and employee.
- 5) 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.

21. FLEXIBLE WORKING HOURS

- 1) An employer and an employee may contract to work either a compressed working week or to average the hours of work.
- 2) Compressed working week: an agreement in writing may require or permit an employee to work up to 12 (twelve hours) in a day, inclusive of the intervals required in terms of clause 22 without receiving overtime pay.
- 3) An agreement in terms of sub clause (2) may not require or permit an employee to work
 - a) more than 45 (forty-five) ordinary hours of work in any week:

- b) more than 10 (ten) hours' overtime in any week; or
 - c) on more than 5 (five) days in any week.
- 4) Averaging hours of work: the ordinary hours of work and overtime of an employee may be averaged over a period of up to 4 (four) months in terms of an agreement in writing.
- 5) An employer may not require or permit an employee who is bound by a written agreement in terms of sub clause (4) to work more than -
- a) an average of 45 (fourty-five) ordinary hours of work in a week over the agreed period.
 - b) an average of 5 (five) hours' overtime in a week over the agreed period.
- 6) A written agreement in terms of sub clause (4) lapses after 12 months.

22. INTERVALS/LUNCH AND TEA BREAKS

- 1) Every employee shall be entitled to daily meal and/or rest intervals totalling not more than 60 (sixty) minutes, which shall not form part of ordinary working hours, and shall be at such times as agreed to with his employer.
- 2) No employer shall require an employee to work for more than 5 (five) hours continuously without an interval.

23. SHIFT WORK

- 1) An employer may require his employees to work shifts: Provided that no employee shall be required to work more than an 8-hour or 12-hour shift in any period of 24 (twenty-four) hours.
- 2) An employee who works any shift other than the shift during the ordinary hours of work shift shall receive the basic wage payable in terms of clause 18, plus 15% of his basic wage: Provided that the provisions of this sub clause shall not apply to security guards.
- 3) Notwithstanding any other clause in this Agreement, 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 (thirteen) hours during a night shift and 11 (eleven) hours during a day shift.

- 4) Notwithstanding anything contained in sub clauses (1) to (3) 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 20 above in which case payment shall be at a rate of one and a half of the ordinary basic rate.

24. PUBLIC HOLIDAYS

- 1) The public holidays proclaimed in terms of the Public Holidays Act, 1994, shall be recognised as paid public holidays if they fall on a day on which the employee would ordinarily work.
- 2) The annual holiday payment made by the Council within the annual shutdown period shall include payment for all the public holidays that fall within the three-week shutdown period and shall include payment for the public holiday that falls on the 16th of December irrespective of 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.
- 3) An employee who is not required to work on a public holiday which would normally be a normal working day, shall receive his normal daily basic wage in respect of that public holiday.
- 4) An employee who is required to work on a public holiday which would normally be a normal working day shall, in addition to wages paid in terms of sub clause (3), be paid at a rate equal to his ordinary basic wage in respect of all hours worked on that day.
- 5) 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.

25. OVERNIGHT ALLOWANCE AND ACCOMMODATION

- 1) An employee who is required to work away and spend a night away from his ordinary place of residence shall be paid a living-away allowance of a minimum of the amounts as per the table below per day and 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, from the date of coming into operation of this Agreement to 31 October 2023:

Overnight Allowance Amount per day

All Employees: R210.00

For the period 1 November 2023 to 31 October 2024 the allowance applicable shall be increased on 01 November 2023 by the CPI percentage + 1% (as at the 1st of July 2023 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

For the period 1 November 2024 to 31 October 2025 the allowance applicable from 1 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

- 2) **Suitable accommodation:** the accommodation shall be appropriate for its location and be clean, safe and, at a minimum, meet the basic needs of workers. It must take into account, but is not restricted, to the following considerations: the provision of minimum amounts of space for each worker; provision of sanitary, laundry and cooking facilities, potable water; the location of accommodation in relation to the workplace; any health, fire safety or other hazards; the provision of first aid and medical facilities; and heating and ventilation.

26. TRANSPORT FOR EMPLOYEES

- 1) Employers shall not be compelled either to provide transport for employees or to pay any additional transport allowance.
- 2) 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, and such employees shall be entitled to trade union representation.

27. PERFORMANCE STANDARD CONTRACTS

- 1) An employer and an employee may enter into a written performance standard contract subject to an agreement being reached at least 5 (five) working days before the task is to commence.
- 2) 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.
- 3) All statutory provisions for employment contracts, including unemployment insurance, income tax deductions and all provisions of this Agreement shall be observed.

28. 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, provided that the probation period shall not be longer than 3 (three) months and that contributions towards employee benefits in terms of this Agreement shall be from the first day of employment, regardless of when the employee is registered at the Council.

CHAPTER SIX: EMPLOYEE BENEFIT SCHEMES

29. EMPLOYEE BENEFITS: GENERAL PROVISIONS

- 1) Every employee who works at least 7 (seven) 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.
- 2) An employee who has been laid off in terms of clause 40 shall not be entitled to benefits.
- 3) An employer shall contribute employee benefits in the prescribed manner from the Council for the purpose of making the contributions prescribed in this Agreement in respect of all eligible employees

and pay the contributions over to the Council within the period determined by the Council for such purposes.

- 4) 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.
- 5) An employee who contracts to work compressed working weeks of less than 5 (five) normal working days shall be entitled to benefits for 5 (five) days for each compressed working week that is worked.
- 6) 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 5 shall be liable for any benefit that would have been due to the employee in terms of this Collective Agreement.
- 7) If an employer is assessed for arrear benefits, the employer will be liable for both the employer and employee portions of the arrear benefits.

30. HOLIDAY AND BONUS FUNDS

- 1) The Holiday and Bonus Funds are hereby continued and shall continue to be administered by the Council for the purpose of providing eligible employees with leave and bonus pay for the annual leave period in terms of clause 37.
- 2) Monies contributed to the Funds by employers shall be vested as provide for in terms of section 53(5) of the Act.
- 3) Every employer shall pay the contribution to the Council by the 7th of each month following the month for which the contributions are due.
- 4) The Council shall determine a date before the commencement of the annual leave period in terms of clause 37 upon which eligible employees shall receive payment of the amount standing to their credit in the Holiday and Bonus Funds: Provided that no payment shall be made from the Holiday and Bonus Funds –
 - a) In respect of benefits contributed 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 more than 245 daily benefits in any single year ending on 31 October of that year;

- c) If an employee fails to claim the value of the benefits within 6 (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 and Bonus Fund entitlement in terms of clause 39(3);
 - 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 and Bonus Funds 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 (twelve) 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 and Bonus 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 and Bonus 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 and Bonus 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 the 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 and Bonus 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 and Bonus Fund in terms of sub clauses (7) or (8) the moneys remaining after the payment of all claims against the Holiday and Bonus 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 and

Bonus Fund the monies remaining shall be distributed equally among the parties to the Council immediately prior to its dissolution.

