

---

## INTRODUCTION TO MTN SA'S RIO

---

This document represents **Mobile Telephone Network (Pty) Ltd's** ("MTN SA") "reference interconnect offer" ("RIO") which it is required to publish in terms of applicable regulations under the Electronic Communications Act 36 of 2005 (ECA).

This document, which is subject to the conclusion and signing of an interconnect agreement and a service contract, is a reference document so that other licensed operators in terms of the ECA (and persons who provide services on a licence-exempt basis) ("OLOs") who want to interconnect with MTN SA can gain an overview and understanding of MTN SA's standard terms and conditions for interconnection.

However, this document does not constitute an offer capable of acceptance.

It is MTN SA's intention that the majority of its interconnect agreements with applicable OLOs will be in substantially the same format as this document. However, negotiations with individual applicable OLOs may lead to amendments for particular applicants on a case by case basis.

Applicants seeking to interconnect with MTN SA should be aware that, as provided for in the applicable regulations, MTN SA reserves the right to assess the applicant's ability to pay the charges prior to execution of any interconnect agreement and that any pre-conditions established as part of that process will need to be satisfied prior to or on execution of the interconnect agreement.

The specific services covered by an interconnect agreement will be as described in one or more separate Service Contracts which will be annexures to the interconnect agreement.



---

FRAMEWORK INTERCONNECTION AGREEMENT

---

Entered in to by and between

MOBILE TELEPHONE NETWORKS PROPRIETARY LIMITED

("MTN SA")

And

---

[The person(s) described as the OLO (or Other Licensed Operator) in **Schedule 1: Agreement Data Schedule** to this Interconnection Agreement]



## CONTENTS

1.	DEFINITION OF TERMS AND ABBREVIATIONS .....	2
2.	SERVICES SCHEDULE CONTRACT PROCESS .....	7
3.	COMMENCEMENT AND DURATION .....	9
4.	SCOPE .....	9
5.	POINT OF INTERCONNECTION .....	10
6.	CHARGES.....	10
7.	BILLING AND SETTLEMENT .....	11
8.	QUALITY OF SERVICE AND SERVICE LEVELS .....	11
9.	SUSPENSION AND TERMINATION .....	13
10.	CONSEQUENCES OF TERMINATION .....	16
11.	CONTRACTUAL DISPUTE RESOLUTION AND ARBITRATION PROCEDURES.....	17
12.	FORECASTS.....	18
13.	IRREGULAR ACTIVITIES.....	18
14.	CREDIT MANAGEMENT .....	19
15.	GENERAL WARRANTIES AND OBLIGATIONS.....	19
16.	INDEMNITY.....	20
17.	LIMITATION OF LIABILITY .....	20
18.	FORCE MAJEURE .....	21
19.	CONFIDENTIALITY .....	22
20.	DATA.....	24
21.	INSURANCE.....	27
22.	INTELLECTUAL PROPERTY.....	27
23.	ADDRESSES FOR LEGAL PROCESS AND NOTICES .....	27
24.	GENERAL .....	29
25.	INTERPRETATION .....	32
	SCHEDULE 1: AGREEMENT DATA SCHEDULE .....	36
	SCHEDULE 2: CREDIT MANAGEMENT .....	37
	SCHEDULE 3: TEMPLATE FORM OF SERVICE CONTRACTS .....	39
	SCHEDULE 3.1: TEMPLATE FORM OF SERVICE CONTRACT (NATIONAL VOICE).....	39



## PARTIES:

This Agreement is made between:

- (1) **MOBILE TELEPHONE NETWORKS PROPRIETARY LIMITED**, a company registered in accordance with the laws of the Republic of South Africa under registration number 1993/001436/07 (**MTN SA**); and
- (2) The person(s) described as the **OLO** in **Schedule 1: Agreement Data Schedule** to this Interconnection Agreement) (**OLO**).

