



MEMORANDUM OF AGREEMENT

Between

UNEMPLOYMENT INSURANCE FUND

Established in terms of section 4 (1) of the Unemployment insurance Act, 2001

(Act No.63 of 2001)

(hereinafter referred to as the “UIF”)

duly represented by **Thobile Lamati / Teboho Maruping** in his capacity as

Unemployment Insurance Commissioner/ Director – General

and duly authorised thereto

and

ADD NAME OF THE COUNCIL OR COMPANY

(Hereinafter referred to as the “**xxxxxxx**”)

Herein represented by.....

in his capacity as the

and duly authorized thereto

1. PURPOSE

- 1.1. The purpose of this Memorandum of Agreement is to record the terms and conditions for the implementation of **Covid-19** Temporary Employee-Employer Relief Scheme (**Covid-19** TERS) between the UIF and the Council/ Employer for the benefit of the Employees.

2. INTERPRETATION AND DEFINITIONS

- 2.1. The head notes to the clauses in this Agreement are for reference purposes only and shall not affect the interpretation of any part hereof.
- 2.2. 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.
- 2.3. 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 required to be made on the next succeeding Business Day.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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.

2.7. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings:

“Agreement”	means this Memorandum of Agreement between the UIF and the Council / Employer and any Annexures and schedules thereto;
“BCEA”	means the Basic Conditions of Employment Act, 1997 (Act No. 75 1997) as amended;
“the Department”	means the Department of Employment and Labour;
"Parties"	means the UIF and the Council/ Employer;
"Council/ Employer"	means the National Bargaining Council for the Clothing Manufacturing Industry duly registered in accordance with the laws of the Republic of South Africa/ Company Registered in terms of xxxx ;
“Council’s Members/ Employees”	means the employees of Council’s Members or employee of the Company;
“PFMA”	means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended;
“Covid-19 benefits ”	means an amount equivalent to xxxxxx of the Employee’s normal wage, which amount must not exceed the threshold earnings as determined by the Minister from time to time in terms of section 6 of the BCEA;
“UIF”	means Unemployment Insurance Fund established in terms of section 4(1) Unemployment Insurance Act, 2001 as amended;
“TERS”	(formerly TLS) means the Temporary Employee-Employer Relief Scheme developed in terms of the Framework for South Africa’s Response to the International Economic Crisis and the TERS Guideline;
“TLS”	means Training Lay-off Scheme;

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the date of the last signature and shall remain in force for a period of 3 (three) months.
- 3.2 This Agreement may be extended with the prior written consent of both Parties and on such terms as the Parties may then agree.
- 3.3 UIF reserves the right to seek clarification and request further information and supporting documentation during and or after the termination of the Agreement.

4. FUNDING

- 4.1. The UIF undertakes to fund the Covid-19 Benefits in relation to Employees of Council/Employer as reflected in **Annexure A** of this Agreement.
- 4.2. The Council/Employer must open and maintain a dedicated UIF bank account which must be separate from its business account, into which account the UIF will pay the Covid-19 Benefits.
- 4.3. The Council/ Employer must within 5 days disburse the Covid-19 Benefits electronically from the dedicated TERS bank account referred to in clause 4.2 above into the banking accounts of each of the Employees.
- 4.4. The Council must not transfer the Covid-19 Benefits to any other account except for the purpose of paying the Covid-19 Benefits to or for the benefit of the Employees.

- 4.5. The Council/ Employer undertakes to honour its obligations for financial transactions in compliance with the South African Laws and good practice.
- 4.6. The Council/ Employer shall not deposit or credit the Covid-19 Benefits into any of its bank accounts.
- 4.7. The Council/ Employer shall pay any Value Added Tax payable in respect of services rendered in terms of this Agreement - the UIF bears no responsibility therefore.
- 4.8. The Council/ Employer shall account for the expenditure on the previous tranche payment before the next tranche can be processed.
- 4.9. The Council/ Employer shall submit the proforma invoice and submit the list of employees and other relevant documents required by the UIF for verification before making payment of Covid-19 Benefits.
- 4.10. The Covid-19 Benefits will not be paid to employees appointed after the commencement of this Agreement.
- 4.11. The Covid-19 Benefits are for the benefits of employees and such constitute Worker's funds, hence, UIF will not be liable for any management fees or any additional costs whatsoever.

