

**GENERIC AGREEMENT FOR BARGAINING COUNCILS THAT CAN PAY
BENEFITS TO EMPLOYEES DIRECTLY**

MEMORANDUM OF AGREEMENT

between

UNEMPLOYMENT INSURANCE FUND

and

THE BARGAINING COUNCIL

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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 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, as amended, 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 Bargaining Council.

Interpretation

3. In this MOA:

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- 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:

“Act”	means the Unemployment Insurance Act, 2001;
“Agreement”	means this Memorandum of Agreement between the UIF and the Bargaining Council

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	and any Annexures and schedules thereto;
“Bargaining Council”	means [name of bargaining council] registered in terms of section 29 of the Labour Relations Act, 1995;
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 within the registered scope of the Bargaining Council who has accepted the terms and conditions set out in this MOA that are applicable to it;
“MOA”	means this MOA;
"Parties”	means the UIF and the Bargaining Council;
“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 the UIF herein, the MOA commences on the date of written confirmation of acceptance by the UIF

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of the Bargaining Council's application to pay benefits under the Covid-19 TERS and remains in force for three months unless extended by mutual agreement.

5. The benefits contemplated in this MOA are to be paid only to those employees who—
 - 5.1. suffer or will suffer a loss of income as a result of the temporary closure by the employer of its business operations; and
 - 5.2. were in employment prior to the commencement of the national lock-down on 27 March 2020.

Bargaining Council obligation and Employer warranty

6. The Bargaining Council must ensure that each Employer registered with the Bargaining Council whose employees are paid Covid-19 Temporary Relief Scheme Benefits by the Bargaining Council warrants that –
 - 6.1. the temporary closure of its business operations is a direct result of the Covid-19 pandemic;
 - 6.2. it will immediately inform the Bargaining Council on the recommencement of its business operations that were subject to temporary closure;
 - 6.3. it is registered with the UIF;
 - 6.4. it has not applied directly to the UIF for Covid-19 Temporary Relief Scheme Benefits on behalf of its employees
 - 6.5. it accepts the terms of this MOA in so far as it relates to an Employer.
7. The Bargaining Council undertakes to use the Covid-19 Temporary Relief Scheme Benefits exclusively and solely for the purpose of paying approved benefits to employees of Employers registered with the Bargaining Council, or refunding Employers who have already paid the benefit to employees, subject to the further terms of this agreement.

Calculation of benefits

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8. The Bargaining Council must submit a claim to the UIF on behalf of employees falling within its registered scope for benefits under the Directive by submitting the information and documents in Annexure A.
9. The Bargaining 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 expected period of the temporary closure of the Employer's business.
10. The UIF and, if applicable, the Bargaining Council must calculate the benefit that employees are entitled to in respect of 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 R3 500, 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 per month is taken into account in determining the benefit.
11. The UIF must deposit the funds into the Bargaining Council's approved bank account and at the same time must either submit a spread sheet detailing the amount of the benefits to be paid to each employee listed in the spread sheet or confirm the Bargaining Council's calculations referred to in clause 9.

Payment of benefits

12. The Bargaining Council must pay the employees their benefits within 2 days of receipt of funds from the UIF in accordance with the spread sheet or confirmation contemplated in clause 11, unless the relevant Employer has already paid part or all of the benefits in accordance with the spread sheet or confirmation, in which case the Bargaining Council may –
 - 12.1. pay the amounts so paid to the Employer from the funds deposited in terms of clause 11; and
 - 12.2. pay the balance, if any, to the employees.

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13. The Bargaining Council must submit proof of payment to the UIF within 5 days of the receipt of funds from the UIF in terms of clause 11.
14. The Bargaining Council must return any unutilized funds, including interest, to the UIF within 10 days of the termination of this agreement.