## INTRODUCTION

- A. MTN SA is licensed in terms of Chapter 3 of the ECA.
- B. The OLO is licensed in terms of the ECA or provides services on a licence-exempt basis as envisaged in the ECA.
- C. The OLO submitted a Request to Interconnect.
- D. The Parties have agreed to connect and keep connected, their respective Systems at the Points of Interconnection established in terms of a Service Contract for the purpose/s described in such Service Contract entered into between the Parties and on the terms and conditions set out in a Service Contract and this Agreement.
- E. This Agreement is a framework agreement which allows the Parties to enter into more than one Service Contract.
- F. Each Service Contract will incorporate the terms and conditions set out in this Agreement.
- G. The Parties wish to record in writing, their agreement in respect of the above and matters ancillary thereto.

## IT IS AGREED AS FOLLOWS:

### 1. DEFINITION OF TERMS AND ABBREVIATIONS

In this Agreement, the following words and phrases shall, save as otherwise defined in the schedules annexed hereto or unless the context otherwise requires, have the following meanings:

- 1.1 **Achieved Service Levels** in respect of any Service in any measurement period means the standard of performance actually achieved by the Service Provider in the provision

of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in the relevant Service Contract);

- 1.2 **Affiliate** means, with respect to a Party, any other person directly or indirectly Controlling, Controlled by, or under common Control with, such Party;
- 1.3 **Agreement** means this framework interconnection agreement (which includes the Introduction) together with all its Schedules and Appendices;
- 1.4 **Agreement Data Schedule** means **Schedule 1: Agreement Data Schedule**;
- 1.5 **Artificial Inflation of Traffic** means any activity where Communications –
- 1.5.1 are made, generated, stimulated, and/or prolonged for the direct or indirect benefit of any entity or person operating, hosting or otherwise connected with a telecommunication service as a result of any activity by or on behalf of such entity or person; and
- 1.5.2 result in a pattern of communication which is disproportionate to the overall amount, duration and/or extent of Communications which would be expected from –
- 1.5.2.1 a good faith usage; and/or
- 1.5.2.2 a lawful, acceptable and reasonable practice relating to the operation or use of the Services;
- 1.6 **Communication** means all and any type of communication which may pass across the Interconnected Systems including, without limitation, Electronic Communications and calls;
- 1.7 **Business Day** means any day other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;
- 1.8 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a Party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services (together, its **Representatives**) (the **Disclosing Party**) to the other Party or that Party's Representatives (**Receiving Party**) in connection with this Agreement or any Service Contract or which may become known to the Receiving Party from the Disclosing Party

including, without limitation: (i) the Disclosing Party's Data; (ii) information relating to the Disclosing Party's products, operations, processes, policies, budget, income, plans or intentions, know-how, design rights, trade secrets; and (iii) the Disclosing Party's information of commercial value);

- 1.9 **Control** means the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract or otherwise, and **Controlled** and **Controlling** shall have a similar meaning;
- 1.10 **Data** means data or information, in whatever form, including signalling traffic data and information, System statistics and performance metrics, aggregated and non-personal data, and data generated by a Party from any of the other Party's data;
- 1.11 **ECA** means the Electronic Communications Act, 36 of 2005;
- 1.12 **ECN** or **Electronic Communications Network** has the meaning given to the term "electronic communications network" in the ECA;
- 1.13 **ECS** has the meaning given to the term "electronic communications service" in the ECA;
- 1.14 **Electronic Communications** has the meaning given to the term "electronic communications" in the ECA;
- 1.15 **ICASA** means the Independent Communications Authority of South Africa and/or any successor body;
- 1.16 **Insolvency Event** means the happening of any one or more of the following events:
- 1.16.1 a Party convenes a meeting of its creditors, makes an offer of compromise or makes a proposal for any other composition or scheme of arrangement with its creditors generally; or
- 1.16.2 a Party commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of section 8 of the Insolvency Act, 24 of 1936; or
- 1.16.3 a Party is unable to pay its debts as contemplated in item 9 of Schedule 5 (Transitional Arrangements) of the Companies Act, 71 of 2008, when read with and as set out in Section 345 of the Companies Act, 61 of 1973, as amended; or
- 1.16.4 a Party is sequestrated or liquidated, as the case may be;

