

**MOA "D" FOR BODIES/ORGANISATIONS/ COUNCILS THAT CANNOT  
PAY BENEFITS TO EMPLOYEES DIRECTLY**

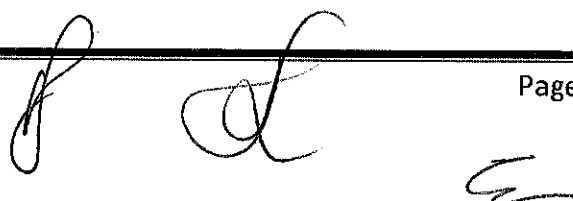
**MEMORANDUM OF AGREEMENT**

between

**UNEMPLOYMENT INSURANCE FUND**

and

**[NAME OF BODY/ORGANISATIONS/ COUNCIL]**

Handwritten signatures in black ink, including two large signatures and a smaller one at the bottom right.

## 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.
- 2 The MOA records the terms and conditions for the implementation of the Scheme by the Unemployment Insurance Fund and the [name of Organisation/Council/Body].

## 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;
- 3.8 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

<b>“Act”</b>	means the Unemployment Insurance Act, 2001;
<b>“Agreement”</b>	means this Memorandum of Agreement between the UIF and the Employer and any Annexures and schedules thereto;
<b>Covid-19 Temporary Relief Scheme Benefits</b>	means the benefits provided by the scheme established to compensate employees who have lost or will lose income due to Covid-19; based on the Directive.
<b>Covid-19 TERS</b>	means the COVID-19 Temporary Employee-Employer Relief Scheme;
<b>“Employer”</b>	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; For this agreement Employer, depending on context, shall include Council/Organisation/Body when such acts for the employer, duly authorised by such Employer.
<b>“MOA”</b>	means this Agreement;
<b>“Parties”</b>	means the UIF and the Council;
<b>“PFMA”</b>	means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended;

<p><b>“temporary closure”</b></p>	<p>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;</p>
<p><b>“UIF”</b></p>	<p>means the Unemployment Insurance Fund established in terms of section 4 (1) Unemployment Insurance Act, 2001 as amended.</p>

**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.

**Council obligations**

- 6 The Council must ensure that every employer registered with the Council or for whom and at whose instance it acts –
  - 6.1 warrants in writing that the temporary closure of its business operations is a direct result of the lock down and the pandemic;
  - 6.2 advises the Council of the date that-
    - 6.2.1 it expects to resume business operations;
    - 6.2.2 it commences business operations;
  - 6.3 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 –

6.3.1 by or before 15 April in respect of the period 27 March 2020 to 16 April 2020;

6.3.2 by the 5<sup>th</sup> of each subsequent month covered by extension of Directive, if any.

6.3.3 Submits to UIF the warranties in clause 6.1 above.

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 in clause 6.1 and Annexure A.

### **Calculation of benefits**

9 The Council may, if it has the means to do so, submit 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 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 minimum wage;

10.3 the employee's remuneration up to a maximum of R 17 712,00 is taken into account in determining the benefit.

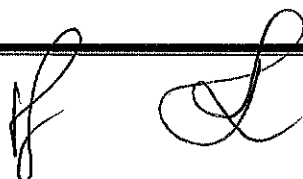
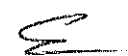
10.4 The calculations of UIF prevail.

### **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 –

Two handwritten signatures in black ink, one appearing to be 'JF' and the other a more stylized signature.A handwritten signature in black ink, possibly 'E'.

- 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 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 7,8 and 9 above;
- 12.3 submit the spread sheet or verification contemplated in clause 10 to the Council together with the proof of payments contemplated in the Directive or this clause 10.
- 12.4 Carry its obligation in clause 11.

### **UIF auditing powers**

- 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.

### **Communication**

- 15 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**

- 16 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.
- 17 The provisions of clause 16 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**

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

### **Breach and termination**

- 19 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**

20 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**

21 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.

22 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.

23 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.

24 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**

25 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**

26 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**

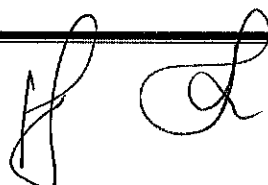
27 The Council will not be entitled to cede, assign or sub-contract all or any of its rights or obligations under this Agreement without the written consent of the UIF.

28 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**

29 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.

30 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.



- 31 **AFSA** will be responsible for the appointment of an arbitrator and, where the Parties agree, more than one arbitrator may be appointed.
- 32 The arbitration will include the right of appeal provided for by the rules of AFSA.
- 33 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.
- 34 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**

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

#### **Notices**

- 36 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.

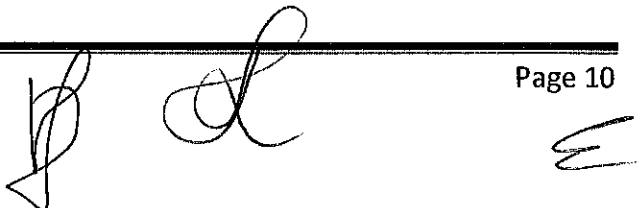
#### **UNEMPLOYMENT INSURANCE FUND**

**Street Address:**

ABSA TOWERS  
230 Lilian Ngoyi Street  
PRETORIA  
0001

**Postal address:**

PRETORIA

Handwritten signatures and initials in black ink, including a large stylized signature and several smaller initials.

0052

**For the Attention of:**

**Adv. E M Yawa Chief Director: Corporate Services**

ABSA TOWERS

230 Lilian Ngoyi Street

PRETORIA

0001

Email: [mzie.Yawa@labour.gov.za](mailto:mzie.Yawa@labour.gov.za)

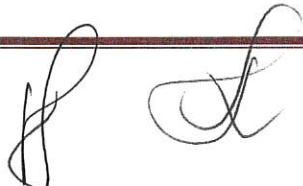
### **THE COUNCIL**

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.

37 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.

### **ANNEXURE A INFORMATION AND DOCUMENTS**

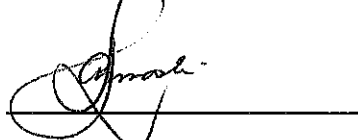
- Documents and information to be provided to receive first instalment –
  - Letter of authority on the Council letterhead granting authority to individual lodging claim on behalf of employers.
  - Legal undertaking signed by the person authorised by the Council.
  - 
  - Acceptance of the terms and 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 months<sup>1</sup>
- 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

SIGNED at Pretoria on this-----<sup>8<sup>th</sup></sup>-----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**

08/04/2020

<sup>1</sup> 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.