

**MEMORANDUM OF AGREEMENT****MOA**

entered into by and between

Name:		Commission for Conciliation, Mediation and Arbitration		
Description and Number:	Registration	an independent dispute resolution body established in terms of the Labour Relations Act, 66 of 1995 (LRA)		
Physical Address:		28 Harrison Street, Johannesburg		
Postal Address:		Private Bag X94, Marshalltown, 2107		
Contract Manager / Contact person		Bongani Mbali		
Fax No.:			E-mail:	BonganiMb@CCMA.org.za
Represented by:		Mr. Cameron Morajane	-	who warrants that he is duly authorised to do so
Designation:		Director		

(Hereinafter referred to as the "**CCMA**")

and

Name:		Productivity SA		
Description and Number:	Registration	An entity of the Department of Labour established in terms of Section 31 of the Employment Services Act, No 4 of 2014 with the mandate to promote productivity and employment growth		
Physical Address:		International Business Gateway, Cnr New and Sixth Roads, Midrand		
Postal Address:		Private Bag 235, Midrand, 1685		
Contract Manager / Contact person		Mario Govinder		
Fax No.:		011 848 5555	E-mail:	mariog@productivitysa.co.za
Represented by:		Mr. Mothunye Mothiba	-	who warrants that he is duly authorised to do so
Designation:		Chief Executive Officer		

(hereinafter referred to as the "**Productivity SA**")

1. PREAMBLE

- 1.1 Productivity SA is an entity of the Department of Labour, with the mandate of promoting employment growth and productivity, thereby contributing to South Africa's socio-economic development and economic efficiency.
- 1.2 Productivity SA is classified as a schedule 3 (A) Public Entity in terms of the Public Finance Management Act 1 of 1999, and governed by a tripartite Board consisting of the Chairperson and six members (four drawn from NEDLAC - two representing organised labour and two representing organised business), and two members representing the RSA Government.
- 1.3 Section 32 of the Employment Services Act read together with sections 2 (1) (e) , (f), and section 7 enjoins Productivity SA to amongst other things, develop relevant productivity competencies and competitiveness in enterprises, with a focus on the following key functions:
 - 1.3.1 Promoting employment, income growth and workplace productivity.
 - 1.3.2 Improving the employment and re-employment prospects of employees facing retrenchments (job retention and preventing job losses) and retrenched workers.
 - 1.3.3 To provide productivity improvement including competitiveness measures, conducting research on productivity and competitiveness related matters and collection and supply of information.
 - 1.3.4 Promote and inculcate a culture of productivity and competitiveness mind-set in the workplace and all spheres of the nation's economic and community life.
- 1.4 The CCMA provides facilitation in large scale retrenchment processes as envisioned in section 189A of the Labour Relations Act 66 of 1995 [hereinafter referred to as Section 189A process/es].
- 1.5 In the course of Section 189A processes, the parties must consult on the rationale for retrenchment, alternatives to retrenchments and ways to minimise and mitigate the harsh effects of retrenchments.
- 1.6 The Training Layoff Scheme (TLS) was first introduced in September 2009 as a possible alternative to retrenchment as a result of the Framework Agreement on South Africa's Response to the Global Economic Crisis ("the Framework Agreement").
- 1.7 The TLS was again endorsed as a means to save jobs in the "Full Package on the Economy" issued by the Presidency during October 2012. The CCMA is the point of entry for participation in the Scheme, and the Advisory Committee makes a recommendation on whether applicant parties are eligible to participate. Experience shows that the TLS can be an effective mechanism to save jobs and, where appropriate, it provides an ideal opportunity for business turn-around while the workers are on training.
- 1.8 The CCMA also offers users a Building Workplace Relations intervention which is particularly appropriate where the reason for low productivity is due to a poor relationship between business and labour.
- 1.9 According to Section 7 of the Employment Services Act, Productivity SA offers various mechanisms to assist businesses to stabilise and become more profitable, which include:

