

**MOA C FOR BARGAINING COUNCIL THAT CANNOT PAY BENEFITS TO
EMPLOYEES DIRECTLY**

MEMORANDUM OF AGREEMENT

between

UNEMPLOYMENT INSURANCE FUND

and

[NAME OF BARGAINING COUNCIL]

Purpose

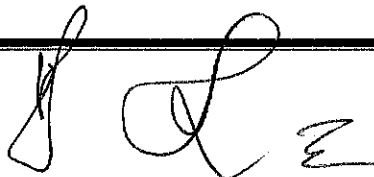
1 The purpose of this Memorandum of Agreement (MOA) is to give effect to the Covid-19 Temporary Relief Scheme as set out in the Minister of Employment and Labour's Directive of 25 March 2020 (Directive) as amended namely to provide temporary relief to employees who suffer a loss of income as a result of the lock down declared by the Minister of Cooperative Governance and Traditional Affairs on 18 March 2020 in terms of the Disaster Management Act, 2002 on 18 March 2020, in order to –

1.1 expedite the payment of benefits to contributors who lose income due to the Covid-19 pandemic;

1.2 alleviate the economic impact of the loss of employment and closure of businesses due to the Covid-19 pandemic;

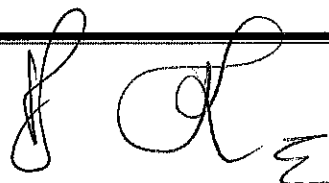
1.3 allow for electronic applications for benefits in order to minimise the spread of Covid-19 and set out the application procedure for benefits.

2 The MOA records the terms and conditions for the implementation of the Scheme by the Unemployment Insurance Fund and the [name of bargaining council].

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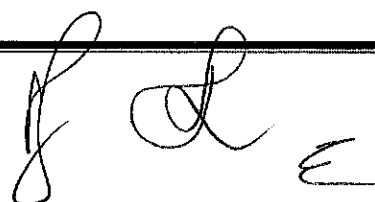
Interpretation

3 In this MOA:

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- 3.1 The head notes to the clauses in this MOA are for reference purposes only and shall not affect the interpretation of any part hereof;
- 3.2 Unless inconsistent with the context, any gender includes the other genders; a natural person includes an artificial person and vice versa; the singular shall include the plural and vice versa;
- 3.3 When any number of days are prescribed by the MOA, same shall be reckoned exclusively of the first and inclusively of the last Business Day, save that if the last day does not fall on a Business Day, the last day shall be the next succeeding Business Day;
- 3.4 In the event of any provisions contained in this MOA being declared invalid or unenforceable by a Court of law, the validity and enforcement of the remaining provisions contained herein shall not, in any way, be affected or impaired thereby;
- 3.5 All provisions of these terms and conditions are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other;
- 3.6 Any provision of these terms and conditions which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of these terms and conditions shall remain in full force and effect;
- 3.7 In the event of conflict between Annexures in this MOA, the MOA read with (Annexure A) shall prevail, provided the Directive prevails over MOA ;
- 3.8 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

" UI Act"	means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), as amended;
"Memorandum of	means this MOA, and all Annexures and



Agreement (MOA)"	Schedules thereto;
Covid-19 Temporary Relief Scheme Benefits	; means a scheme established, per Directive in Annexure B herein or as amended, to compensate employees who have lost income due to Covid-19
"Council's Members "	means the employers for whom the Council Acts.
Covid-19 TERS	means the COVID-19 Temporary Employee-Employer Relief Scheme;
"Employer"	means any employer who has accepted the terms and conditions set out in this MOA and who submits a claim as contemplated in clause 8 of this MOA, through the Bargaining council;
National Minimum Wage	means the amount of R3500
"Parties"	means the UIF and the COUNCIL;
"temporary closure"	means a complete or partial temporary closure of business operations due to Covid-19 pandemic for the period in the Directive called Covid-19 TERS;
"UIF"	means the Unemployment Insurance Fund established in terms of section 4(1) of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001) as amended.

Period and scope

- Despite signature for and on behalf of UIF herein, this MOA commences on the date of confirmation of acceptance by the UIF of the Employer's application in terms of Covid-19 TERS, and remains in force for three

months or less in terms of the Directive unless extended by mutual agreement.