5. PAYMENT PROCESS

- 5.1. The UIF shall disburse the Covid-19 Benefits to the Council/Employer for the benefit of the Employees in monthly payments/ or as per Bargaining Council Agreement with its Council members and in accordance with the payment schedule reflected in **Annexure A** of this Agreement.

- 5.2. In relation to all three monthly payments, the Council/Employer must submit documents as stated in **Annexure A** of this Agreement on or before the 15th (fifteenth) of each month to the UIF for verification. The UIF should accept and agree with the Council/Employer on the submitted deliverables prior to processing payment on any invoice.
- 5.3. The UIF shall pay funds electronically into the Bank Account within 30 (thirty) days of receipt of a valid invoice and accepted deliverables as stated in **Annexure A** of this Agreement.
- 5.4. First payment will be made after the signing of the Agreement by both parties and verification of the documents in clause 6.1 of **Annexure A** of this Agreement.
- 5.5. All unutilized funds, including interest earned in the possession of the Council/Employer shall be refunded to the UIF within one (1) month after the termination of the Agreement.
- 5.6. In the instance where the employer has not paid the employees. The employer must submit the documents mentioned in Annexure A; UIF has discretion to pay the employees directly to their account.
- 5.7. UIF has right to request financial documents to prove that the company was in distress during existence of this agreement
- 5.8. The employers will required to sign an acknowledged of debt if contribution are not up-to-date.

6. WITHHOLDING OF FUNDING AND REPAYMENTS

- 6.1. The UIF may require the Council/ Employer, at any time, to repay all or part of the funding if the Council/ Employer are in breach of this Agreement.

6.2. The UIF has the sole discretion to withhold or suspend any payment in whole or in part if the Council/ Employer:

6.2.1. is in breach of this Agreement; or

6.2.2. any document and invoices made in the Council's/ Employer's application for the Covid-19 Benefits are incorrect, incomplete, false or misleading.

7. ACCOUNTING REQUIREMENTS

7.1. The Council/ Employer shall at all times ensure that its accounting records in relation to the Covid-19 Benefits, whether electronic or manual, are kept and maintained safely, and are at all times capable of being retrieved to a readable and printable form.

7.2. The Council/ Employer must ensure that its accounting records in relation to the Covid-19 Benefits shall, subject to clause 7.5 of the Agreement, always be accessible to authorised persons from the UIF.

7.3. The Council/ Employer must keep financial and accounting records relating to the Covid-19 Benefits separately from accounting records relating to its business, so that such Covid-19 Benefits accounting records are capable of being identified on a stand-alone basis.

7.4. The Council/ Employer shall, in relation to its disbursement of the Covid-19 Benefits to the Council/Employer, at all times keep a proper audit trail, which audit trail shall inter alia include bank account details of the Council/ Employer who have received the Covid-19 Benefits.

7.5. No cash withdrawals shall be made nor cheques drawn from the Council's/ Employer's Covid-19 Benefits banking account referred to in clause 4.2. of this Agreement .

7.6. The Council/ Employer shall retain its accounting records, all files and documents relating to the Covid-19 Benefits for at least five years from the date of the last entry recorded in each accounting or financial or other record.

8. OBLIGATIONS OF THE COUNCIL

8.1. The Council/Employer shall pay to the Employees the Covid-19 Benefits within 5 days of receipt of funds transferred from the UIF.

8.2. For the duration of this Agreement, the Council's members shall not increase the remuneration of its management personnel and directors.

8.3. The Council shall disclose the remuneration of all its management personnel and directors with every invoice it submits to the UIF.