- 1.9.1 Turnaround Strategies, which are a tripartite approach to addressing issues of productivity.
- 1.9.2 Small, medium and micro enterprise development which involves action learning solutions to assist SMMEs, including Cooperatives, with the right skills, knowledge and attitudes to implement systems and procedures to improve productivity, profitability, growth and employment creation.
- 1.9.3 The Workplace Challenge Programme, sponsored by the DTI which is aimed at small groups of enterprises where they discover how to implement the basic principles of Continuous Improvement, including world-class management, goal alignment, teamwork and leadership, as well as basic cost, productivity and quality improvement techniques.
- 1.10 The Parties are of the view that by partnering and pooling resources, they would be more effective in assisting businesses to recover, in saving jobs and in assisting retrenched workers to access support and survival mechanisms.
- 1.11 A partnership contemplated herein will also promote capacity building and an understanding of the roles and services of both Parties with the end goal of -
 - 1.11.1 being able to better identify early warning signs of business distress;
 - 1.11.2 assisting businesses to turn around;
 - 1.11.3 saving jobs; and
 - 1.11.4 assisting retrenched workers to access support and survival mechanisms.
- 1.12 Now therefore, recognising the mutual benefit to be derived from a partnership contemplated above, the Parties wish to conclude a memorandum of agreement, as they do herein, which will govern the partnership between the Parties.

2. PARTIES

The Parties to this agreement are -

- 2.1 the Commission for Conciliation, Mediation and Arbitration (the CCMA) an independent dispute management and resolution body established in terms of section 112 of the Labour Relations Act 66 of 1995, as amended; and
- 2.2 Productivity SA an entity of the Department of Labour established in terms of Section 31 of the Employment Services Act No. 4 of 2014 with a mandate to promote productivity and employment growth.

3. COMMENCEMENT AND DURATION

This Agreement will come into effect on the date of the Party last signing on the understanding that both Parties sign and shall continue indefinitely until terminated in accordance with clause 17.1.1 below.

4. PURPOSE

- 4.1 The purpose of this MOA is to facilitate co-operation and information-sharing between the Parties in order to support businesses and workers in distress through various mechanisms with the aim of assisting such businesses to turn around and to save jobs. Where retrenchments are unavoidable, the Parties will collaborate in order to assist workers to access appropriate support and survival mechanisms. Skills development on the recognition of early warning symptoms of business distress will also be a component.
- 4.2 According to Section(s) 2(1) e, 32(d), and Section 7, Productivity SA purpose will be to -
- 4.2.1 improve the employment and re-employment prospects of employees facing retrenchments;
 - 4.2.2 measure and evaluate productivity in the workplace; and
 - 4.2.3 job retention.

5. SCOPE

The Parties agree to collaborate in all sectors that need labour market assistance, however, the following are the key priority sectors:

- 5.1 Mining.
- 5.2 Agriculture.
- 5.3 Agro processing.
- 5.4 Agro business.
- 5.5 Manufacturing.
- 5.6 Public Sector.

6. OBJECTIVES

The objectives of partnership between the Parties created in terms of the MOA are to:

- 6.1 Provide assistance where businesses and / or workers are in distress or facing distress.
- 6.2 Save jobs and promote employment security by exploring alternatives to retrenchment, including the TLS, as well as identifying the causes of the distress and mechanisms to assist businesses to turn around and become profitable.
- 6.3 Assist workers who have been retrenched to access survival mechanisms, including entrepreneurial skills or business start-up training.
- 6.4 Promote co-operation, skills development and information-sharing between the Parties to further the above objectives.