- 4 The benefits contemplated in this MOA are to be paid by UIF, in terms of the Directive, only to those qualifying employees who –
 - 4.1 suffer a loss of income as a result of the temporary closure by the employer of its business operations; and
 - 4.2 were in employment prior to the commencement of the national lock-down on 27 March 2020.

Council obligations

- 5 The Council must ensure that every employer registered with the Council and it represents herein –
 - 5.1 warrants in writing that the temporary closure of its business operations is a direct result of the lock down and the pandemic;
 - 5.2 advises the Council of the date that-
 - 5.2.1 it expects to resume business operations;
 - 5.2.2 it commences business operations;
 - 5.3 submits to the Council the information and documentation listed in Annexure A in respect of a temporary closure of its business operations and the desired payment of benefits to each of its employees –
 - 5.3.1 by or before 15 April in respect of the period 27 March 2020 to 16 April 2020;
 - 5.3.2 by 5th day of each subsequent month covered by extension of Directive, if any.
- 7 The Council must prepare the spread sheet contemplated in Annexure A for submission to the UIF for each of the periods in 6.3 above.
- 8 The Council must submit the calculations contemplated in clause 7 to the UIF together with the supporting documents listed clause 5 above and in Annexure A.

Calculation of benefits

- 9 The Council must ensure that the employer submits a calculation of the amount of benefits to be paid to employees for the period of the temporary closure of its member's business.
- 10 The UIF must calculate the benefit that employees are entitled to in respect to the period of temporary closure in accordance with the formula stated in the Directive namely –
 - 10.1 38%-60% in terms of the income replacement sliding scale contained in the UI Act; or
 - 10.2 if the employee's benefit determined in terms of the income replacement sliding scale falls below the minimum wage for the sector, the employee must be paid a benefit equal to that amount;
 - 10.3 the employee's remuneration up to a maximum of R 17 712,00 is taken into account in determining the benefit.
 - 10.4 The calculation of UIF prevails.

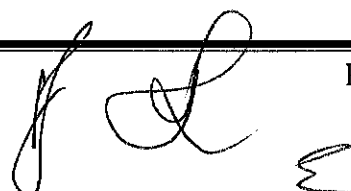
Payment of benefits

- 11 The UIF must deposit its approved benefit amounts into each employee's bank account.

UIF obligations

- 12 On verification of the supporting documents, the UIF must –
 - 12.1 determine the benefits for each of the employees listed in the spread sheet contemplated in Annexure A and submitted to it by the Council;
 - 12.2 prepare a spread sheet detailing the amounts of the benefits to be paid and thereafter actually paid to each of the employees listed in the spread sheet submitted by the Council or verify the calculations submitted by the Council in terms of clauses 9 and 10 above;
 - 12.3 submit the spread sheet or verification contemplated in clause this 1 to the Council together with the proof of payments contemplated in the Directive or this clause.
 - 12.4 Carry its obligation in clause 11.

UIF auditing powers

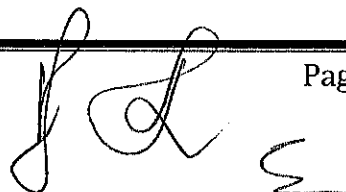
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- 13 The UIF may at any time, at its expense and sole discretion appoint an auditor or a suitably qualified investigator to audit or investigate suspected-
- 13.1 breaches of the MOA;
 - 13.2 corruption or fraud related to the implementation of the MOA.
- 14 The Council must -
- 14.1 allow UIF employees or an auditor or investigator so appointed, timeous unrestricted access to any records as UIF employees or the auditor or investigator may deem necessary to examine, for the purposes of discharging their duties; and
 - 14.2 without delay, furnish UIF employees or the auditor or investigator with any authority which may be required to enable them to obtain such information as they may reasonably require for such purpose.

Withholding of Funds and Return thereof

- 15 The UIF may terminate the MOA or withhold or suspend any payment in whole or in part if the Council-
- 15.1 is in breach of the MOA; or
 - 15.2 has submitted any document or form that is incorrect, incomplete, false or misleading.