- 1.17 **Interconnect Bypass** means: (i) disguising, or being party or privy to disguising or changing, the source of origin of a Party's traffic (whether originated on its own or a third party's network) which is handed over to, terminated on, or transited through, the other Party's System; or (ii) the routing of a Party's traffic (whether originated on its own or a third party's network) with a view to terminating the traffic onto the other Party's System other than through those points of interconnect between the Systems which the Parties have agreed, in writing, to use to route such traffic;
- 1.18 **Interconnection** means the physical and logical interconnection of the Parties' respective Systems in the Territory for the provision of the Services as provided for in terms of a Service Contract and **Interconnect**, **Interconnected** and **Interconnecting** shall bear a corresponding meaning;
- 1.19 **Interconnection Commencement Date** means the date that the Parties will commence Interconnecting which date will be as specified in the relevant Service Contract;
- 1.20 **Irregular Activity** means any activity that no Party is permitted to participate in in relation to the Services, including but not limited to–
- 1.20.1 any Interconnect Bypass activity;
- 1.20.2 any Artificial Inflation of Traffic;
- 1.20.3 any other activity or function which the Parties agree in writing constitutes an Irregular Activity, including those specified in a Service Contract;
- 1.20.4 any fraudulent activity or function in relation to the Services;
- 1.20.5 any activity or function which is contrary to applicable laws or regulations prevailing at the time; or
- 1.20.6 any other activity or function where there is an absence of good faith usage of the Services or an absence of lawful, acceptable or reasonable commercial practice relating to the operation and/or usage of the Services;
- 1.21 **Licence** means the electronic communications services and/or electronic communications network services licences issued to either of the Parties, as the case may be, for the provision of electronic communications services and/or electronic communications network services and any renewal, amendment, re-issue or equivalent thereof;

- 1.22 **Minimum Traffic** means the minimum volume of traffic that the Service Recipient must send to the Service Provider in respect of a particular Service, as indicated in the Request to Interconnect or in terms of a Service Contract;
- 1.23 **MTN SA System** means the telecommunications system used by MTN SA, including its ECN, to provide ECS which is connected to the OLO System pursuant to a Service Contract;
- 1.24 **OLO System** means the telecommunications system used by the OLO, including its ECN where applicable, to provide ECS which is connected to the MTN SA System pursuant to a Service Contract;
- 1.25 **Parties** means the parties to this Agreement and the Service Contract/s, and **Party** means any one of them;
- 1.26 **Personnel** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;
- 1.27 **Request to Interconnect** means the OLO's request to interconnect the OLO System with the MTN SA System and for the provision of Services, a copy of which will be attached to the relevant Service Contract;
- 1.28 **Service Contract** means an agreement for Interconnection and the subsequent provision of Services by the Services Provider to the Service Recipient agreed in accordance with clause 2;
- 1.29 **Service Provider** means the Party that is providing the Service;
- 1.30 **Service Recipient** means the Party that is receiving the Service;
- 1.31 **Services** means the services to be provided by the Service Provider as specified in each Service Contract and **Service** shall bear a corresponding meaning;
- 1.32 **Services Start Date** means the date that the Service Provider will commence with the provision of a Service which date will be as specified in the relevant Service Contract;
- 1.33 **Signature Date** means the date on which this Agreement is signed by the Party signing last in time;
- 1.34 **Systems** means the MTN SA System and the OLO System, and **System** shall mean either of them as the context so requires;



- 1.35 **Territory** means the territory specified in a Service Contract and if no Territory is specified then the Territory shall be the Republic of South Africa;
- 1.36 **Traffic Received** means the actual amount of traffic received by the Service Provider from the Service Recipient in respect of a particular Service;
- 1.37 **VAT** means value-added tax, chargeable under the VAT Act; and
- 1.38 **VAT Act** means the Value Added Tax Act, 89 of 1991.