8.4. The Council/ Employer shall in writing notify the UIF of any termination of the employee within 5 (five) days of such termination as a result of dismissal, resignation or retrenchment.

8.5 The Council/Employers undertakes to use the Covid-19 Benefits exclusively and solely for the Employees.

9. UIF OBLIGATIONS

The UIF undertakes to:

9.1. make payments to the Council / the Employers in accordance with the terms and conditions of this Agreement.

- 9.2. promptly remedy any defect or deficiency in the fulfilment of its obligations in terms of this Agreement;
- 9.3. inform the Council/ Employer in writing as soon as it becomes aware of anything, which may hamper, delay or prevent it fulfilling its obligations in terms of this Agreement; and
- 9.4. recover any losses through fraud, or fruitless and wasteful, irregular or unauthorised expenditure, from any person liable in law.

10. AUDITING AND REPORTING

10.1. 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:

10.1.1. breach of this Agreement; and

10.1.2. corruption or fraud related to the Covid-19 Benefits or any aspect of this Agreement.

10.2. The Council/ Employer shall:

10.2.1. 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 his or her duties; and

- 10.2.2. without delay, furnish UIF employees or the auditor or investigator with any authority which may be required to enable him or her to obtain such information as he or she may reasonably require for such purpose.

11. COMMUNICATION

- 11.1. The UIF shall be entitled to develop public relations material relating to the Covid-19 Benefits, which public relations materials may include press statements, media reports, and opening ceremonies of training sites or information relating to the Covid-19 Benefits.
- 11.2. The UIF shall be entitled, by prior consent of the Council/ the Employer, which consent shall not be unreasonably withheld, to invite persons including representatives from business, government, donors or any other dignitaries to attend any function and/or to inspect the Covid-19 Benefits materials and/or premises of the Council/Employer.

12. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

- 12.1. The Council/ the Employer retains all right, title and interest in and to the Council's/ the Employer's Intellectual Property.
- 12.2. The UIF retains all right, title and interest in and to the UIF's Intellectual Property.
- 12.3. The Parties agree that they will give due recognition on all the publications and materials developed by or on behalf of UIF or Council/ Employer in respect of the Covid-19 Benefits.

13. CONFIDENTIALITY OF INFORMATION

13.1 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.

13.2 The provisions of 13.1 above shall not apply to any Confidential Information which –

13.2.1 is or hereafter becomes part of the public domain;

13.2.2 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;

13.2.3 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 13.2.1 and 13.2.2 above; or

13.2.4 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.

14. NO VARIATION

No amendment or variation to this Agreement shall be of any force unless it is in writing and signed by both Parties.

15. BREACH AND TERMINATION

15.1 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 14 (fourteen) 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 Party shall be entitled to immediately:

15.1.1 as a means of first recourse to meet the defaulting Party and agree to work together to mitigate the effect of the breach;

15.1.2 failing which to refer to mediation;

15.1.3 failing which to cancel this Agreement and claim damages and/or losses occasioned by the breach from the defaulting party; or

15.1.4 claim specific performance in terms of this Agreement.

15.2 This Agreement may be terminated by either Party on prior 30 days written notice to the other Party.

16. GOOD FAITH

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

17. DISPUTE RESOLUTION

- 17.1 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.
- 17.2 If the dispute is not resolved at the meeting contemplated in clause 17.1, or extended meeting as the Parties may agree to in writing, or such meetings mentioned in this clause 17.2 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.
- 17.3 AFSA will be responsible for the appointment of an arbitrator and, where the Parties agree, more than one arbitrator may be appointed.
- 17.4 The arbitration will include the right of appeal provided for by the rules of AFSA.
- 17.5 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.
- 17.6 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.

18 INDEMNITY

The Council/Employer indemnifies the UIF against any claims for loss, accidents, death and injury or damages suffered by it or its employees, agents or visitors in or near the premises or during training irrespective of the cause thereof and even if there has been an element of negligence on the part of the UIF.