Breach and termination

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16. Except where expressly provided to the contrary, should any Party commit a breach of any of the terms and conditions of this Agreement and fail to rectify such breach within a period of 7 (days) days after written notice has been given to the defaulting Party by or on behalf of the other Party (aggrieved Party) calling upon the defaulting Party to remedy such breach, then notwithstanding any previous indulgence on the part of the aggrieved Party and without prejudice to any other or further rights in law of such aggrieved Party in terms hereof or otherwise, the aggrieved may cancel this Agreement and claim damages and losses occasioned by the breach from the defaulting Party; or Party shall be entitled to immediately:

16.1 Claim specific performance in terms of this Agreement.

16.2 This Agreement may be terminated by either Party on prior 15 days written notice to the other Party.

No variation

17. No amendment or variation of the MOA is of any force unless it is in writing and signed by the parties to the MOA.

Notices

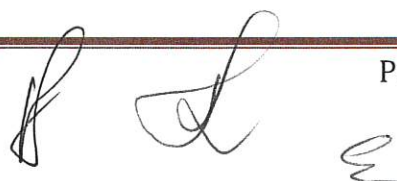
18. The Parties choose the following addresses for the purposes of serving any notice of payment of any sum, serving of any legal process or for any other notice arising from this Agreement.

UNEMPLOYMENT INSURANCE FUND

ABSA TOWERS
230 Lilian Ngoyi Street
PRETORIA
0001

Postal address:
PRETORIA
0052

Adv. E M Yawa Chief Director: Corporate Services
ABSA TOWERS
230 Lilian Ngoyi Street
PRETORIA
0001
Email: mzie.Yawa@labour.gov.za



For Council

(per address appearing in Authorized application letter)

For the Attention of:

Email (as appears in authorisation application letter)

19. Each Party will be entitled from time to time by written notice to the other Party to change to any other address within the Republic of South Africa, provided that one of the addresses shall always be a physical address at which the service of legal processes can be effected;

19.1 Any notice which:

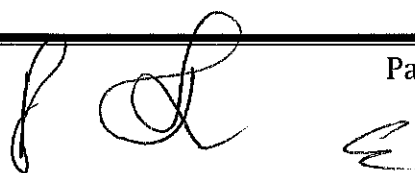
19.2 Is delivered by hand at the addressee's physical address shall be deemed to have been received by the addressee at the time of delivery; or

19.3. Is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its physical address shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh day after the date of posting; and

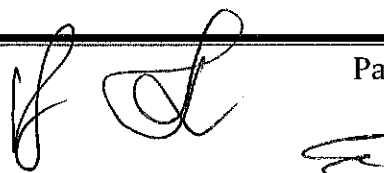
19.4 If transmitted by telefax to the addressee at its physical address, shall be deemed to have been received by the addressee on the date of transmission or, if the transmission is made outside of normal business hours, on the first business day following after the date of transmission.

DISPUTE RESOLUTION

20. Should any dispute pertaining to this Agreement or performance there under arise at any time between the Parties, the duly authorized senior officials of each Party shall meet within 5 (five) days, or such period as the Parties may agree, from the date on which the dispute was notified in writing by one Party to the other, to attempt to resolve the dispute amicably.



21. If the dispute is not resolved at the meeting contemplated in clause 20.1, or extended meeting as the Parties may agree to in writing, or such meetings mentioned in this clause 20.1 does not take place, then either Party may refer the dispute to the Arbitration Foundation of South Africa ("AFSA") to be determined by arbitration in terms of the rules of AFSA, such arbitration shall be held in Pretoria.
- 20.2 AFSA will be responsible for the appointment of an arbitrator and, where the Parties agree, more than one arbitrator may be appointed.
- 20.3 The arbitration will include the right of appeal provided for by the rules of AFSA.
- 20.4 Notwithstanding the institution and commencement of arbitration proceedings, either Party may nonetheless approach a court of law for relief of an urgent nature in circumstances in which such relief cannot be given or cannot urgently be given by the arbitrator.
- 20.5 In making an award, the arbitrator appointed will also, in his discretion, make a decision with regard to the costs of the arbitration, including any value-added tax, charges and disbursements, and fees of a like nature incurred by the successful Party in successfully enforcing or defending any of the provisions of this Agreement or any claim hereunder, and shall be for the account of the unsuccessful Party. In so doing, the arbitrator shall be entitled to appoint a taxation consultant and/or a taxing master to determine the amount of the fees.

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LIMITATION OF LIABILITY

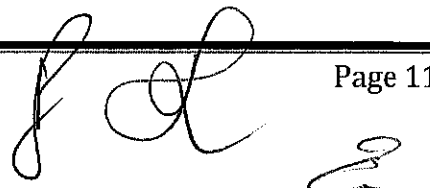
21.1 The Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall only be liable to the other Party for all losses which constitute direct and/or general damages.