## 2. SERVICES SCHEDULE CONTRACT PROCESS

- 2.1 This Agreement governs the overall relationship of the Parties in relation to the Interconnection and Services provided by the Service Provider to the Service Recipient, and sets out:
- 2.1.1 in this clause 2, the procedure for the Service Recipient to request Interconnection and the provision of Services from the Service Provider under separate Service Contracts;
- 2.1.2 in **Schedule 3: Template form of Service Contract**, the template form of Service Contract; and
- 2.1.3 in clause 2.7.3 of this Agreement the terms and conditions which apply to each Service Contract and that are deemed incorporated into each Service Contract to apply in conjunction with the terms and conditions in each Service Contract.
- 2.2 MTN SA reserves the right to add new template forms of Service Contracts and amend the attached and any new template form of Service Contracts at any time before entering into any such Service Contract, subject to ICASA's approval. Any amendment to a Service Contract signed by the Parties to that Service Contract shall be done in accordance with the terms of the Service Contract.
- 2.3 The OLO shall be entitled from time to time to request, in writing, to Interconnect and the provision of Services from MTN SA by completing and submitting a complete and accurate Request to Interconnect in respect of a particular Service.
- 2.4 Within 7 (seven) days of receipt of a properly completed and accurate Request to Interconnect, MTN SA will –

- 2.4.1 respond to the Request to Interconnect in respect of the applicable Service stipulating its minimum requirements to Interconnect;
- 2.4.2 if MTN SA considers the Request to Interconnect to be unreasonable on any basis provided for in the ECA read with applicable regulations, notify the Service Recipient that it considers the request to Interconnect to be unreasonable unless certain conditions are met (and then subject to those conditions), for example, the Service Recipient providing Service Provider with additional information or security for its performance.
- 2.5 Within 30 (thirty) days (or such other period as may be agreed between the Parties) of receipt of: (i) a properly completed and accurate Request to Interconnect from the OLO; (ii) all and any information requested therein, and (iii) any additional information requested in the response referred to in clause 2.4 above, MTN SA shall:
  - 2.5.1 notify the OLO that it considers the Request to Interconnect to be unreasonable; or
  - 2.5.2 notify the OLO that it considers the Request to Interconnect to be reasonable in which case it shall complete a draft Service Contract, containing the information referred to in the template Service Contract annexed to this Agreement as Schedule 3: Template Service Contract, and shall submit the draft Service Contract to the OLO for its written approval.
- 2.6 A Service Contract shall not enter into force, be legally binding or have any other effect unless:
  - 2.6.1 the Service Contract contains all the information required by the template service contract at **Schedule 3: Template Service Contract**;
  - 2.6.2 the Service Contract has been signed by the authorised representatives of both Parties; and
  - 2.6.3 as at the date the Service Contract is signed, this Agreement has not terminated.
- 2.7 Each Service Contract:
  - 2.7.1 shall be entered into by MTN SA and the OLO;
  - 2.7.2 forms a separate contract between the Parties; and

2.7.3 shall incorporate the applicable terms and conditions from this Agreement which are intended (either expressly or impliedly) to apply to each such Service Contract including clauses 1, 2.8 to 8 (inclusive), 9.1, 9.2, 9.5, 9.6 and 10 to 25 (inclusive).

2.8 Any amendment to this Agreement agreed by the OLO and MTN SA in accordance with clause 24.10 shall be deemed to apply to all future Service Contracts entered into after the date of such amendment.

### **3. COMMENCEMENT AND DURATION**

3.1 Duration of the Agreement: This Agreement shall commence on the Signature Date and shall continue indefinitely unless and until terminated in accordance with this Agreement.

3.2 Duration of the Interconnection: The Parties will commence Interconnecting on the Interconnection Commencement Date and shall keep the Systems Interconnected indefinitely for the purpose/s contemplated in a Service Contract unless and until the Service Contract, Interconnection or Service/s is/are suspended or terminated in accordance with the Service Contract.