7. GOOD FAITH



7.1 The Parties recognise the reciprocal nature of this MOA and thus in furtherance thereof they shall consciously undertake to -

7.1.1 observe the utmost good faith in their dealings with one another pursuant to the provisions of this MOA and they warrant in their dealings with each other that they shall neither do nor refrain from doing anything which might prejudice the rights, assets or interests of the other;

7.1.2 fulfil their obligations promptly, diligently and in such a manner so as not to materially interfere with or delay the performance by the other of their obligations under this Memorandum; and

7.1.3 implement the memorandum in a concerted effort, to work together in the fulfilment of the provisions of the memorandum.

8. RELATIONSHIP BETWEEN THE PARTIES

8.1 This MOA does not constitute an employment relationship, partnership, joint relationship between the Parties; neither is one Party an agent of the other. The transaction envisaged in this MOA is on an arm's length basis and no employee of the one Party shall be regarded as an employee of the other Party.

8.2 In view of the above, nothing contained in this MOA shall be construed as authorising any Party to enter into contracts, undertakings or arrangements for and / or on behalf of the other Party, or to bind a Party or the credit of a Party in any way whatsoever, other than as expressly provided for herein.

9. TERMS OF ENGAGEMENT AND COMMUNICATION

9.1 The CCMA and Productivity SA will circulate this MOA broadly within the respective organisations to commissioners involved in retrenchment matters and to officials involved in Turnaround Solutions and the Workplace Challenge Programme.

9.2 Each regional CCMA office (where appropriate collaborating to match the geographical scope of Productivity SA's regional offices) will initiate a meeting with the relevant Productivity SA office within three months of signature of this MOA -

9.2.1 to discuss development of a co-operative relationship;

9.2.2 to share understanding of the respective services and roles; and

9.2.3 to agree on ways to implement this MOA in the particular region.

9.3 The CCMA and Productivity SA will explore mechanisms such as training and presentations in each region and nationally to develop an understanding by commissioners and officials of the services and roles of the respective organisations.

9.4 The Parties at a regional level will have bi-annual meetings to plan the work, engagements and collaborations for the following 6 months and to evaluate the success of prior cases during the past 6 months and what can be improved upon.



- 9.5 The Parties undertake to adopt a transparent approach in dealing with one another and further undertake to deal with each other in good faith. Any dispute or misunderstanding that may arise from the process shall be resolved by open discussions and in good faith.

10. OBLIGATIONS

The Parties undertake and commit to co-operating as follows:

10.1 CCMA Obligations

- 10.1.1 The CCMA (regional and national offices) will inform Productivity SA of Training Lay-off Schemes facilitation processes.
- 10.1.2 In respect of workplace-based TLS cases or TLS cases arising out of s189A facilitation processes, the CCMA will inform Productivity SA of the first meeting arrangement with the parties involved, or as soon as practicably possible, where the TLS is formally introduced and explained.
- 10.1.3 CCMA Front desk, email or telephonic enquiries about short time, late payment of salaries must be fed through to the Employment Security Commissioner in each region to follow up and discuss possible assistance that CCMA or Productivity SA can provide. This must be followed-up with a meeting, presentations, or assessment, whichever is appropriate.
- 10.1.4 With the consent of the parties, the CCMA will invite Productivity SA to attend and participate in Section 189A processes. CCMA facilitators will actively encourage the parties to consent to Productivity SA's involvement.
- 10.1.5 As much notice as possible will be given by the CCMA of meeting arrangements, but it will be important that Productivity SA can fit in with these arrangements as CCMA processes cannot be delayed.
- 10.1.6 The CCMA will have a Productivity SA website link on its website.

10.2 Productivity SA obligations

- 10.2.1 Productivity SA will be a technical advisor to the CCMA on matters relating to economic distress in particular on operational and financial issues.
- 10.2.2 Where practicable, Productivity SA will determine the turnaround potential of businesses interested in participating in the TLS by carrying out an initial diagnosis. This will be carried out at or as soon as possible after the initial engagement by the CCMA with the parties concerned.
- 10.2.3 Productivity SA will advise the CCMA if any of its clients might be eligible for and benefit from participation in the TLS.
- 10.2.4 Productivity SA will advise the CCMA regional or national office if a Building Workplace Relations process is required in a company going through the Workplace Challenge programme.
- 10.2.5 Where retrenchments cannot be avoided or have taken place, Productivity SA's Workplace Challenge and Turnaround Solutions offerings should be considered to

assist the company to recover and improve productivity so as to avoid further retrenchments in the future.

