

MOA "B" FOR BARGAINING COUNCILS THAT CAN PAY BENEFITS TO EMPLOYEES DIRECTLY

MEMORANDUM OF AGREEMENT

between

UNEMPLOYMENT INSURANCE FUND

and

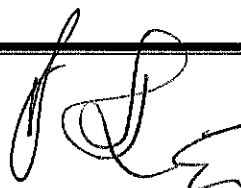
[NAME OF BARGAINING COUNCIL]

Purpose

- 1 The purpose of this Memorandum of Agreement (MOA) is to give effect to the Covid-19 Temporary Employer-Employee Relief Scheme established in the Minister of Employment and Labour's Directive of 25 March 2020, as amended, issued in terms of Regulation 10 (8) of the Regulations issued by the Minister of Cooperative Governance and Traditional Affairs 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 any employer who submits a claim under the Scheme, through the Council.

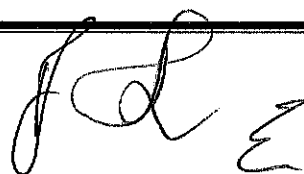
Interpretation

- 3 In this MOA:

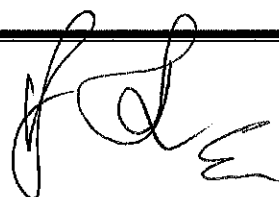


- 3.1 The head notes to the clauses in this Agreement are for reference purposes only and shall not affect the interpretation of any part hereof;
- 3.2 Unless inconsistent with the context, any gender includes the other genders; a natural person includes an artificial person and vice versa; the singular shall include the plural and vice versa;
- 3.3 When any number of days are prescribed by the Agreement, 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 the Agreement 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 Agreement, the MOA read with Annexure A shall prevail, save that the Directive prevails over the MOA;
- 3.8 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

| | |
|--------------|---|
| “Act” | means the Unemployment Insurance Act, 2001; |
|--------------|---|



| | |
|--|---|
| "Agreement" | means this Memorandum of Agreement between the UIF and the Employer and any Annexures and schedules thereto; |
| Covid-19 Temporary Relief Scheme Benefits | means the benefits provided by the scheme established to compensate employees who have lost or will lose income due to Covid-19; |
| 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; |
| "MOA" | means this Agreement ; |
| "Parties" | means the UIF and the Employer; |
| "PFMA" | means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended; |
| "temporary closure" | means a complete or partial temporary closure of business operations due to Covid-19 pandemic for the period in the Direction called Covid-19 TERS; |
| "UIF" | means the Unemployment Insurance Fund established in terms of section 4(1) Unemployment Insurance Act, 2001 as amended. |



Period and scope

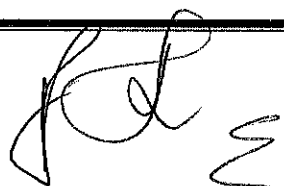
- 4 Despite signature for and on behalf of UIF herein, this MOA commences on the date of confirmation of acceptance by the UIF of the Employer's application in terms of Covid-19 TERS and remains in force, per the Directive, for three months or less, unless extended by mutual agreement.
- 5 The benefits contemplated in this MOA are to be paid by UIF, in terms of the Directive, only to those qualifying employees who –
 - a. suffer a loss of income as a result of the temporary closure by the employer of its business operations; and
 - b. were in employment prior to the commencement of the national lock-down on 27 March 2020.

Employer warranty

- 6 The Employer shall warrant, in writing to the Council for forward transmission to UIF that –
 - a. the temporary closure of its business operations is a direct result of the Covid-19 pandemic;
 - b. it will immediately inform the UIF on the recommencement of its business operations that were subject to temporary closure;
 - c. it is registered with the UIF;
 - d. it has not individually entered into a MOA with the UIF.
- 7 The Council undertakes to use the Covid-19 benefit exclusively and solely for the purpose of paying approved benefits to employees, in Annexure A subject to clause 12 and the further terms of this agreement.

Council obligations

- 8 The Council must ensure that every employer registered with the Council or for whom Council acts –
 - 8.1 Provides it with the warrants under Employer warrant above.

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8.2 The Council must prepare the spread sheet contemplated in Annexure A for 27 March 2020 to 16 April 2020 or such extended period of the Directive, if any;

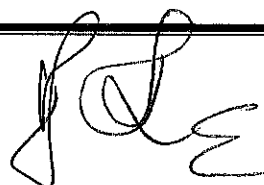
- 9 The Council must submit the warranties in clause 6 above and supporting documents listed in Annexure A by the 15th of April, and 5th of every month covered by an extension of period of Directive, if any, respectively.