3.3 Duration of a Service Contract: The Service Provider will commence with the provision of Services under a Service Contract on the Service Start Date and shall continue providing the Services in accordance with the terms of the Service Contract.

### **4. SCOPE**

4.1 Each Party agrees to Interconnect and provide Services to the other Party in accordance with the terms and conditions of each Service Contract.

4.2 Each Party agrees in the provision or receipt of Services and otherwise in complying with their obligations and undertakings in this Agreement and all Service Contracts to comply with all applicable laws including the ECA.

4.3 For avoidance of doubt and notwithstanding the Interconnection and the provisions of the Request to Interconnect or the services described in a draft Service Contract, the Services that are provided in terms of this Agreement consist solely of the Services set out in a Service Contract which has been signed by both Parties.

4.4 Neither Party shall be obliged to provide or be entitled to access or receive any services, ancillary or otherwise, unless the Parties expressly agree to provide and receive that particular service in a Service Contract which has been signed by both Parties.

4.5 The Service Contract relevant to the type of Services in question contains the technical scope of the Interconnection.

## 5. POINT OF INTERCONNECTION

5.1 Interconnection: Once a Service Contract is agreed to and signed by both Parties, the Parties shall each connect and keep connected their respective Systems subject to the terms and conditions set out in the relevant Service Contract for the purpose of enabling the provision by the Service Provider of the Services contemplated in that Service Contract.

5.2 Points of Interconnection: The Parties shall interconnect their respective Systems at the points of interconnection specified in the relevant Service Contract.

5.3 Responsibility: The Service Provider shall be under no obligation and shall have no liability for any communication once it is handed over from the Service Provider's System to the Service Recipient's System.

5.4 Mechanisms for changes to the location of point of interconnection or related facilities:

5.4.1 MTN SA reserves the right to change the location and other aspects of the point/s of interconnection and any related facilities.

5.4.2 The mechanisms for these changes are as specified in a Service Contract.

5.5 Detail in the Service Contract: Each Service Contract contains details of the location of the point/s of interconnection, the specifications of related facilities, charges and the like.

## 6. CHARGES

6.1 Charges: The detailed charges (per Service) payable by the Service Recipient to the Service Provider in respect of the provision of Services will be specified in the relevant Service Contract.

6.2 VAT: All charges are stated **exclusive** of VAT which shall be paid by the Service Recipient at the rate and from time to time in the manner prescribed by applicable law.

6.3 Currency: Unless specified otherwise in a Service Contract, all charges shall be payable in South African Rand.

6.4 Review of Charges: The mechanisms for a review of the charges are specified in the Service Contract.

## 7. BILLING AND SETTLEMENT

7.1 The charges for the Services will be billed, invoiced and paid in accordance with the provisions and procedures set out in the Service Contract.

7.2 Any disputes between the Parties regarding the charges shall be dealt with in accordance with the provisions of the Service Contract.

## 8. QUALITY OF SERVICE AND SERVICE LEVELS

8.1 Service levels and quality of Service:

8.1.1 Each Party shall provide to the other a reasonable level of service that complies with any applicable requirements prescribed in terms of the ECA.

8.1.2 If a Party has been determined by ICASA to have significant market power (**SMP**) in the Republic of South Africa, such SMP Party shall, for so long as it is required by ICASA, supply the quality of service which such SMP Party provides from time to time for comparable services and facilities in that SMP market, including services that are provided to the SMP Party itself.

8.1.3 Where Services are stated in a Service Contract to be subject to a specific Service Level, the Service Provider shall provide those Services in such a manner as will ensure that the Achieved Service Levels in respect of those Services are equal to or higher than such specific Service Levels.

8.2 Records and Reports: The Service Provider shall provide the Service Recipient with reports summarising the Achieved Service Levels. These reports shall be provided as frequently as may be agreed between the Parties and if not so agreed then on a quarterly basis.