10.2.6 Where retrenchments cannot be avoided or have occurred, Productivity SA's business start-up training should be considered as a support and survival mechanism for retrenched workers.

10.2.7 Productivity Statistics reports compiled by Productivity SA will be shared annually and later quarterly with classification, and 20 selected Manufacturing sector.

10.2.8 Productivity SA to have a CCMA website link on its website.

10.2.9 The capacitation of unemployed workers in a two tier programme:

10.2.9.1 Entrepreneurship training with the intention of having unemployed workers be capacitated with the requisite skillsets to open their own businesses.

10.2.9.2 Productivity related modules in order to reskill workers for re-entry into the market.

10.3 Monitoring and evaluation

10.3.1 The Parties will each designate a person to meet to evaluate the impact of this MOA on the level of co-operation and information-sharing between the Parties.

10.3.2 The Parties at a national level will meet to evaluate the impact of this MOA within 6 months of the implementation of this MOA and annually thereafter.

10.4 Training

In view of the fact that both Parties offer training and presentations internally and to users, where appropriate, the two Parties may enhance their skills by offering such training to each other.

11. FINANCIAL OBLIGATIONS

The funding of the TLS will be funded in accordance with Section 12 of the Employment Services Act No. 4 of 2014.

12. CONFIDENTIALITY

12.1 Parties will share information during the currency of this MOA.

12.2 The confidential information of the Disclosing Party shall without limitation, include all information relating to:

12.2.1 The Disclosing Party's past, present and future research.

12.2.2 The Disclosing Party's business activities, financial affairs, products, services, users and clients, as well as its Intellectual Property.

12.2.3 The terms and conditions of this MOA, and any dispute that may emanate from same.

12.2.4 The Disclosing Party's information, data, records of Staff and know-how.

- 12.3 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its Confidential Information:
- 12.3.1 It will only make the Confidential Information available to those of its Staff who are actively involved in the execution of its obligations under this MOA and then only on a "need to know" basis.
 - 12.3.2 It will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Staff who need to be given access to Confidential Information, the secret and confidential nature thereof.
 - 12.3.3 Subject to the right to make the Confidential Information available to their Staff under this clause, it will not at any time, whether during this MOA or thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to third parties.
 - 12.3.4 All written instructions, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Staff, will be, and will at all times remain, the sole and absolute property of such Disclosing Party and shall be promptly handed over to such Party when no longer required for the purposes of this MOA.
 - 12.3.5 Upon termination or cancellation or expiry of this MOA, the Parties will deliver to each other or, at each Party's option, destroy all originals and copies of Confidential Information in their possession.
- 12.4 The foregoing obligations shall not apply to any information which:
- 12.4.1 Is lawfully in the public domain at the time of disclosure.
 - 12.4.2 Subsequently and lawfully becomes part of the public domain by publication or otherwise.
 - 12.4.3 Subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction of disclosure to disclose such Confidential Information.
 - 12.4.4 Is disclosed for the purpose of publications and / or dissemination.
 - 12.4.5 Is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
 - 12.4.6 The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause 12 by the Receiving Party or its Staff.
 - 12.4.7 This clause is severable from the remainder of the MOA and shall remain valid and binding upon the Parties, notwithstanding any termination thereof, for a period of 5 (five) years after termination.