30A. HOLIDAY FUND

- 1) An employer shall contribute to the Holiday 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, from the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Holiday Fund Contribution per day |
|---------------------------------|-----------------------------------|
| Labourer | R22.08 |
| General Worker | R28.68 |
| Tradesman Class 4 | R30.47 |
| Tradesman Class 3 | R33.60 |
| Tradesman Class 2 | R45.81 |
| Drivers/Plant operators code C1 | R40.15 |
| Drivers code A, A1 or B | R30.22 |
| Artisan | R61.37 |
| Security Guard | R32.25 |
| Apprenticeship Year 1 | R21.48 |
| Apprenticeship Year 2 | R30.68 |
| Apprenticeship Year 3 | R43.60 |

- 2) For the period 01 November 2023 to 31 October 2024 the contributions applicable from 01 November 2023 shall be increased by the CPI percentage + 1% (as at the 1st of July 2023 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

- 3) For the period 01 November 2024 to 31 October 2025 the contributions applicable from 01 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

30B. BONUS FUND

- 1) An employer shall contribute to the Bonus Fund on behalf of an eligible employee in respect of a maximum of 15 normal days that the employee remains in his employ ("a contribution day"), a daily amount which shall be calculated as follows, from the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Bonus Fund Contribution per day |
|---------------------------------|---------------------------------|
| Labourer | R16.45 |
| General Worker | R21.40 |
| Tradesman Class 4 | R24.05 |
| Tradesman Class 3 | R26.53 |
| Tradesman Class 2 | R36.17 |
| Drivers/Plant operators code C1 | R28.28 |
| Drivers code A, A1 or B | R21.30 |
| Artisan | R48.43 |
| Security Guard | R25.47 |
| Apprenticeship Year 1 | R16.96 |
| Apprenticeship Year 2 | R24.87 |
| Apprenticeship Year 3 | R38.76 |

- 2) For the periods 01 November 2023 to 31 October 2024 and 01 November 2024 to 31 October 2025, the applicable increase for bonus contributions will be calculated once the percentage of the annual increase has been finalised.

31. PENSION SCHEME/PROVIDENT FUND

- 1) The Western Province Building Industry Pension Scheme and Provident Fund ('the Funds') 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.
- 2) Every employee for whom a contribution is required in the table in sub clause (4) below shall be a member of either of the Funds, subject always to the rules of the said funds.
- 3) 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.
- 4) An employer shall contribute the following amounts to the Funds, as the case may be, on behalf of each eligible employee in respect of each contribution day worked, from the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Employer Contribution per day |
|---------------------------------|--------------------------------------|
| Labourer | R22.77 |
| General Worker | R29.59 |
| Tradesman Class 4 | R31.44 |
| Tradesman Class 3 | R34.67 |
| Tradesman Class 2 | R47.25 |
| Drivers/Plant operators code C1 | R41.43 |
| Drivers code A, A1 or B | R31.19 |
| Artisan | R63.30 |
| Security Guard | R33.27 |
| Apprenticeship Year 1 | R22.16 |
| Apprenticeship Year 2 | R31.65 |
| Apprenticeship Year 3 | R47.48 |

- 5) For the period 01 November 2023 to 31 October 2024 the contributions applicable from 01 November 2023 shall be increased by the CPI percentage + 1% (as at the 1st of July 2023 as

published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

- 6) For the period 01 November 2024 to 31 October 2025 the contributions applicable from 01 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 7) 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, from the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Employee Contribution per day |
|---------------------------------|-------------------------------|
| Labourer | R21.34 |
| General Worker | R27.74 |
| Tradesman Class 4 | R29.46 |
| Tradesman Class 3 | R32.49 |
| Tradesman Class 2 | R44.30 |
| Drivers/Plant operators code C1 | R38.83 |
| Drivers code A, A1 or B | R29.24 |
| Artisan | R59.33 |
| Security Guard | R31.19 |
| Apprenticeship Year 1 | R20.78 |
| Apprenticeship Year 2 | R29.67 |
| Apprenticeship Year 3 | R44.52 |

- 8) For the period 01 November 2023 to 31 October 2024 the contributions applicable from 01 November 2023 shall be increased by the CPI percentage + 1% (as at the 1st of July 2023 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 9) For the period 01 November 2024 to 31 October 2025 the contributions applicable from 01 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as

published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

- 10) Every employer shall pay the above contributions to the Council within the period determined by the Council.
- 11) Subject to an eligible employee's right to nominate a beneficiary to receive any amounts which may become due in terms of the Funds 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.
- 12) When an employee fails to qualify for death, disability, and/or funeral benefits in terms of the Funds 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.
- 13) 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.

32. 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 works, an amount which shall be calculated as follows, from the date of coming into operation of this Agreement to 31 October 2023:

| Category of Employee | Contribution per day |
|---------------------------------|----------------------|
| Labourer | R3.55 |
| General Worker | R4.62 |
| Tradesman Class 4 | R4.91 |
| Tradesman Class 3 | R5.42 |
| Tradesman Class 2 | R7.39 |
| Drivers/Plant operators code C1 | R6.46 |
| Drivers code A, A1 or B | R4.88 |
| Artisan | R13.85 |
| Security Guard | R5.20 |
| Apprenticeship Year 1 | R3.47 |
| Apprenticeship Year 2 | R4.71 |
| Apprenticeship Year 3 | R7.42 |

- 4) For the period 01 November 2023 to 31 October 2024 the contributions applicable from 01 November 2023 shall be increased by the CPI percentage + 1% (as at the 1st of July 2023 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 5) For the period 01 November 2024 to 31 October 2025 the contributions applicable from 01 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by the Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.
- 6) 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 | Percentage of minimum wage prescribed in Clause 18 |
|----------------------------|--|
| 1st to 10th day | 80% |
| 11th to 20th day | 33% |

- 7) An employee with more than 10 years employment in the industry receives 15 (fifteen) days sick leave at 80% and 5 (five) days at 33%.
- 8) Subject to the Rules of the Fund, an employee shall not be entitled to sick pay-
- a) until 90 (ninety) 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 compensable 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.
- 9) 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.
- 10) 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.
- 11) The Fund shall continue to pay employer contributions to the Holiday and Bonus 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.
- 12) 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 30(7), (8) and (9) relating to the Holiday and Bonus Fund shall apply equally to this Fund.

33. MEDICAL AID FUND

- 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, from the date of coming into operation of this Agreement to 31 October 2023:

| |
|---|
| Medical Aid Contribution per day |
| <p>Artisan Member Employee contribution: R38.30</p> <p>Employer contribution per Artisan: R38.30</p> |
| <p>For the period 1 November 2023 to 31 October 2024 the contributions applicable shall be increased on 01 November by the CPI percentage + 1% (as at the 1st of July 2023 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.</p> |
| <p>For the period 1 November 2024 to 31 October 2025 the contributions applicable from 1 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.</p> |

- 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 30(7), (8) and (9) relating to the Holiday and Bonus Fund shall apply equally to this Fund.

CHAPTER SEVEN: LEAVE

34. MATERNITY LEAVE

- 1) An employee is entitled to at least 4 (four) consecutive months' maternity leave.
- 2) An employee may commence maternity leave—
 - a) at any time from 4 (four) weeks before the expected date of birth, unless otherwise agreed; or
 - b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- 3) No employee may work for 6 (six) weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- 4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for 6 (six) weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- 5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—
 - a) commence maternity leave; and
 - b) return to work after maternity leave.
- 6) Notification in terms of subsection (5) must be given—
 - a) at least 4 (four) weeks before the employee intends to commence maternity leave; or
 - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).
- 8) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- 9) During an employee's pregnancy, and for a period of 6 (six) months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if—

- a) the employee is required to perform night work, or her work poses a danger to her health or safety or that of her child; and
- b) it is practicable for the employer to do so.

34A. PARENTAL LEAVE

- 1) An employee, who is a parent of a child, is entitled to at least 10 (ten) consecutive days parental leave.
- 2) An employee may commence parental leave on—
 - a) the day that the employee's child is born; or
 - the date—
 - i) that the adoption order is granted; or
 - ii) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,
 - iii) whichever date occurs first.
- 3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—
 - a) commence parental leave; and
 - b) return to work after parental leave.
- 4) Notification in terms of sub clause (3) must be given—
 - a) at least 1 (one) month before the—
 - i) employee's child is expected to be born; or
 - ii) date referred to in sub clause 2(b); or
 - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 5) The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001.