8.3 Penalties: If any Achieved Service Level falls short of the relevant Service Level the Service Provider shall be liable to the Service Recipient for such penalties as are agreed and provided for in the Service Contract.

8.4 Testing and maintenance: The Parties shall conduct such testing and maintenance as may be specified in the Service Contract.

8.5 Fault reporting:

8.5.1 The Parties shall provide to each other the operations and maintenance services set out more fully in the Service Contract for the purpose of enabling them to report any fault in, breakdown of or problem in respect of their Systems.

8.5.2 The Parties shall follow the fault reporting procedures set out therein.

8.5.3 The Parties shall co-operate with one another in the development of any required further procedures for the testing and resolving of faults occurring between their respective Systems.

8.6 Service level disputes:

In the event of any Service Level disputes, including interconnection outages or disputes between the Parties concerning operation and maintenance activities, the Parties agree to follow the escalation procedure set out in the relevant Service Contract failing the resolution of which the matter shall be treated and resolved as a dispute in terms of clause 11 (Dispute Resolution and Arbitration Procedures) of the Agreement.

8.7 System protection and safety measures:

8.7.1 Each Party is responsible for the safe operation of its System and shall take all reasonable and necessary steps in its operation and implementation of this Agreement and all Service Contracts to ensure that nothing is done by that Party or its contractors, agents or customers to:

8.7.1.1 endanger the safety or health of employees, contractors, agents or customers of the other Party; or

8.7.1.2 damage, interfere with or cause any deterioration in the operation of the other Party's System, or where applicable under this Agreement or a Service Contract, the telecommunications systems or apparatus of that other Party's customers.

8.7.2 Neither Party shall connect or permit the use pursuant to this Agreement or any Service Contract of any apparatus that does not meet the relevant standards or any licences held by that Party, or where applicable to that Party's customer.

## 9. SUSPENSION AND TERMINATION

### 9.1 Suspension

9.1.1 The Service Provider or Service Recipient may at any time suspend (in whole or in part) the Interconnection and/or any or all Service Contracts and/or the supply of any or all Services if and to the extent it is necessary to address quality of service degradation of electronic communication networks or services or other material threats to the maintenance of the Interconnection.

9.1.2 Without limiting the generality of clause 9.1.1, the Parties agree that the Service Provider may suspend the Interconnection, a Service Contract and/or the Services:

9.1.2.1 in terms of clause 13.2.2 (Irregular Activities); or

9.1.2.2 on the occurrence of any event or circumstance giving rise to the right for the Service Provider to terminate this Agreement or a Service Contract;

9.1.2.3 if the Service Recipient contravenes any laws or regulations or if anything the Service Recipient does or omits to do means, or is reasonably likely to mean, that the Service Provider is in or will be in contravention of any laws or regulations;

9.1.2.4 if the Service Recipient fails to provide the Service Provider with any or all of the information required by the Service Provider to provide a Service pursuant to this Agreement and/or a Service Contract; and

such suspension is necessary to address: (i) quality of service degradation of electronic communication networks or services; or (ii) other material threats to the maintenance of the Interconnection.

9.1.3 The Parties agree that in the event of any suspension, the suspension procedures they adopt will minimize any adverse effect of the suspension of Services on end users.

## 9.2 Termination – Prior Written Notice

A Party must give prior written notice of its intention to terminate this Agreement or a Service Contract to ICASA and to the other Party, specifying in such notice the grounds for termination.

## 9.3 Termination of the Agreement - Grounds and Procedure

9.3.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies and subject to having complied with the provisions of clause 9.2, a Party may, at any time terminate this Agreement with immediate effect if:

9.3.1.1 the other Party commits a material breach of any term of this Agreement (as opposed to and excluding a breach of a Service Contract to which the provisions of clause 9.5.1.1 below shall apply) and fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;

9.3.1.2 an Insolvency Event occurs in relation to the other Party;

9.3.1.3 the other Party is deregistered or ceases to carry on its business;

9.3.1.4 a Party ceases to be authorised in terms of the ECA to provide electronic communications network services or electronic communications services in terms of a licence or on a licence-exempt basis;

9.3.1.5 no Service Contracts are in effect or neither Party is legally obliged to supply Services pursuant to a Service Contract for a continuous period of not less than 180 (one hundred and eighty) days; or

9.3.1.6 the other Party breaches clause 13.