13. INTELLECTUAL PROPERTY

If applicable:

- 13.1 The Parties acknowledge that any and all Intellectual Property Rights proprietary to a Party are and shall remain the property of that Party. Neither Party shall for the duration of this Agreement, or at any time after termination or cancellation or expiration of this MOA, acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof.
- 13.2 Copyright in the products provided pursuant to this MOA shall, vest in the Party providing such product.
- 13.3 All information, documents and materials, including (without limitation) all data, research, reports, drawings, designs, designs, plans, photographs and other materials discovered or produced by either Party or any of its employees, sub-contractors or agents, in the performance of or incidental to the performance of this MOA, and all intellectual property rights therein (including without limitation, all copyright, patent and trademark rights) shall be the exclusive property of the Party producing same, unless explicitly agreed to otherwise between the Parties, whether pursuant to the provisions of a licence agreement or otherwise.
- 13.4 The Parties warrant that no aspect of the product and / or material provided for pursuant to this MOA, will infringe any Intellectual Property right of any third party.
- 13.5 The Parties hereby indemnify and holds one another harmless against any claim by a third party alleging that the other Party to this MOA has infringed the Intellectual Property Rights of such third party as a result of the products delivered in terms of this MOA (hereinafter referred to as the "Claim").
- 13.6 To the extent that either Party utilises the other's material pursuant to this MOA, same shall remain the property of the Party providing such material, and the Party using such material shall acquire no right or interest in such property. The Parties will deal with each other's products, material, trademarks, names or logos relating thereto in accordance with the distributing Party's instructions, from time to time.
- 13.7 Each Party, in favour of the other, acknowledges that –
- 13.7.1 the other Party's intellectual property and the goodwill associated therewith are the sole and exclusive property of the Party and therefore agrees that any use thereof shall, as between the Parties, be used for the benefit of the other Party, and that it shall not in any manner represent that it has any rights of ownership in and to the Party's intellectual property;
- 13.7.2 it shall not put in issue the validity of the other Party's intellectual property or itself claim any rights in the intellectual property of the other Party; and
- 13.7.3 it may not do anything, which, in the reasonable opinion of the other Party might tend to disregard the other Party's intellectual property or injure the other Party's rights therein.
- 13.8 This clause shall survive termination of this MOA.

14. USE OF LOGO AND NAME

- 14.1 Neither Party shall be entitled to use the other Party's logos or name in the conduct of its business or in any other way, unless expressly provided for in this MOA or prior written consent has been given by the other Party.
- 14.2 Where consent is given to use the logo or name of the other Party, such use shall be limited to the purpose for which the consent was given.

15. DATA PROTECTION

If applicable:

- 15.1 The Parties shall each be responsible for complying with their respective obligations under applicable privacy and data protection laws governing their respective Data, if any.
- 15.2 The Parties each acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and data protection laws.
- 15.3 In performing its obligations under this MOA, either Party shall comply with the provisions of the Data Protection Legislation including by –
 - 15.3.1 taking appropriate technical and organisational measures and physical security measures to prevent the unauthorised or unlawful processing of Personal Data of the other Party, if any;
 - 15.3.2 processing the other Party's data under this MOA only in accordance with that Party's instructions (having regard to the Data Protection Legislation), or as required by law; and
 - 15.3.3 not disclosing the other Party's data except in accordance with the provisions of this MOA, that Party's instructions (having regard to the Data Protection Legislation), or as required by law.

16. GENERAL OBLIGATIONS OF THE PARTIES

- 16.1 The Parties shall ensure that any third party, over which they have direct control, perform their duties and functions as may be reasonably required to enable the Parties to perform this obligations under this MOA.
- 16.2 The Parties shall:
 - 16.2.1 Provide such assistance to each other, as may reasonably be required in connection with the performance of their respective obligations under this MOA.
 - 16.2.2 Fulfil any obligations as set out in this MOA timeously and in accordance with the agreed standards, if any.
- 16.3 The Parties warrant that:
 - 16.3.1 By entering into this MOA they are not acting in breach of any agreement to which they are a party to.