- 6) An employee, who is an adoptive parent of a child who is below the age of 2 (two), is subject to sub clause (11), entitled to—
 - a) adoption leave of at least 10 (ten) weeks consecutively; or
 - b) the parental leave referred to in clause 34A.
- 7) An employee may commence adoption leave on the date—
 - a) that the adoption order is granted; or
 - b) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,
 - c) whichever date occurs first.
- 8) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—
 - a) commence adoption leave; and
 - b) return to work after adoption leave.
- 9) Notification in terms of sub clause (8) must be given—
 - a) at least 1 (one) month before the date referred to in sub clause (7); or
 - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 10) The payment of adoption benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001.
- 11) If an adoption order is made in respect of two adoptive parents, one of the adoptive parents may apply for adoption leave and the other adoptive parent may apply for the parental leave referred to in clause 34A: Provided that the selection of choice must be exercised at the option of the two adoptive parents.
- 12) If a competent court orders that a child is placed in the care of two prospective adoptive parents, pending the finalisation of an adoption order in respect of that child, one of the prospective adoptive parents may apply for adoption leave and the other prospective adoptive parent may apply for the parental leave referred to in clause 34A: Provided that the selection of choice must be exercised at the option of the two prospective adoptive parents.

- 13) An employee, who is a commissioning parent in a surrogate motherhood agreement is, subject to sub clause (18), entitled to—
- a) commissioning parental leave of at least 10 (ten) weeks consecutively; or
 - b) the parental leave referred to in clause 34A.
- 14) An employee may commence commissioning parental leave on the date a child is born as a result of a surrogate motherhood agreement.
- 15) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—
- a) commence commissioning parental leave; and
 - b) return to work after commissioning parental leave.
- 16) Notification in terms of sub clause (15) must be given—
- a) at least one month before a child is expected to be born as a result of a surrogate motherhood agreement; or
 - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 17) The payment of commissioning parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001.
- 18) If a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for the parental leave referred to in clause 34A: Provided that the selection of choice must be exercised at the option of the two commissioning parents.

35. FAMILY RESPONSIBILITY LEAVE

- 1) This clause applies to an employee—
- a) who has been in employment with an employer for longer than 4 (four) months; and
 - b) who works for at least 4 (four) days a week for that employer.
- 2) An employer must grant an employee, once only per benefit year, at the request of the employee, 5 (five) days' paid leave, which the employee is entitled to take—

- a) when the employee's child is sick; or
 - b) in the event of the death of-
 - i) the employee's spouse or life partner; or
 - ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
 - c) In the event of the illness of-
 - i) The employee's spouse or life partner.
- 3) Subject to sub clause (5), an employer must pay an employee for a day's family responsibility leave—
- a) the wage the employee would ordinarily have received for work on that day; and
 - b) on the employee's usual pay day.
- 4) In the event of the death of the employee's spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling, the employee will be entitled to a further 4 (four) working days unpaid leave, provided that the employee notifies the employer at least 24 (twenty-four) hours in advance and that the employee provides reasonable proof of the event. If the employee has given notice and proof of the event, the employer will not be entitled to take disciplinary action against the employee.
- 5) An employee may take family responsibility leave in respect of the whole or a part of a day.
- 6) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub clause (2) for which the leave was required, provided that, if the unpaid leave is granted in terms of sub clause (4), such proof is compulsory.
- 7) An employee's unused entitlement to leave in terms of this clause lapses at the end of the benefit year in which it accrues.

36. LEAVE FOR TRADE UNION ACTIVITIES

- 1) An employee who is an office-bearer of a representative trade union, or of a federation of trade unions to which the representative trade union is affiliated, is entitled to take reasonable leave during working hours for the purpose of performing the functions of that office.

- 2) The representative trade union and the employer may agree to the number of days of leave, the number of days of paid leave and the conditions attached to any leave.
- 3) An arbitration award in terms of section 21(7) of the Labour Relations Act, 1995, regulating any of the matters referred to in subsection (2) remains in force for 12 (twelve) months from the date of the award.

37. ANNUAL LEAVE

- 1) Every employee shall be entitled to 15 (fifteen) working days annual leave during the annual Building Industry shutdown period, the dates of which shall be determined by the Council.
- 2) Notwithstanding the provisions of sub clause (1), 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 18(2) for any time worked during such period, subject to the employer granting a minimum of 10 (ten) working days during the annual shut down period.
- 3) 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.

38. 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 32 of this Agreement, and to payment for the period of such sick leave in terms thereof.

CHAPTER EIGHT: TERMINATION OF EMPLOYMENT

39. TERMINATION OF CONTRACT OF EMPLOYMENT

- 1) An employer or employee who intends terminating a contract of employment shall give the other party at least 1 (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 6 (six) months, continuous employment and 2 (two) weeks written notice if such contract has been for longer than 6 (six) months' continuous employment.

- 2) Instead of giving an employee notice in term of sub clause (1) an employer may pay the employee the remuneration that the employee would have received if the employee had worked during the notice period. If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the employee in terms of sub clause (1), unless the employer and employee agree otherwise.
- 3) In the event of an employee absconding during his notice period and where the employer has proven such, the employer shall be entitled to deduct payment for the days that the employee was required to but did not work during his notice period from any monies due to the employee in terms of the Holiday and Bonus Fund.
- 4) Nothing in this clause shall affect the right of an employer or employee to terminate a contract of employment without notice for any cause recognised by law.
- 5) A contract of employment may be terminated if an employee is absent from work without the employer's consent for a continuous period of 5 (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.

40. TEMPORARY LAY-OFF

- 1) An employer shall be entitled to lay off an employee temporarily on account of -
 - a) inclement weather, or
 - b) a shortage of materials, due to circumstances beyond the employer's control, or
 - c) on account of a temporary shortage of work, or
 - d) loadshedding - where work cannot be performed without the use of electricity, or
 - e) civil and/or political unrest, where this unrest action prevents the normal work activities from continuing on a specific site.
- 2) In all instances where this clause is to be implemented, the following process is to be followed by the employer -
 - a) written notice of the lay-off shall be given to the employee before completion of the normal working shift preceding the day on which the lay-off is to be implemented;

- b) the written notice must include the reason for the lay-off and the period of the lay-off;
 - c) where it is not possible to comply with sub clause (a) above, the employer shall pay the employee the equivalent of two hours' wages for short notice of the lay-off;
 - d) in the case of loadshedding, employers and employees are to negotiate alternative working hours around loadshedding hours to catch up with the work lost due to loadshedding. Where agreement is not reached or the loadshedding hours are of such a nature that alternative work hours are not practical, the employee can be laid off for the day in question.
- 3) The employer shall not be liable to pay employee wages and benefits except as specified in sub clause (2)(c) above during the lay-off.
- a) Where the lay-off period includes a public holiday, the employer will not be compelled to remunerate the employee for the public holiday.
 - b) An employer may not apply the lay-off clause to avoid complying with the provisions of the Public Holidays Act (Act No 36 of 1994).
- 4) An employer may lay an employee off in terms of sub clause (1) above for a continuous period not exceeding 20 (twenty) working days and if at the end of such period the employer wishes to extend the lay-off period for a further 10 (ten) working days the employee shall first be given the option of being retrenched in accordance with the procedure laid down in clause 41.
- 5) The number of lay-offs permitted in terms of sub clause (4) above is limited to 2 (two) per benefit year (1 November to 31 October), thereafter the employer must apply for exemption in terms of Clause 57 to implement further lay-offs during this period.
- a) This sub clause does not apply to lay-offs for the following reasons –
 - i) inclement weather, or
 - ii) loadshedding, or
 - iii) civil and/or political unrest, where this unrest action prevents the normal work activities from continuing on a specific site.
- 6) Where it can be established that the employer has not complied with the provisions of this clause, the employer will be held liable to remunerate the employee for the period that the employee was laid off.