Bargaining Council accounting obligations

15. The Bargaining Council must at all times ensure that its accounting records in respect of this MOA, whether electronic or manual, are –
 - 15.1. kept and maintained safely, and are at all times capable of being retrieved in a readable and printable form;
 - 15.2. accessible to a person authorised by the UIF.
 - 15.3. kept separately from accounting records relating to its business, so that they are capable of being identified on a stand-alone basis.
16. The Bargaining Council must keep a proper audit trail of funds received and benefits paid to employees
17. No cash withdrawals may be made nor cheques drawn from the funds received from the UIF in terms of this MOA.
18. The Bargaining Council must retain its accounting records, 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

19. On verification of the supporting documents and calculation of benefits contemplated in clauses 8 and 9 submitted in terms of those clauses, the UIF must deposit the following benefit funds into the Bargaining Council's account within 10 business days of the submission of the documents and information contemplated in Annexure A–
 - 19.1. the first of which is for the period of temporary closure in the 30 days commencing from the date of the lockdown;

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- 19.2. the second of which is for any period of temporary closure during following 30 days;
- 19.3. the third of which is for any period of temporary closure during the balance of the MOA.

UIF auditing powers

- 20. 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-
 - 20.1. breach of this Agreement; and
 - 20.2. corruption or fraud related to the implementation of this Agreement.
- 21. The Bargaining Council must -
 - 21.1. 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
 - 21.2. 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

- 22. 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

- 23. 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

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during the discussions or negotiations or implementation of this Agreement or at any time thereafter.

24. The provisions of clause 23 above shall not apply to any Confidential Information which –
 - 24.1. is or hereafter becomes part of the public domain;
 - 24.2. 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;
 - 24.3. 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
 - 24.4. 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

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

Dispute resolution

26. 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.
27. If the dispute is not resolved at the meeting contemplated in clause 29, or extended meeting as the Parties may agree to in writing, or such meetings mentioned in clause 29 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.

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28. **AFSA** will be responsible for the appointment of an arbitrator and, where the Parties agree, more than one arbitrator may be appointed.
29. The arbitration will include the right of appeal provided for by the rules of AFSA.
30. 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.
31. 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.

Breach and termination

32. On the basis of a report of the persons contemplated in clause 23, the UIF may –
 - 32.1. remedy any failure to comply with the MOA;
 - 32.2. require the Bargaining Council or any Employer to repay all or part of the funding if either the Bargaining Council or the Employer, as the case may be, is in breach of this MOA;
 - 32.3. suspend or withhold any payment in terms of the MOA;
 - 32.4. terminate the MOA;
 - 32.5. institute legal proceedings to –
 - 32.5.1. recover any amounts owing to the UIF contemplated in clause 14; and
 - 32.5.2. recover any damages flowing from the breach of the MOA or the submission of any document or form in

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terms of the MOA that is incorrect, incomplete, false or misleading.

No variation

33. 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

34. 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.

35. 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.

36. 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-

36.1. all losses which arise out of their corrupt activity or fraud; and

36.2. all losses which arise out of dishonesty or gross negligence regardless of whether such losses arise out of contract or delict.

37. Notwithstanding anything to the contrary contained in this Agreement, the Bargaining 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

38. 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

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39. 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.

Cession and assignment

40. The Bargaining 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.
41. 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 Bargaining Council being honoured, either by UIF providing a written undertaking to the Bargaining 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 the Bargaining Council.

Legal costs

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

Notices

43. 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

Street Address:

ABSA TOWERS
230 Lilian Ngoyi Street
PRETORIA
0001

Postal address:

PRETORIA
0052

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For the Attention of:

Ms Judith Kumbi Chief Director: Operations

ABSA TOWERS

230 Lilian Ngoyi Street

PRETORIA

0001

Email: judith.kumbi@labour.gov.za

BARGAINING COUNCIL

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

44. 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;
45. Any notice which-
 - 45.1. 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
 - 45.2. 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
 - 45.3. 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.

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ANNEXURE A

INFORMATION AND DOCUMENTS

- Documents and information to be provided to receive first instalment –
 - Letter of authority on the Bargaining Council letterhead granting authority to lodge a claim on behalf of Council
 - Acceptance of the terms and conditions contained in the MOA
 - Registered scope of the Council
 - The relevant template duly completed including-
 - Details of Bargaining Council
 - The list of Employers
 - The periods of closure in respect of each Employer
 - The list of employees and their dates of employment and ID numbers
 - The remuneration received by employees
 - Proof of remuneration paid to employees for previous 3 months¹
 - Confirmation of Bargaining 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
 - Period of further closure specified (up to maximum of one month)
 - Details of employees no longer in employment
 - Bank statements confirming previous payments
 - Payments to employees reconciled with the 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.