16.3.2 They will at all times, in the use of the other Party's intellectual property in terms of this MOA, acknowledge such Party's rights thereto.

17. TERMINATION

- 17.1 without prejudice to any other right it may have in law or in terms of this MOA, either Party may terminate this MOA:
- 17.1.1 On 3 (three) months written notice to the other Party, for any reason whatsoever.
- 17.1.2 On material and / or persistent breach of any terms of this MOA.
- 17.1.3 In the event that the other Party has failed to discharge its undertakings or any part thereof under this MOA for a period in excess of 6 (six) months subsequent to a written demand.
- 17.2 Upon termination, cancellation or expiry of this MOA the performance of all obligations shall forthwith cease written notice to the other in the event that, in respect of the other Party.

18. LIMITATION AND EXCLUSION OF LIABILITY

- 18.1 Save for acts of wilful misconduct or criminal conduct, in no event shall either Party, its representatives, agents, or staff be liable for any direct, indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including, without limitation, loss of profits, loss goodwill, lost or damaged data or software, loss of use, downtime or costs of substitute products) arising from this MOA.
- 18.2 Nothing in this clause 18 will be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party. Without affecting the generality of the aforesaid obligation, each Party acknowledges that it has a duty for its own benefit to prevent it suffering damages or loss where such prevention was in the area of control of such Party, or was reasonably expected to be undertaken by such Party in the relevant circumstances. This duty of care will be expected of a Party notwithstanding that omission on its part was a partial cause of the damages it incurred.

19. FORCE MAJEURE

- 19.1 Neither Party shall be liable for any failure to fulfil its obligations under this MOA if such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.
- 19.2 Should either Party be unable to fulfil a material part of its obligations under this MOA for a period in excess of 3 (three) months due to circumstances beyond its reasonable control, as recorded in clause 18.1 above, the other Party may cancel this MOA forthwith by written notice.

20. CESSION, DELEGATION AND ASSIGNMENT

- 20.1 Neither Party shall be entitled to cede, delegate and / or assign this MOA, whether wholly or in part, to any other entity or person, without prior written consent of the other, which consent shall not be unreasonably withheld.

21. DISPUTE RESOLUTION

- 21.1 Any dispute between the Parties arising from or in connection with this MOA or its termination shall in the first instance be referred to the respective chief executive officers of the Parties to the dispute, failing whom, their respective equivalents or nominees ("CEOs").
- 21.2 If, after thirty (30) days, the Parties have failed to resolve their dispute or difference in terms of 22.1 above, then either Party may give notice to the other Party of his intention to commence with mediation. The mediator shall be a mutually agreed person, failing such agreement within 7 days of the notice, either Party may approach the Arbitration foundation Association of South Africa (AFSA) to make the appointment. The Parties shall share the costs of the mediation process equally and shall co-operate, in good faith, with the mediator to ensure that the matter is resolved speedily and amicably.
- 21.3 Notwithstanding any reference to mediation, the Parties shall continue to perform their respective obligations under the MOA unless the referral relates to termination or otherwise agreed;
- 21.4 Should the Parties be unable to resolve the dispute by means of 21.1 and 21.2 above, the dispute may be dealt with, at the written request of either Party, by Arbitration. The arbitration shall be held in Johannesburg. If the Parties to the dispute cannot agree on an arbitrator within 7 (Seven) days of the request for arbitration, then any Party to the dispute shall be entitled to require that the President of the Law Society of the Northern provinces ("LSNP") make the appointment.
- 21.5 The arbitrator shall be a practising Advocate / or Attorney of not less than 10 years legal experience.
- 21.6 The Arbitration shall be conducted in accordance with the provisions of the Arbitration Act, subject to the provisions of this clause 21 and any subsequent arbitration agreement entered into between the parties.
- 21.7 The parties shall share the costs of the arbitration process equally, unless the arbitrator, on good cause shown, determines otherwise.
- 21.8 Each Party to the dispute undertakes to cooperate in good faith with the arbitrator in the conduct of the arbitration so as to ensure that the dispute is resolved as speedily as possible.
- 21.9 The award issued by the arbitrator shall be binding and final.
- 21.10 Notwithstanding anything to the contrary contained in this clause, no Party shall be precluded from instituting any injunctive or similar proceedings in any appropriate court of competent jurisdiction and, if successful, being granted appropriate injunctive relief.
- 21.11 For the purposes of this clause each of the Parties hereby submits itself to the exclusive jurisdiction of the Magistrates Court.
- 21.12 This clause:
- 21.12.1 is severable from the rest of this MOA and shall, notwithstanding the termination, cancellation, invalidity or alleged invalidity of this MOA or any part of it for any reason, remain in full force and effect; and