- 7) Where it can be established that the employer has used the lay-off clause contrary to clause 39 and simply used a lay-off as a disciplinary measure without following the applicable disciplinary procedures, the employer will be held liable to remunerate the employee for the period that the employee was laid off.

41. RETRENCHMENT

- 1) An employer who proposes retrenchment, shall immediately when retrenchment is considered, provide any of the trade unions of which, to his knowledge, prospective retrenchees may be members, with the following information in writing:
 - a) the number of employees who may be retrenched, together with their names, duration of service, Council Holiday Fund numbers, and job categories;
 - b) the proposed date of retrenchment;
 - c) the reasons for the proposed retrenchment, including all alternatives which the employer has considered and the reasons for rejecting them;
 - d) the proposed selection criteria in respect of retrenchees;
 - e) the proposed date for consultations with the trade union(s) and/or employee(s) likely to be affected;
 - f) the proposed severance pay; and
 - g) the employer's proposals for assistance to retrenchees, including the possibility of reemployment.
- 2) In the event of an employee likely to be affected by the proposed retrenchment not being a union member, the information mentioned in sub clause (1) above shall be forwarded directly to that employee(s).
- 3) 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 3 (three) working days before the proposed date of consultation, which shall include all proposals in respect of the retrenchment.
- 4) 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 date on which the retrenchment is to take place, the employer shall be entitled to implement its retrenchment proposals.

- 5) 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.
- 6) An employee who is retrenched in terms of this sub clause shall be entitled to severance payment of a minimum of 1 (one) week of that employee's current remuneration per completed year of continuous service with his employer.

CHAPTER NINE: COUNCIL ADMINISTRATION

42. 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.

43. EXPENSES OF 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.
- 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.

BIBC Levy Amount per day

From the date of coming into operation of this Agreement to 31 October 2023.

- a) Labourer and General Worker: R2.66
- b) All other employee categories: R2.65

For the period 1 November 2023 to 31 October 2024 the levies applicable shall be increased on 01 November by the CPI percentage + 1% (as at the 1st of July 2023 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

For the period 1 November 2024 to 31 October 2025 the levies applicable from 1 November 2024 shall be increased by the CPI percentage + 1% (as at the 1st of July 2024 as published by Statistics South Africa) provided that the minimum increase shall be 5% and the maximum increase be no higher than 7%.

44. EXHIBITION OF AGREEMENT

- 1) 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.
- 2) Any person may acquire a copy of this Agreement by paying to the Council the sum of R10,00.
- 3) Each party to this Agreement shall receive two free copies of the Agreement and Constitution.

45. VALUE ADDED TAX (VAT)

- 1) All monetary values listed below are inclusive of value added tax:
 - a) Council levies in terms of clause 43.
 - b) Master Builders Association (MBA) Skills and Education Trust levy in terms of clause 49.

CHAPTER TEN: PARTY ARRANGEMENTS

46. TRADE UNION SUBSCRIPTIONS

- 1) 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, and in writing.
- 2) 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, or
- 3) The employer shall deduct the Trade Union Subscription Amount (as amended by the Trade Unions from time to time) from an employee who is a member of a registered trade union and for whom wages are prescribed in clause 18 of this Agreement.
- 4) An employer shall pay the amounts deducted by him in terms of sub-clause (3) to the Council within the period determined by the Council.
- 5) Each month the Council shall pay over to the trade unions all moneys so collected by the employers in terms of sub clause (3) above.

47. TRADE UNION ACCESS

- 1) Officials of trade union parties shall in the ordinary course of their duties have access to building sites and workshops during working hours.
- 2) Trade Union Officials 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.

48. 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.

- 3) Each month the Council shall pay over to the employers' organisation all moneys so collected from the employers in terms of paragraph (1).

49. MASTER BUILDERS ASSOCIATION (MBA) SKILLS AND EDUCATION TRUST

- 1) Every member employer of the MBA Western Cape shall pay to the Council the contribution prescribed by the MBAWC Skills and Education Trust.
- 2) Each month the Council shall pay over the collected funds to the MBAWC Skills and Educational Trust.

CHAPTER ELEVEN: COMPLIANCE, MONITORING AND EXEMPTIONS

50. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS AGREEMENT

- 1) The Council shall take all reasonable steps necessary to ensure compliance with this Agreement.
- 2) 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 shall issue a compliance order.
 - c) The Secretary of the Council may:
 - i) impose a fine in terms of clause 54; or
 - ii) refer the matter to arbitration in terms of this Agreement if the respondent party does not consent to the compliance order or the fine, in which case the respondent party may be ordered to pay the costs of the process; or
 - iii) take such other steps as he may deem reasonable:
- 3) The Secretary of the Council may apply to make an arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.

- 4) Notwithstanding any the provisions of this Collective Agreement 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.

51. POWERS OF DESIGNATED AGENTS

- 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 occupied 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.
 - 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 appears 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 employee in the process of a designated agent carrying out his function as conferred by or in terms of this Agreement.
 - 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 during 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.

52. ARBITRATION PROCEDURES TO ENFORCE COMPLIANCE WITH THIS AGREEMENT

- 1) 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.
- 2) 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.

- 3) 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.
- 4) Any party who has a legal interest in the outcome of the arbitration shall have the right to-
 - a) give evidence;
 - b) call witnesses;
 - c) question the witnesses of any other party;
 - d) address the concluding arguments to the arbitrator;
 - e) 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.
- 5) Any award made by the arbitrator, together with any reasons, shall be served on all interested parties by the Council.
- 6) 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.
- 7) The provisions of this procedure shall stand in addition to any other legal remedy which the Council may apply to enforce a collective agreement.

53. POWERS OF AN ARBITRATOR

- 1) The arbitrator shall have the following general powers:
 - a) To determine whether there has been a breach of this Agreement.
 - b) To make any appropriate award that gives effect to the Collective Agreement and to ensure compliance therewith.
 - c) To determine the appropriate form of and the procedure to be followed at the arbitration proceedings.
 - d) To make any order as to costs that he deems appropriate.
- 2) The arbitrator shall have the power to make an award in the absence of a party who is alleged to have breached the Agreement, if-

- a) such party fails to appear in person or to be represented at the arbitration proceedings;
 - b) 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-
 - i) by registered mail to such party's last-known address and 14 (fourteen) days have elapsed since such notification has been mailed; or
 - ii) by fax transmission to such party's last-known fax number; or
 - iii) by hand delivery to such party's last-known business or residential address; or
 - iv) an electronic mail has been sent to such party
 - c) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this Agreement.
- 3) The arbitrator shall have the power to vary, rescind or amend any arbitration award made by him or any arbitrator. The arbitrator shall have this power if-
- a) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
 - b) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
 - c) the award was granted as a result of a mistake common to the parties to the proceedings.
- 4) If 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 shall, in addition to any other appropriate order, impose a fine on the non-compliant party in accordance with clause 50.