9.4 The Service Recipient acknowledges and agrees that any breach of clause 4.2 shall constitute a material breach of a term of this Agreement for the purposes of clause 9.3.1.1.

## 9.5 Termination of a Service Contract - Grounds and Procedure

9.5.1 Without prejudice to any rights that have accrued under this Agreement, a Service Contract or any other rights or remedies and subject to having complied with the



provisions of clause 9.2, a Party may at any time terminate a Service Contract with immediate effect, if:

- 9.5.1.1 the other Party commits a material breach of any term of the Service Contract and fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;
- 9.5.1.2 an Insolvency Event occurs in relation to the other Party;
- 9.5.1.3 the other Party is deregistered or ceases to carry on its business; or
- 9.5.1.4 a Party ceases to be authorised in terms of the ECA to provide electronic communications network services and/or electronic communications services in terms of a licence or on a licence-exempt basis; or
- 9.5.1.5 the continued provision of any of the Services by either Party is unreasonable for the purposes of section 37 of the ECA. Without limiting the generality of the foregoing, the continued provision of any of the Services by either Party may be or become unreasonable for the purposes of section 37 of the ECA where:
  - 9.5.1.5.1 the Traffic Received in any period of 12 (twelve) consecutive months, or such other period as may be specified in relation to the Service in question, is lower than the Minimum Traffic, for that period;
  - 9.5.1.5.2 technical changes are made to the OLO System which impacts on the provision of any Services by MTN SA; or
  - 9.5.1.5.3 so indicated in a Service Contract; or
- 9.5.1.6 permitted to do so in terms of clause 13.
- 9.5.2 Without prejudice to any of the Service Provider's rights or remedies whether under this Agreement, a Service Contract or otherwise, if the provisions contemplated in clauses 9.5.1.5.1, 9.5.1.5.2 or 9.5.1.5.3 apply, and the Parties have agreed in a Service Contract that the Service Recipient shall pay to the Service Provider liquidated damages in such circumstances, then the Service Recipient shall pay to the Service Provider, as liquidated damages, the amount (if any) specified in the Service Contract. The Service Recipient shall pay these liquidated damages on demand or the Service Provider may deduct them from its payments to the Service Recipient.

- 9.5.3 Without prejudice to any rights that have accrued under this Agreement, a Service Contract or any other rights or remedies and, subject to having complied with clause 9.2, the Parties mutually agree that the Service Provider may at any time terminate a Service Contract on not less than **90 (ninety)** days prior written notice, if:
- 9.5.3.1 the Interconnection or provision of Services is no longer technically or economically feasible for the Service Provider or it no longer promotes the efficient use of electronic communications networks and services;
- 9.5.3.2 the terms of the Service Contract are having or will have a materially negative effect on the Service Provider.
- 9.5.4 A Party may terminate a Service Contract in accordance with the provisions of clause 18.5.
- 9.6 The Parties acknowledge and agree that any breach of clause 4.2 shall constitute a material breach of a term of a Service Contract for the purposes of clause 9.5.1.1.