21.12.2 constitutes an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom.

22. ADDRESSES AND NOTICES

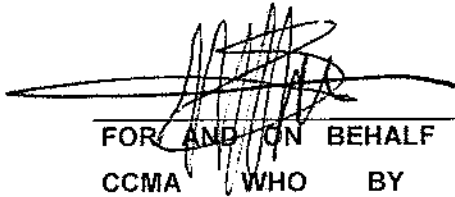
- 22.1 For the purpose of this MOA, including the giving of notices in terms hereof and the serving of legal process, the Parties choose *domicilium citandi et executandi* ("*domicilium*") as the addresses set out in the cover page of this MOA.
- 22.2 A Party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.
- 22.3 Any notice given in connection with this MOA may be delivered by hand; or be sent by prepaid registered post; to the *domicilium* chosen by the Party concerned. Any notice or process delivered on any Party in connection with any matter or subject arising out of this MOA or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any Party and it shall not be necessary to hand such process or notice to any Party personally.
- 22.4 A notice given as set out above shall be presumed to have been duly delivered -
- 22.4.1 on the date of delivery if delivered by hand;
- 22.4.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and
- 22.4.3 on the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa.
- 22.5 Either Party may amend its chosen *domicilium* by serving a written notice of its intention to amend to the other party at least 5 (five) days before the amendment takes effect.

23. GENERAL

- 23.1 To the extent that parts of this MOA become unenforceable for any reason whatsoever, then those parts shall be regarded as having been severed here from and the remaining provisions of this MOA shall continue to be of full force and effect.
- 23.2 This MOA constitutes the sole record of the MOA between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise nor the like not recorded herein. This MOA supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 23.3 No addition to, variation, novation or agreed cancellation of any provision of this MOA shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 23.4 No indulgence or extension of time which either Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

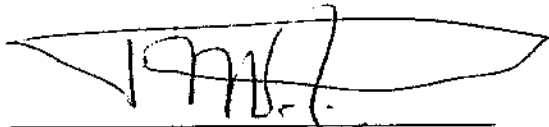
- 23.5 Without prejudice to any other provision of this MOA, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either Party shall be bound by this MOA.
- 23.6 This MOA shall be construed in accordance with the laws of the Republic of South Africa.
- 23.7 Notwithstanding termination of this MOA any clause which, from the context, contemplates on-going rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect;
- 23.8 Nothing in the MOA shall be construed as precluding or limiting in any way the right of either Party to enter into a similar agreement with any other person or entity as that Party, in its sole discretion deems appropriate.

Signed at Kempton Park this 9th day of December 2016



FOR AND ON BEHALF OF THE
CCMA WHO BY HIS/HER
SIGNATURE HERETO WARRANTS
THAT HE/SHE IS DULY
AUTHORISED TO SIGN ON BEHALF
OF THE CCMA

Signed at Kempton Park this 9th day of December 2016



FOR AND ON BEHALF OF
PRODUCTIVITY SA, WHO BY
HIS/HER SIGNATURE HERETO
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OF THE PRODUCTIVITY SA