21.2 Subject to clause 21.3, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall not be liable to the other Party for any losses, which constitute indirect, special and/or consequential damages.

21.3 Notwithstanding anything to the contrary set forth in clause 21.2 above or this Agreement in general, the Parties agree that they shall be liable to each other for:

21.3.1 All losses which arise out of their Corrupt Activity or fraud; and

21.3.2 All losses which arise out of dishonesty or gross negligence regardless of whether such losses arise out of contract or delict.

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21.4 Notwithstanding anything to the contrary contained in this Agreement, Council's maximum liability for any claims, howsoever arising or connected to this Agreement, will be to the extent of damage suffered by UIF in terms of this Agreement.

22. GOOD FAITH

The Parties shall display good faith in their dealings with each other.

23. FULL AGREEMENT

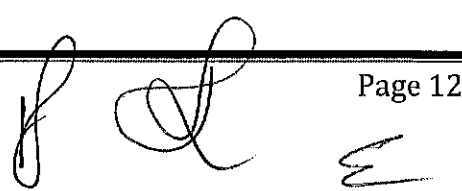
This Agreement constitutes the entire Agreement, and no other Agreement, provision, document or determination shall form part of this Agreement unless such other Agreement, provision, document or determination is in writing and has been signed by both Parties.

24. INDULGENCE

No waiver on the part of either party of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

25. CESSION AND ASSIGNMENT

Council will not be entitled to cede, assign or sub-contract all or any of its rights or obligations under this Agreement without the written consent of the UIF.



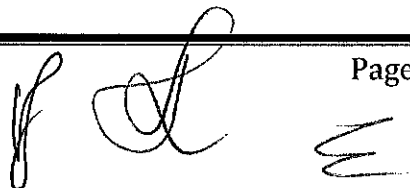
26. LEGAL COSTS

Each Party will pay its own costs and expenses incurred by it in connection with the negotiation and execution of this Agreement.

ANNEXURE A

INFORMATION AND DOCUMENTS

- Documents and information to be provided to receive first instalment –
 - Letter of authority on the business letterhead granting authority to Council (if there is no binding collective agreement) lodging claim on behalf of employer
 - Acceptance of the terms and conditions contained in the MOA
 - Acceptance by Employer of UIF's confirmation of acceptance of Employer's application, per and for clause 4 hereof.
 - The relevant template duly completed including-
- Details of of employer
 - Name and address
 - UIF details
 - Details of the employer's business account
 - Details of the employer's accountant or auditor
- A template duly completed including
 - details of the expected period of closure
 - a list of employees and their dates of employment ID, Bank account and UIF details
 - Remuneration received by employees

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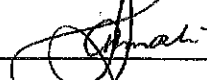
- Proof of remuneration to employees in terms of pay-roll/ bank-statements for previous 3 months¹
- Confirmation of employer bank account in form of certified latest bank account
- Information to be provided for second and further instalment
 - The relevant template must be updated, where applicable
 - Period of further closure specified (up to maximum of one month)
 - Details of employees no longer in employment
 - Bank statements confirming previous payments

Payroll reconciling payments to employees to amount paid by UIF

SUPPORTING DOCUMENTS

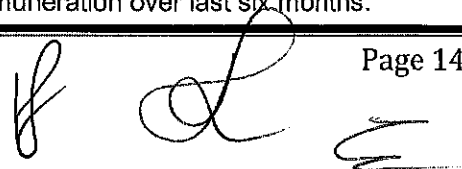
- Documents and information to be provided to receive first instalment -
 - Resolution of the Council authorising the Council to enter into the MOA.
 - MOA signed by the person authorised by the Council.
 - The relevant template duly completed including-
 - Details of registered employers
 - Details of the expected periods of closure in respect of each of the registered employers
 - List of employees and their dates of employment, bank account and ID and UIF numbers
 - Remuneration received by employees
 - Proof of remuneration to employees for previous 3 months

SIGNED at Pretoria on this 08 day of April 2020



THOBILE LAMATI
DIRECTOR-GENERAL

¹ In terms of 13(2) of the UIF Act, if the remuneration of an employee fluctuates significantly, benefit calculations must be based on the average remuneration over last six months.



For: **UNEMPLOYMENT INSURANCE FUND**

AS WITNESSES

TEBOHO MARUPING
UI COMMISSIONER
SERVICES

08/04/2020

E M YAWA
CHIEF DIRECTOR: CORPORATE

08/04/2020