54. FINES, ARBITRATION COSTS AND INTEREST

- 1) The fine that the Secretary may impose, and an arbitrator shall impose for a failure to comply with a provision of a Collective Agreement is as follows:

- a) The fine application for failure to pay an amount due to an employee/party in terms of any provision, shall be 25% of the amount due, plus any interest owing on the amount at the date of the order.
- 2) A cost award by an arbitrator may include the following costs or any costs which in the opinion of the arbitrator should be awarded:
 - a) Fee of the arbitrator including travelling and accommodation;
 - b) venue costs;
 - c) administration fee of the Council;
 - d) costs of issuing subpoenas;
 - e) representative's fee which is to be taxed by the Labour Court;
 - f) cost of the designated agent or other staff of the Council who must attend the arbitration.
- 3) 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 5 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.

55. PROCEDURE FOR THE RESOLUTION OF DISPUTES ABOUT THE APPLICATION OR INTERPRETATION OF THIS AGREEMENT

- 1) 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.
- 2) If a dispute is so referred to the Council, it shall attempt to resolve the dispute through conciliation and, if the dispute remains unresolved after conciliation, the Council shall appoint an arbitrator to arbitrate the dispute.
- 3) The powers of the arbitrator shall be the same as in clause 53 above.

56. 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) consist of 1 (one) representative from each party to this Agreement, including Employer Organisation representatives and Trade Union representatives;
 - b) 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;
 - c) actively monitor and ensure that the guidelines and principles so established are adhered to by the agents of the Council;
 - d) provide open communication regarding the actions of the Council or the Compliance Committee with all employers and employees interested in these actions;
 - e) 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;
 - f) provide for quick and cost-effective conciliation or arbitration of disputes between the Council and employers or employees.

57. 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) The Council shall decide an application for exemption within 30 (thirty) days of receipt.

- 5) 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; 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.
- 6) 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.
- 7) The authority of the Council is to consider applications for exemptions and grant exemptions.
- 8) In considering the application, the Council or the Independent Exemptions Body in the case of an appeal, 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 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
 - v) any special circumstance that exist;
- 9) In the event of the Council or the Independent 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 (fourteen) normal working days and non-parties shall have the right to appeal in writing against the decision to the Independent Body within 14 (fourteen) days from the date of being informed of the outcome. Such an appeal shall be fully reasoned.
- 10) 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.
 - c) an appeal shall be decided within 30 (thirty) days.
- 11) 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.
- 12) 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.

- 13) 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 (thirty) days hear and decide the matter with reference to the exemption criteria set out in sub clause (8) 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.
- 14) When the Independent Exemptions Board decides against granting an exemption or part of an exemption requested it shall advise the applicant(s) within 14 (fourteen) normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.
- 15) Once the Council 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 (fourteen) 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 the 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.
- 16) The Council 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
- 17) An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at his establishment.

- 18) 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 1ST day of AUGUST 2022

A BODILL 

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

D. UYS 

Master Builders' and Allied Trades' Association, Boland

S. KIRSTEN 

for the Consolidated Employers Organisation (CEO)

L. JONKERS 

for the Building Workers' Union (BWU)

T. NTSOMI 

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

L. MGQAMQO 

for the National Union of Mineworkers (NUM)

ANNEXURE A: RULES FOR CONCILIATING AND ARBITRATING DISPUTES IN THE BUILDING INDUSTRY BARGAINING COUNCIL (RULES)

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PART A: SERVING AND FILING DOCUMENTS**1. Council contact details and addresses at which documents must be filed**

- 1) The addresses, telephone numbers, e-mail addresses and telefax numbers of the offices of the Council are listed in Schedule 1 to these Rules.
- 2) Documents may be filed with the Council only at those addresses, e-mail addresses or telefax numbers listed in Schedule 1.
- 3) The Council's offices will be open every day from Monday to Friday, excluding public holidays, between the hours of 08h00 and 16h00, or during such other times as are determined by the Council.
- 4) Documents may be filed with the Council during the hours referred to in sub-rule (3).
- 5) Notwithstanding sub-rule (4), documents may be faxed and e-mailed to the Council at any time on any day of the week.

2. How to calculate time periods

- 1) For the purpose of calculating any period of time in terms of these Rules-
 - 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.
 - b) the first day is excluded and the last day is included, subject to sub rule (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. ¹

Example 1

¹ This Rule is not applicable to timelines regulated by the Labour Relations Act, Employment Equity Act and/or the Basic Conditions of Employment Act, which timelines shall be governed by the provisions of the relevant legislation, alternatively, the Interpretation Act.

Rule 7 below refers to 7 (seven) days after the document was posted. If the document was posted on a Friday then the 7 (seven) days would include the Saturday and Sunday and would be presumed to have been received on the next Friday.

Example 2

Rule 7 below refers to 7 (seven) days after the document was posted. If the date of postage was on a Friday, the 12th of December, the first 3 (three) days would be counted (the days before the 16th being the 13th, 14th and 15th) and final 4 (four) days would be counted from 8th of January (being the 8th, 9th, 10th and 11th). In other words the period would run from the 12th of December to the 11th of January.

Example 3

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

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 employee 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 authorised 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;
 - iv) a person identified in sub-rule (2); or
- b) by leaving a copy of the document at –
- i) an address chosen by the person to receive service; or
 - ii) any premises in accordance with sub-rule (3);
- c) by e-mailing, faxing or telefaxing a copy of the document to that party's e-mail address or fax number that was chosen by that party to receive service; or
- d) by sending a copy of the document by registered post to the last-known address of the party or to an address chosen by the party to receive service.
- 2) A document may also be served –
- a) on a company or other body corporate by handing a copy of the document to a responsible employee of the company or body at its registered office, its principal place of business within the Republic or its main place of business within the magisterial district in which the dispute first arose;
 - b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employees involved in the dispute ordinarily work or worked;
 - c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the main office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;
 - d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;

- e) on a municipality, by serving a copy of the document on the municipal manager or any person acting on behalf of that person;
 - f) on a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or
 - g) on the State or a province, a state department or a provincial department, a minister, premier or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- 3) If no person identified in sub-rule (2) is willing to accept service, service may be effected by affixing a copy of the document to -
- a) the main door of the premises concerned; or
 - b) if this is not accessible, a post-box or other place to which the public has access.
- 4) The Council or an arbitrator may order service in a manner other than prescribed in this Rule.
- 5) The Council may provide notice of a conciliation or arbitration or any other proceedings before it, by the same means as listed in this rule or by means of a short message service.

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

- 1) A party must prove to the Council or a Council arbitrator that a document was served in terms of these Rules, by providing the Council or a Council arbitrator 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;
 - d) if a document was served by e-mail, with a copy of the sent e-mail indicating the successful dispatch to the other party of the e-mail and any attachments concerned; or
 - e) if a document was served by hand -
 - i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, date and time of service; or

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- ii) with 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.
- f) 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.
- g) 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;
- c) by sending an electronic mail in PDF or Word format; or
- d) by faxing the document to the Council;

at the addresses, email addresses or fax numbers referred to in Schedule 1 to these Rules.

2) A document is filed with the Council when-

- a) the document is handed to the office of the Council and is stamped by the Council;
- b) a document sent by registered post is received or presumed to be received by the Council in terms of Rule 7 below;
- c) the electronic mail has been successfully delivered to the Council's e-mail address; or
- d) the transmission of a fax is successfully completed.

7. Documents and notices sent by registered post

Any document sent by registered post is presumed, until the contrary is proven, to have been received by the person to whom it was sent 7 (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 in 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 of 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, by serving it on the other parties to the dispute and by filing it with the Council.
- 2) The referring party must-
 - a) sign the referral form in accordance with Rule 3;
 - b) attach written proof that the referral form was served on the other parties to the dispute in accordance with Rule 5;
 - c) if the referral form is filed late, attach an application for condonation in accordance with rule 8 read with Rule 30.
- 3) The Council must refuse to accept a referral document until sub-rule (2) hereof has been complied with.