Payment of benefits

- 10 Within 2 days or period not exceeding 5 days of the receipt of funds from the UIF, the Council must pay the benefits to the employees in the amounts listed against their names in the spread sheet submitted by the UIF in terms of clause 18.3.
- 11 The Council must submit proof of payment of the benefits to the employees to the UIF together with the updated spread sheets contemplated in Annexure A.
- 12 The Council must return any unutilised funds, including interest, to the UIF within 10 days of the final tranche deposited by the UIF.

Council's accounting obligations

- 13 The Council must at all times ensure that its accounting records in respect of this MOA are –
- 13.1 in electronic form and kept and maintained safely;
 - 13.2 capable of being retrieved into a readable and printable form;
 - 13.3 accessible to the persons contemplated in clauses 19 and 22.
 - 13.4 kept separately from accounting records relating to the Council's other accounting records so that they are capable of being identified on a stand-alone basis.
- 14 The Council must keep a proper audit trail of funds received and benefits paid to employees.
- 15 No cash withdrawals may be made nor cheques drawn from the amounts paid in in terms of this agreement.
- 16 The Council must retain its accounting records, all files and documents relating to implementation of this MOA for at least five years from the



date of the last entry recorded in each accounting or financial or other record.

UIF obligations

17 On verification of the supporting documents, the UIF must –

- 17.1 determine the benefits for each of the employees listed in the spread sheet contemplated in Annexure A and submitted to it by the Council;
- 17.2 prepare a spread sheet detailing the amounts of the benefits to be paid to each of the employees listed in the spread sheet submitted by the Council;
- 17.3 submit to Council the spread sheet prepared in clause 18.2 to the Council together with the deposits contemplated in clause 18.4
- 17.4 The UIF must deposit benefit funds into the account contemplated in this agreement for each of the periods covered by the Directive.

UIF auditing powers

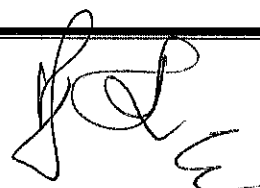
18 The UIF may at any time, at its expense and sole discretion appoint an auditor or a suitably qualified investigator to audit or investigate suspected-

- 18.1 breaches of the MOA;
- 18.2 corruption or fraud related to the implementation of the MOA.

19 The Council must -

- 19.1 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
- 19.2 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.

Communication



- 20 The UIF shall be entitled to develop public relations material relating to the Covid-19 Temporary Relief Scheme Benefits, which public relations materials may include press statements, media reports, and or information relating to the Covid-19 Temporary Relief Scheme Benefits.

Confidentiality of information

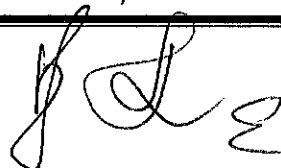
- 21 The Parties shall keep confidential and shall not disclose to any third Party (other than for the purposes of performing services under this Agreement) any of the Confidential Information disclosed to either Party during the discussions or negotiations or implementation of this Agreement or at any time thereafter.
- 22 The provisions of clause 22 above shall not apply to any Confidential Information which –
- a. is or hereafter becomes part of the public domain;
 - b. can be shown to have been lawfully in the possession of the other Party prior the signing of the Agreement and is not subject to any existing Agreement between the Parties;
 - c. is acquired by the other Party independently from a third Party, who lawfully acquired such information without restriction, or information which is acquired or developed by a Party independently of the other Party in circumstances which do not amount to a provision of clause 26.1 and 26.2 above; or
 - d. is disclosed or released by the Receiving Party/Recipient to satisfy an order of Court or otherwise comply with the provisions of any law or regulation in force at the time.

Good faith

- 23 The Parties must display good faith in their dealings with each other.

Breach and termination

- 24 On the basis of a report of the persons contemplated in clauses 19, the UIF may –
- a. remedy any failure to comply with the MOA;



- b. require the Council to repay all or part of the funding if the Council is in breach of this MOA;
- c. suspend or withhold any payment in terms of the MOA;
- d. terminate the MOA;
- e. institute legal proceedings to –
 - i. recover any amounts owing to the UIF contemplated in clause 18.4; and
 - ii. recover any damages flowing from the breach of the MOA or the submission of any document or form in terms of the MOA that is incorrect, incomplete, false or misleading.

No variation

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

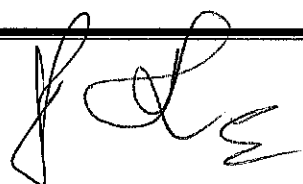
Limitation of liability

26 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.

