

**Minimum Services Agreement (MSA) in respect of the
Maintenance of Minimum Services in Essential Services**

Made and entered into between:

.....

(Hereby referred to as “the Employer”)

AND

.....

(Hereinafter referred to as the “trade unions”)

1. INTRODUCTION

- 1.1 The employer and trade unions shall collectively be referred to as “the Parties”.
- 1.2 The Parties acknowledge and recognise that in terms of section 23 of the Constitution of the Republic of South Africa, 108 of 1996 (“the Constitution”), every employee has the right to strike, noting, however, that constitutional rights may be limited in terms of section 36 of the Constitution.
- 1.3 Section 64 of the Labour Relations Act, 66 of 1995 (“the Act”) provides that every employee has the right to strike and every employer has the recourse to lock-out.
- 1.4 Section 65 of the Act, however, places a limitation on the right to strike and the recourse to lock-out. The section provides that no employee may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if that employee is engaged in an essential service (see section 65 (1) (d) (i) of the Act) or a maintenance service (see section 65 (1) (d) (ii) of the Act).
- 1.5 Essential services, minimum services and maintenance services are regulated in sections 71 to 75 of the Act.
- 1.6 The Act provides in section 70 for the establishment of an Essential Services Committee (“the ESC”). The ESC, in terms of section 71 of the Act, may conduct investigations and make designations on whether the whole or part of a service is essential.
- 1.7 An ESC has been established under the auspices of the Commission for Conciliation, Mediation and Arbitration, (“the CCMA”).
- 1.8 The ESC has designated the services set out in paragraph 3 below as essential services. These services, if interrupted, would endanger the life, personal safety and/or health of

the whole or part of the population (see the definition of an essential service in section 213 of the Act).

1.9 Section 72 of the Act requires parties to negotiate and conclude collective agreements that provide for the maintenance of minimum services in the designated essential services.

1.10 The parties to this agreement, as set out above, have negotiated on the issue and have reached agreement on the minimum services that have to be maintained in the designated essential service in the event of a strike or lock-out. The Parties wish to reduce the said agreement to writing.

Now therefore, the parties agree as follows:

2. ESSENTIAL SERVICES

2.1 For the purpose of this agreement and any future agreement pursuant hereto, an essential service is defined in section 213 of the Act as *“a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population.”*

2.2 Not all the services provided by the Employer are *per se* essential services.

2.3 Employees who work in those essential services that have been identified as minimum service employees, in terms of this agreement, may not strike or be subjected to a lock-out. They are, however, not required to perform the work of non-minimum service employees during such a strike or lock-out.

2.4 Similarly, employees who may participate in a strike in terms of this agreement may not be subjected to disciplinary action for participating in protected strike action, except in the case of misconduct committed during the course of such protected strike action.

3. DESIGNATED ESSENTIAL SERVICES

3.1 The following service provided by the Employer have been designated as essential by the ESC

3.1.1 As gazetted on (insert date of GG and GG number):

a) *List the services as per designation*

3.2 Notwithstanding the above designation, employees engaged in the designated essential service and who perform non-essential functions, the interruption of which do not directly endanger the life, personal safety or health of the whole or any part of the population, such as administrative functions, non-essential support functions and the like, shall not be deemed as essential in terms of this agreement.

3.3 In the event that during a strike that affects the operations of the employer, a party asserts that a service or services not defined as *per se* essential in terms of paragraph 3.1 above, has become an essential service due to circumstances, the Parties shall meet within 24 hours of written notice by any of them to the other(s) calling for such a meeting in an attempt to reach agreement on whether the service(s) in question is/are indeed essential and if so what minimum level of services is required.

3.4. The duration of any such agreement shall be for the period of the strike referred to in paragraph 3.3 above.

3.5 In the event that no agreement is reached at the meeting so convened (whether due to the absence of any party, or otherwise) the matter may be dealt with in terms of Section 73 of the Act, read with regulation 9 of the ESC Regulations.

3.6 The status of essential services during the course of a disaster declared in terms of the Disaster Management Act, 57 of 2002, shall be dealt with in accordance with that Act.

4. REPLACEMENT LABOUR

- 4.1 The employer hereby waives and abandons the right to take on replacement or additional labour in order to provide a service in addition to the minimum service levels agreed in respect of any service determined to be an essential service.
- 4.2 The above waiver will not affect the right of the employer to take on replacement labour or additional labour in respect of those services not classified as essential services.
- 4.3 Notwithstanding the aforesaid, in the event of employees failing to abide by the terms of this agreement on minimum services, then the waiver and abandonment referred to in paragraph 4.1 above shall be of no force and effect. The employer, however, shall give the trade union parties in question written notice to correct such failure before the aforesaid is implemented (Time to be determined by parties).

5. INTEREST DISPUTES IN ESSENTIAL SERVICES

Section 74 of the Act shall apply to all employees who may not participate in strike action in terms of this agreement, subject to the provisions of section 72 (6) of the Act.

6. DURATION OF AGREEMENT

- 6.1 This agreement shall come into effect on the date of ratification by the ESC and shall remain in force and effect for a period of 5 (five) years.

7. REVIEW AND AMENDMENT OF AGREEMENT

- 7.1 This agreement may be reviewed on an annual basis to consider the following:

- (a) To ascertain whether or not there has been any change in the nature or extent of the designated essential service and whether or not such changes require a change to the relevant staffing levels;
- (b) To give effect to any revision of the current essential service designations by the ESC;
- (c) The effect of vacancies on the approved organogram in the designated essential services; and
- (d) Such other circumstances or facts that are material to the successful operation of the MSA.

7.2 In the event that the Parties agree to an amendment to the MSA, the amended MSA shall be returned to the ESC for ratification.

8. COMMUNICATION AND AWARENESS

The Parties to this agreement shall ensure that all affected employees are informed and made aware of the contents of a ratified MSA in a manner that is accessible to all occupational levels of employees.

9. DISPUTE RESOLUTION

9.1 Any dispute regarding the interpretation and application of this agreement shall be dealt with in terms of section 23 of the Act.

9.2 The parties shall not be precluded from agreeing on any amendments to this agreement prior to its date of termination but any amendment made must be ratified by the ESC. In the event that any party declines to negotiate on any proposed amendment, or if the

parties cannot come to an agreement on any proposed amendment, the dispute resolution provisions set out in sections 72 (8) and 73 (1) (d) of the Act shall apply.

11. ESSENTIAL SERVICES WORKING GROUP

11.1 The parties agree to the establishment of an inhouse Essential Services Working Group.

11.2 The working group shall comprise of two persons representing the Employer and two persons representing the trade unions.

11.3 The terms of reference of the Working Group shall be:

- (a) The monitoring, evaluation and ongoing review of this agreement as well as compliance thereof during and after a strike;

12. WHOLE AGREEMENT

The parties agree that this agreement, and the annexures hereto, constitutes the whole agreement between them and no other agreement or amendments hereto or agreement concluded pursuant to the provisions hereof shall be of any force and effect unless reduced to writing and signed by or on behalf of the relevant parties.

13. GENERAL

The parties agree that no indulgence and/or relaxation of the terms of this agreement will constitute a waiver of that party's rights.

This done and signed at _____ on this the ____ day of
_____ 20____

For the State as Employer
Insert name of duly authorised representative

Signature

Thus done and signed at _____ on this the ____ day of
_____ 20____

For (Union A)
Insert name of duly authorised representative

Signature

Thus done and signed at _____ on this the ____ day of
_____ 20____

For (Union B)
Insert name of duly authorised representative

Signature