10. When must the Council notify the parties of a conciliation hearing

The Council must give the parties at least 14 (fourteen) days' written notice of a conciliation hearing, unless the parties agree to a shorter period of notice. An additional 7 (seven) days from the date of posting must be provided if a notice of conciliation in terms of this Rule is sent by registered post only.

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

The Council arbitrator 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

- 1) If a party to a dispute, that is not a mutual interest dispute, fails to attend in person or to be represented in terms of Rule 23(1)(a) at a conciliation hearing the Council arbitrator may -
 - a) continue with the proceedings;
 - b) adjourn the conciliation to a later date within the 30-day period; or
 - c) conclude the proceedings by issuing a certificate that the dispute remains unresolved.
- 2) In exercising a discretion in terms of sub-rule (1), a Council arbitrator should take into account, amongst other things -
 - a) whether the party has previously failed to attend a conciliation in respect of that dispute;
 - b) any reason given for that party's failure to attend;
 - c) whether conciliation can take place effectively in the absence of one or more of the parties;
 - d) the likely prejudice to the other party of the Council arbitrator's ruling; and
 - e) any other relevant factors.
- 3) 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 arbitrator may extend the conciliation period for another 30 (thirty) days and notify the parties of the extension in writing; or

- b) had not referred the dispute to the Council, the Council arbitrator may immediately issue a certificate stating that the dispute remains unresolved.
- 4) A Council arbitrator 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 (3).

13. How to determine whether or not Council arbitrator 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. Extension of the conciliation period in terms of Section 135 (2A) of the Act and the issuing a certificate in terms of section 135 (5) of the Act

- 1) The conciliating Council arbitrator or a party to a conciliation process may request an extension of the conciliation period referred to in section 135 of the Act.
- 2) The request must be made on the prescribed form and before the expiry of the conciliation period as determined in terms of section 135.
- 3) The Secretary must within 2 (two) days of receipt of the request -
 - a) consider whether:
 - i) an extension is necessary to ensure a meaningful conciliation process;
 - ii) the refusal to agree to the extension is unreasonable; and
 - iii) there are reasonable prospects of reaching agreement; and
 - b) Advise the parties on whether or not the extension is granted and where the extension is granted, the period of such extension, which may not exceed 5 (five) days.
- 4) The Secretary may not extend the conciliation period if the State is the employer party.
- 5) A certificate issued in terms of section 135 (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 Council arbitrator during the conciliation proceedings.

15. Conciliation proceedings may not be disclosed

- 1) Conciliation proceedings must be treated as private and confidential and must be conducted on a without prejudice basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree to this in writing or if they are ordered to do so by a court of law.
- 2) No person, including a Council arbitrator, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during the conciliation proceedings unless ordered to do so by a court of law or by the Council arbitrator.

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 (fourteen) days' written notice that a matter has been scheduled for con-arb.
- 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 7 (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 scheduled in terms of sub-rule (1), the Council arbitrator 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 if a notice of objection to con-arb has been filed in terms of sub-rule (2).
- 5) 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. This includes the rules on representation.
- 6) If the arbitration does not commence or does not conclude 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 duly completed 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) read with rule 16.

18. When parties may be directed to file statements

- 1) The Council or a Council arbitrator 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; and
 - b) be delivered within the time period specified by the Council or the Council arbitrator.
- 3) The Council arbitrator has a discretion to continue with the matter despite non-compliance with a directive of the Commission or Council arbitrator in terms of sub-rule (1). However, any non-

compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

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

- 1) The parties to an arbitration must hold a pre-arbitration conference dealing with the matters referred to in sub-rule (3), if:
 - a) both parties are represented by a trade union, employer's organisation, legal practitioner and/or candidate attorney;
 - b) both parties agree to hold a pre-trial conference; or
 - c) directed to do so by the Council or the presiding Council arbitrator.
- 2) A pre-trial conference convened in terms of sub-rule (1)(a) and (b) must be convened at least 14 (fourteen) days prior to the date of the scheduled arbitration.
- 3) In a pre-arbitration conference, the parties must attempt to reach consensus on the following-
 - a) any means by which the dispute may be settled;
 - b) facts that are agreed between the parties;
 - c) facts that are in dispute;
 - d) the issues that the Council is required to decide;
 - e) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - f) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
 - g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
 - h) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
 - i) which party must begin;

- j) the necessity for any on-the-spot inspection;
 - k) securing the presence at the Council of any witness;
 - l) the resolution of any preliminary points that are intended to be taken;
 - m) the exchange of witness statements;
 - n) expert evidence;
 - o) any other means by which the proceedings may be shortened;
 - p) an estimate of the time required for the hearing;
 - q) the right of representation; and
 - r) whether an interpreter is required and, if so, for how long and for which languages.
- 4) Unless a dispute is settled, the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
- 5) A minute in terms of sub-rule (4) may also deal with any other matter listed in sub-rule (3).
- 6) The referring party must ensure that a copy of the pre-arbitration conference minute is delivered to the presiding Council arbitrator 7 (seven) days prior to the date scheduled for the arbitration.
- 7) The presiding Council arbitrator may, after receiving a pre-arbitration minute -
- a) direct the parties to hold a further pre-arbitration conference; or
 - b) issue any other directive to the parties concerning the conduct of the arbitration, including rescheduling the matter for hearing on another date.
- 8) The presiding Council arbitrator has a discretion to continue with the matter despite non-compliance with the directive in terms of sub-rule (1), or the provisions of sub-rule (4), (5) and/or (6). However, any non-compliance may be taken into account when considering costs at the conclusion of the arbitration hearing.

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

The Council must give the parties at least 14 (fourteen) days' written notice of an arbitration hearing, unless the parties agree to a shorter period. An additional 7 (seven) days from the date of posting must be provided if a notice of arbitration in terms of this Rule is sent by registered post only.

21. How to determine whether a Council arbitrator may arbitrate a dispute

If, during the conciliation or arbitration proceedings, it appears that a jurisdictional issue has not been determined, the Council's presiding Council arbitrator 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 7 (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. The applicant must indicate in the application whether the other parties to the dispute agree to the postponement.
- 3) After considering the written application in sub-rule (2), the Commission may -
 - a) without convening a hearing, postpone the matter; or
 - b) convene a hearing to determine whether to postpone the matter.

PART E: RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS**23. Who may represent a party before the Council**

- 1) In conciliation proceedings before the Council a party to a dispute may appear in person or be represented only by-
 - a) if the party is an employer, a director or employee of that party and, in addition, if it is a close corporation, a member or employee of that close corporation;
 - b) any member of that party's registered trade union or registered employers' organisation or an office bearer or official as defined in the Act or an office bearer or official as defined in the Act of a registered federation of trade unions or registered federation of employers' organisations;

- c) if the party is a registered trade union, any member of that trade union or any office bearer or official as defined in the Act and authorized to represent that party or an office bearer or official as defined in the Act of a registered federation of trade unions and authorized to represent that party;
 - d) if the party is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or an official or office bearer as defined in the Act and authorized to represent that party or an office bearer or official as defined in the Act of a registered federation of employers' organisations and authorized to represent that party;
 - e) if a party is the department of labour, any employee or official of the department of labour; or
 - f) another party to the dispute if proceedings are brought or opposed by more than one party.
- 2) Subject to sub-rule (3) below, in arbitration proceedings before the Council a party to a dispute may appear in person or be represented only by-
- a) a legal practitioner;
 - b) a candidate attorney; or
 - c) an individual entitled to represent the party at conciliation proceedings in terms of sub-rule (1).
- 3) Notwithstanding sub rule (1), if the dispute being arbitrated 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 a legal practitioner or a candidate attorney in the proceedings unless-
- a) the Council arbitrator and all the other parties' consent;
 - b) the Council arbitrator 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.