19 NOTICES

- 19.1 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

Facsimile No. (012) 337...

For: the Attention of:

.....

Chief Director:

XXXXXXXX

19.2 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;

19.3 Any notice which:

19.3.1 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

19.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its physical 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

19.3.3 If transmitted by telefax to the addressee at its physical, 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.

20 AMENDMENT TO THE AGREEMENT

20.1 Should either Party wish to make any amendment to this Agreement that Party shall make a request to UIF, the request shall specify the following:

20.1.1 The description of the proposed amendment;

20.1.2 The reason for making the proposed amendment;

20.1.3 When the Party requires the amendment to be implemented;

20.1.4 The resources available; and

20.1.5 The continued balance of the Parties obligations under this Agreement.

20.2 The other Party shall be given an opportunity to consider such amendment and make a decision on whether it is prepared to accept such amendment or not.

20.3 No amendment shall be of any force and effect until it is signed by duly authorized by representatives of each of the Parties.

21 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.

21.4 Notwithstanding anything to the contrary contained in this Agreement, Council/ Employer'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 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.

25 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.

26 CESSION AND ASSIGNMENT

26.1 Council/Employer shall 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.

26.2 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/Employers being honoured, either by UIF providing a written undertaking to the Council/Employers 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/Employers.

27 LEGAL COSTS

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

28 PENALTY

28.1 Council/ Employer'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.

28.2 Any loss or damages suffered by UIF as a results of the fraud by Council or Employer will became due immediately to UIF and will be legally recovered from the employer or Council.

28.3 The employer or Council will liable for costs of recovery of debt by UIF.

28.4 Any Act of fraudulent activities committed by the Employer or Council will be criminal offence and shall be prosecuted in terms of Disaster Management Act, 2002 (Act No. 57 of 2002).

SIGNED aton this day of 2020

For: UNEMPLOYMENT INSURANCE FUND
TEBOHO MARUPING/ Thobile Lamati

AS WITNESSES

1. _____ 2. _____

SIGNED aton this day of 2020

For: **xxxxxxxxxx**
xxxxxxxxxx
Duly Authorised

AS WITNESSES:

1. _____ 2. _____

ANNEXURE A

1. Covid-19 Benefits Budget is....
2. Number of g Employees is.....
3. Monthly Covid-19 Benefits value is R
4. Covid-19 Benefits payable for 3 months
5. Maximum Covid-19 Benefits payable to a Participating Employee is **R17 119.44**
- 6.

PAYMENT SCHEDULE	
Payments	Deliverables
6.1 Payment 1	<ol style="list-style-type: none"> 1. Council Invoice supported by proof of payment reconciling to the invoice per grades of all Employees; 2. Details of the Employer ; 3. A list of Employees and their employment 'history ; 4. Confirmation of dedicated TERS Bank Account for Council as contemplated in clause 4.2 of the Agreement; 5. A signed Memorandum of Agreement between the Council and the UIF; 6. The Employment status of the Participating Employees; 7. Proof of salary over the last six months; 8. Three months Certified Bank statement of the Employer/; and 9. Payroll of the the last six months or proof of payment for last six months.
6.2 Payment 2	<ol style="list-style-type: none"> 1. Council Invoice supported by proof of payment reconciling to the invoice per grades of all Employees ; 2. Bank statements reflecting payment of the Covid-19 TERS Allowances to the Employees; and 3. The Employment status of the Employees; and 4. Payroll of the the last six months or proof of payment of first monthly payment reconciling to the amount paid by the UIF.
6.3 FINAL PAYMENT	<ol style="list-style-type: none"> 1. Council Invoice supported by proof of payment reconciling to the invoice per grades of all Employees; ; 2. Bank statements reflecting payment of the Covid-19 TERS

Allowances to the Participating Employees;

3. The Employment status of the Employees; and

4 Payroll of the the last six months or proof of payment of first monthly payment reconciling to the amount paid by the UIF.

4.