27 Subject to clause 38, 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.

28 Notwithstanding anything to the contrary set forth in clause 37 above or this Agreement in general, the Parties agree that they shall be liable to each other for-

- f. all losses which arise out of their corrupt activity or fraud; and
- g. all losses which arise out of dishonesty or gross negligence regardless of whether such losses arise out of contract or delict.



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

Full agreement

30 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.

Indulgence

31 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.

Cession and assignment

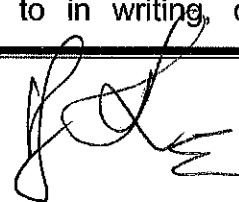
32 The Council will not be entitled to cede, assign or sub-contract all or any of its rights or obligations under this Agreement without the written consent of the UIF.

33 The UIF shall be entitled to cede and assign all of its rights and obligations, or any portion thereof under this Agreement to any other organ of the State, subject only to the rights and obligations of the Council being honoured, either by UIF providing a written undertaking to the Council to honour its obligations, or the rights and obligations of UIF being honoured by any successor in title or assignee of UIF, without written consent of Council.

Dispute resolution

34 Should any dispute pertaining to this Agreement or performance thereunder 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.

35 If the dispute is not resolved at the meeting contemplated in clause 28 or extended meeting as the Parties may agree to in writing, or such



meetings mentioned in this clause 28 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.

- 36 **AFSA** will be responsible for the appointment of an arbitrator and, where the Parties agree, more than one arbitrator may be appointed.
- 37 The arbitration will include the right of appeal provided for by the rules of AFSA.
- 38 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.
- 39 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.

Legal costs

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

Notices

- 41 The Parties choose emails below 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.

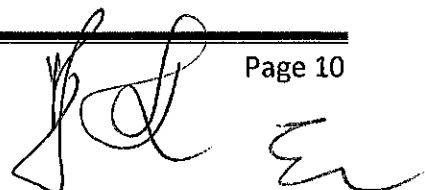
UNEMPLOYMENT INSURANCE FUND

Street Address:

ABSA TOWERS

230 Lilian Ngoyi Street

PRETORIA



0001

Postal address:

PRETORIA

0052

For the Attention of:

Adv. E M Yawa Chief Director: Corporate Services

ABSA TOWERS

230 Lilian Ngoyi Street

PRETORIA

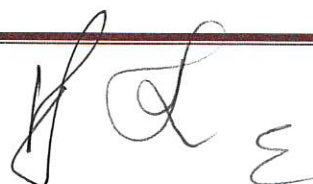
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Email: mzie.Yawa@labour.gov.za

THE COUNCIL

The physical and email addresses provided by the Council for this purpose in the claim documents referred to in letter of Authority or Annexure A.

42 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.

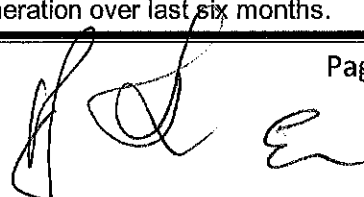
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ANNEXURE A INFORMATION AND DOCUMENTS

- Documents and information to be provided to receive first instalment –
 - Letter of authority on the Council letterhead granting authority to individual lodging claim on behalf of employers.
 - Legal undertaking signed by the person authorised by the Council.
 -
 - Acceptance of the terms and conditions contained in the MOA
 - Acceptance by Council of UIF's confirmation of acceptance of Employer's application, per and for clause 4 hereof.
 - The relevant template duly completed including-
 - Details of employer
 - Period of closure
 - List of employees and their dates of employment, bank account and ID numbers
 - Remuneration received by employees
 - Proof of remuneration to employees in terms of pay-roll/ bank-statements for previous 3 months¹
 - Confirmation of Council 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

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.



SIGNED at Pretoria on this ~~28~~ day of April 2020



THOBILE LAMATI

DIRECTOR-GENERAL

For: UNEMPLOYMENT INSURANCE FUND

NB: I authorise any of the UIF witnesses below to sign the approval letter on my behalf and warrant that such letter shall have the legal force as though personally signed by me.

AS WITNESSES

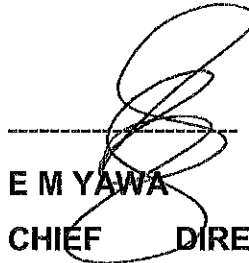


TEBOHO MARUPING

UI COMMISSIONER

SERVICES

08/04/2020



E M YAWA

CHIEF DIRECTOR: CORPORATE

08/4/2020