- 4) No person representing a party in proceedings before the Council in a capacity contemplated in sub-rule (1) or (2) other than a legal practitioner or candidate attorney contemplated in sub-rule (2), may charge a fee or receive a financial benefit in consideration for agreeing to represent that party.
- 5) If a party to a dispute objects to the representation of another party to the dispute or the presiding Council arbitrator suspects that the representative of a party does not qualify in terms of this rule, the Council arbitrator must determine the issue and may call upon the representative to establish why that representative should be permitted to appear in terms of this rule.
- 6) Despite the provisions of sub-rule (1) and (2), a presiding Council arbitrator may exclude any person who is representing a party in any proceedings on the basis that they are a member of the same employers' organisation as an employer party, or a member of an employers' organisation that is a party to proceedings, if the Council arbitrator, after enquiring into the matter and considering relevant representations, believes that –
 - a) the representative joined the employer's organisation for the purpose of representing parties in the Commission; or
 - b) the representative's participation in the dispute resolution process—
 - i) would be contrary to the purpose of the rule which is to promote inexpensive and expeditious dispute resolution in a manner that is equitable to all parties;
 - ii) is not in keeping with the objectives of the Labour Relations Act 66 of 1995; or
 - iii) may have the consequence of unfairly disadvantaging another party to the dispute.
- 7) Subject to the provisions of sub-rule (4), the presiding Council arbitrator may, on application brought in accordance with rule 30, allow a person not contemplated by sub-rule (2) to represent a party at arbitration proceedings before the Council, after considering –
 - a) whether it is unreasonable to expect the applicant party to deal with the dispute without representation, after considering the factors set out in sub-rule 3(b)(i) to (iv);
 - b) the reason why a person contemplated in this rule cannot represent the applicant party, which includes affordability, if applicable;
 - c) the ability of the proposed representative to meaningfully represent the applicant;
 - d) whether the proposed representative is subject to the oversight and discipline of a professional or statutory body;

- e) whether the proposed representative will contribute to the fairness of the proceedings and the expeditious resolution of the dispute;
- f) prejudice to the other party; and
- g) any other relevant factors.

24. How to join or substitute parties to proceedings

- 1) The Council or a Council arbitrator may at any stage prior to the conclusion of an arbitration proceedings make a ruling joining any number of persons as parties to the proceedings if:
 - a) the right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim;
 - b) the party to be joined has a substantial interest in the subject matter of the proceedings; or
 - c) the party to be joined may be prejudicially affected by the outcome of the proceedings.
- 2) A Council arbitrator may make a ruling in terms of sub rule (1)-
 - a) of the Council arbitrator's own accord;
 - b) on application by a party; or
 - c) if a person entitled to join the proceedings applies in terms of rule 30 at any time during the proceedings to intervene as a party.
- 3) When making a ruling in terms of sub-rule (1), a presiding Council arbitrator may -
 - a) give appropriate directions as to the further procedure in the proceedings; and
 - b) make an order of costs in accordance with these Rules.
- 4) 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 in terms of Rule 30 prior to the conclusion of the arbitration proceedings for an order substituting that person for an existing party, and a Council arbitrator may make such a ruling or give appropriate directions as to the further procedure of the proceedings.

- 5) 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.
- 6) A ruling for joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings unless directed by the presiding Council arbitrator in such a ruling.

25. How to correct the citation of a party

If a party to any proceedings has been incorrectly or defectively cited, the Council may of its own accord; with the consent of the parties or on application from a party in terms of Rule 30, correct the error or defect.

26. When the Council may consolidate disputes

- 1) The Council or a Council arbitrator may, of its own accord, be consent of the parties or on application from a party in terms of Rule 30 consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.
- 2) The Council or a Council arbitrator may consolidate separate disputes where-
 - a) the relief sought in each of the separate dispute to be consolidated, depends on the determination of similar or substantially the same questions of law and fact;
 - b) there will be no substantial prejudice on the party or parties sought to be joined through a consolidation ruling;
 - c) the balance of convenience favours the consolidation; and
 - d) the Council has jurisdiction on all disputes sought to be consolidated.

27. Disclosure of documents

- 1) Any party may request a Council arbitrator to make a ruling requiring any other party to the dispute to disclose relevant documents.
- 2) A request in sub-rule (1) must be made no less than 14 (fourteen) days prior to the hearing date.
- 3) The party to whom the request is made must respond to the request within 5 (five) days from the date on which the request was received.

- 4) A Council arbitrator may either before or during the proceedings of own accord, or on application from a party, make a ruling as to the disclosure of relevant documents or other evidence.
- 5) Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.

28. What happens if a party fails to attend arbitration proceedings

- 1) If a party to a dispute fails to attend or be represented at any arbitration proceedings before the Council, and that party-
 - a) had referred the dispute to the Council, a Council arbitrator may dismiss the matter by issuing a written ruling; or
 - b) had not referred the matter to the Council, the Council arbitrator may-
 - i) continue with the proceedings in the absence of that party; or
 - ii) adjourn the proceedings to a later date.
- 2) A Council arbitrator 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.

PART F: APPLICATIONS

29. How to bring an application

- 1) This Rule applies to any -
 - a) application for condonation, joinder, substitution, variation, rescission, or postponement;
 - b) application in a jurisdictional dispute; and
 - c) other preliminary or interlocutory application.
- 2) Subject to rule 30, an application must be brought at least 14 (fourteen) days prior to the date of the hearing on notice to all persons who have an interest in such application.
- 3) The party bringing the application must sign the notice of application in accordance with rule 3 and must state-

- a) the title of the application;
 - b) the case number assigned to the matter by the Council, if a case number has been assigned;
 - c) the relief sought;
 - d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;
 - e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within 5 (five) days after the application was served on that party;
 - f) that the application may be heard in the absence of a party that does not comply with subparagraph (e);
- 4) 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.
- 5) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 5 (five) days from the day on which the application was served on that party.
- 6) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub rules (3) and (4), respectively.
- 7) The party initiating the proceedings may deliver a replying affidavit within 3 (three) days from the day on which any notice of opposition and answering affidavit are served on it.
- 8) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.

- 9) The Council arbitrator may permit the affidavits referred to in this rule to be replaced by a written statement.
- 10) In an urgent application, the Council or a Council arbitrator may-
 - a) dispense with the requirements of this rule; and
 - b) only grant an order against a party who has had reasonable notice of the application.
- 11) 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.
- 12) The Council must notify the parties of the date, time and place of the hearing of the application.
- 13) Notwithstanding this rule, the Council or a Council arbitrator may determine an application in any manner it deems fit, provided that the Council or the Council arbitrator informs the parties of how the process will be conducted and that the parties be given an opportunity to be heard.

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

An application for the variation or rescission of an arbitration award or ruling must be made within 14 (fourteen) days of the date on which the applicant became aware of the arbitration award or ruling.

31. 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 delivered within 90 (ninety) days of a certificate being issued that the dispute was not resolved through conciliation.
- 2) Notwithstanding sub rule (1), a party that requests arbitration may not thereafter make an application in terms of section 191(6) of the Act.
- 3) The application in terms of section 191(6) of the Act 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 in terms of section 191(7) of the Act within 7 (seven) days of receipt of the application.
- 5) The Council must notify the parties of the decision in terms of section 191(8) of the Act within 14 (fourteen) days of receiving the objection.

- 6) In the event that the request has been granted, the party who applied for the referral to the Labour Court must refer the matter to the Labour Court in terms of the Labour Court Rules.

PART G: PRE-DISMISSAL ARBITRATIONS

32. How to request an inquiry in terms of section 188A of the Act

- 1) An employer requesting the Council to conduct an inquiry in terms of section 188A of the Act into allegations about an employees' conduct or capacity must do so by delivering a completed prescribed referral form to the Council.
- 2) The employee must sign the referral form consenting to the inquiry. If an employee has consented in terms of section 188A(4)(b)², the referral form does not have to be signed by the employee, but a copy of the contract of employment containing the consent must be attached to the form. An employee may only consent to the inquiry if the employee has been advised of the allegations in sub rule (1).
- 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 electronic transfer into the bank account of the Council.
- 4) Within 14 (fourteen) 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 inquiry when and where the inquiry will be held.
- 5) Unless the parties agree otherwise, the Council must give the parties at least 14 (fourteen) days' notice of the commencement of the inquiry.
- 6) The Council will only be required to refund the fee paid in terms of sub rule (3), if the Council is notified of the resolution of the matter prior to issuing a notice in terms of sub rule (4).

² Only an employee whose earnings exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, (currently R211,596.30 per annum) may consent to an inquiry in a contract of employment.

- 7) If an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, that employee or the employer may require an inquiry to be conducted in terms of this rule.

PART H: GENERAL

33. Unrepresented applicants without email addresses, postal addresses or fax numbers

- 1) An unrepresented applicant who intends to refer a dispute to the Council and who does not have an email address, postal address or a 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 7 (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.

34. Condonation for failure to comply with the Rules

- 1) The Council or a Council arbitrator may condone any failure to comply with any provision of these Rules, on good cause shown.
- 2) In exercising its powers and performing its functions the Council and a Council arbitrator may act in such a manner as is deemed expedient in the circumstances in order to achieve the objects of the Act. In doing so it shall have regard to substance rather than form, save where the Act provides otherwise.
- 3) The provisions of this Rule do not apply to Rule 23 relating to representation.

35. Recordings of Council proceedings

- 1) The Council must keep a record of-
 - a) all processes except conciliations, unless otherwise stated in these Rules; and

b) any arbitration award or ruling made by a Council arbitrator .

- 2) The record must be kept by means of a digital recording and, if practically possible, also by legible notes.
- 3) A party may request a copy of the record or a portion of a record kept in terms of sub rule (2), on payment of the costs where applicable.

36. How to have a subpoena issued and served

- 1) Any party who requires the Council or a Council arbitrator to subpoena a person in terms of section 142(1) of the Act, must file a completed prescribed 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) for good cause shown 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. The Council's decision in relation to the request to waive the witness fee must be given in writing when issuing the subpoena.
- 3) An application in terms of sub rule (1) must be filed with the Council at least 14 (fourteen) days before the arbitration hearing, or as directed by the Council arbitrator hearing the arbitration.
- 4) The Council or a Council arbitrator 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 arbitrator is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel and subsistence costs of the person subpoenaed.
- 5) A subpoena must be served at least 7 (seven) days before the scheduled date of the arbitration by the person who has requested the subpoena or by the sheriff.
- 6) Service is effected in terms of this Rule by -
 - a) handing a copy of the subpoena to the subpoenaed person;
 - b) handing a copy of the subpoena to a person authorised in writing to accept service on behalf of the subpoenaed person; or

- c) leaving a copy of the subpoena at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there.
- 7) The Council or a Council arbitrator may order service in a manner other than prescribed in this Rule.
- 8) If directed by the Council, the subpoena must be accompanied by payment of the prescribed witness fees for 1 (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 and subsistence costs.

37. Expert witnesses

A party intending to call an expert witness shall give 7 (seven) days' notice prior to the hearing to the Council and the other party to the dispute together with a summary of the proposed evidence of the expert witness, any document on which the witness will rely during evidence and the basis on which the witness is regarded to be an expert to enable the other party to consider the summary and to obviate the need for any postponement.

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 arbitrator may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

39. Costs orders and taxation of bills of cost

- 1) The basis on which a Council arbitrator may make an order as to costs in any arbitration is regulated by section 138(10) of the Act.
- 2) In any arbitration proceedings, the Council arbitrator may make an order for the payment of costs according to the requirements of law and fairness and when doing so should have regard to -

- a) the measure of success that the parties achieved;
 - b) considerations of fairness that weigh in favour of or against granting a cost order;
 - c) any with prejudice offers that were made with a view to settling the dispute;
 - d) whether a party or the person who represented that party in the arbitration proceedings acted in a frivolous and vexatious manner–
 - i) by proceeding with or defending the dispute in the arbitration proceedings; or
 - ii) in its conduct during the arbitration proceedings;
 - e) the effect that a cost order may have on a continued employment relationship;
 - f) any agreement concluded between the parties to the arbitration concerning the basis on which costs should be awarded;
 - g) the importance of the issues raised during the arbitration to the parties as well as to the labour community at large;
 - h) any other relevant factor.
- 3) A Council arbitrator may make an award of costs in favour of a party who appears or is represented in arbitration in respect of reasonable disbursements actually incurred in the conduct of the case in the arbitration. A Council arbitrator who makes an award in terms of this provision must specify clearly the items and amounts in respect of which costs are ordered.
- 4) A Council arbitrator may make an award of costs in respect of the legal fees of a party that is represented in an arbitration by a legal practitioner or candidate attorney, only if the other parties to the arbitration were represented by a legal practitioner or candidate attorney.
- 5) An award for costs in terms of sub-rule (4) must be in the amount of –
- a) in respect of the first day of an arbitration (including any arbitration concluded in a single hearing) – R7 000-00 (VAT inclusive);
 - b) in respect of each additional day of an arbitration – R4 700-00 (VAT inclusive).
- 6) An award for costs in respect of a candidate attorney must be 50 percent of the amount set out in sub-rule (5).

- 7) The Secretary of the Council may appoint taxing officers to perform the functions of a taxing officer in terms of these Rules.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) Notwithstanding sub rule (10), 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.
- 12) Any decision by a taxing officer is subject to review by the Labour Court.

40. Payment of an arbitration fee ordered in terms of section 140 of the Act

- 1) Where the Council arbitrator, having found that the dismissal was procedurally unfair, orders payment of an Arbitration fee in terms of 140(1) of the Act, the employer must pay the prescribed fee to the Council within 14 (fourteen) days of receipt of the award ordering payment of such a fee.
- 2) Payment of the fee may only be made by electronic transfer into the bank account of the Commission.

41. What words mean in these Rules

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

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

"Association" means any unincorporated body of persons;

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

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

"mutual interest dispute" 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 dispute relating to an entitlement based on an employment contract or practice, a collective agreement, a statute or the common law;

"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 or 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

Good Friday

Family Day

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,

and any public holiday declared as such in terms of section 2A of the Public Holidays Act, 1994.³

"Rules" means these rules and includes any footnote to a rule;

"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.

³ The dates on which Good Friday and Family Day fall varies each year. The Public Holidays Act determines whenever any public holiday falls on a Sunday, the Monday following on it shall be a public holiday.

SCHEDULE 1 REGISTERED ADDRESSES OF THE COUNCIL

| | | |
|---|--------------------------------------|--|
| The Secretary 81 Voortrekker Road BELLVILLE 7530 | Private Bag X29 BELLVILLE 7535 | Tel: (021) 950 7400 Fax: (021) 950 7404 E-mail: bibc@bibc.co.za |
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