## 10. CONSEQUENCES OF TERMINATION

- 10.1 On termination of this Agreement, howsoever arising, each Service Contract then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Service Contract, unless earlier terminated in accordance with the terms of such Service Contract.
- 10.2 Termination of any Service Contract shall not affect any other Service Contract or this Agreement.
- 10.3 Following the termination of a Service Contract –
- 10.3.1 the Service Recipient shall immediately pay to Service Provider all of the Service Provider's outstanding unpaid invoices and interest and, in respect of Services that have been performed, but for which no invoice has been submitted, the Service Provider may submit an invoice, which shall be payable immediately on receipt;
- 10.3.2 the Service Recipient shall, at the Service Provider's election, return or destroy all of the Service Provider materials and/or documentation relating to the Service Provider and/or the Services. If the Service Recipient fails to do so, then the Service Provider may enter the Service Recipient's premises and take possession thereof.
- 10.4 On termination of the Agreement:

10.4.1 the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

10.4.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including: clause 1 (Definition of Terms and Abbreviations), clause 9 (Suspension and Termination), clause 10 (Consequences of termination), clause 11 (Contractual Dispute Resolution and Arbitration Procedures), 16 (Indemnity), clause 17 (Limitation of liability), clause 23 (Addresses for Legal Process and Notices), clause 24 (General) and clause 25 (Interpretation).

10.5 On termination of a Service Contract:

10.5.1 the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Service Contract which existed at or before the date of termination; and

10.5.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including: clause 1 (Definition of Terms and Abbreviations), clause 9 (Suspension and Termination), clause 10 (Consequences of Termination), clause 11 (Contractual Dispute Resolution and Arbitration Procedures), clause 16 (Indemnity), clause 17 (Limitation of liability), clause 20 (Data), clause 21 (Insurance), clause 23 (Addresses for Legal Process and Notices), clause 24 (General) and clause 25 (Interpretation).

## 11. CONTRACTUAL DISPUTE RESOLUTION AND ARBITRATION PROCEDURES

11.1 Should any dispute arise out of, or relating to, this Agreement or any Service Contract, the Parties shall use all reasonable endeavours to resolve the dispute amicably within a period of 5 (five) Business Days from the date on which the dispute arose (or such longer period as may be agreed between the Parties).

11.2 If the dispute is not resolved amicably within the period contemplated in clause 11.1, either Party shall be entitled to refer the dispute to arbitration on written notice to the other Party. The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) Business Days of the written notice referring the dispute to arbitration, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in force at the time of the dispute. The appointing authority

in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa).

- 11.3 Unless agreed otherwise in writing by the Parties, the arbitration shall be administered by the Parties and the number of arbitrators shall be 1 (one). The place of the arbitration shall be Sandton, Johannesburg. The governing procedural law of the arbitration shall be the law of the Republic of South Africa. The arbitrator shall have the same remedial powers as a court of law in the Republic of South Africa would have were it adjudicating the dispute. The arbitrator shall deliver an award together with written reasons within 20 (twenty) Business Days from the date upon which the arbitration hearing ends. The decision of the arbitrator shall be final and binding.
- 11.4 Nothing in this clause 11 shall preclude a Party from notifying the Complaints and Compliance Committee of ICASA in writing of the dispute and such dispute must be resolved, where applicable on an expedited basis, by the Complaints and Compliance Committee in accordance with the regulations prescribed by ICASA. A decision by the Complaints and Compliance Committee concerning any dispute or a decision concerning a dispute contemplated in this clause 11 is, in all respects, effective and binding on the Parties to this Agreement unless an order of a court of competent jurisdiction is granted against the decision.
- 11.5 Nothing in this clause 11 shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction.

## 12. FORECASTS

The Parties shall supply to each other, forecasts in accordance with the provisions of and as may be required in a Service Contract.

## 13. IRREGULAR ACTIVITIES

- 13.1 A Party shall not, under any circumstances, perform, participate in or be a party to any Irregular Activities.
- 13.2 If a Party (the **Aggrieved Party**) detects that the other Party (**Offending Party**) is performing or is a party to Irregular Activities, the Aggrieved Party may –
- 13.2.1 send a written notice to the Offending Party –
- 13.2.1.1 identifying the Irregular Activity/ies detected by the Aggrieved Party;

- 13.2.1.2 providing the Offending Party with 30 (thirty) days to: (i) confirm in writing that it will completely cease performing and/or being a party to the Irregular Activity/ies; and (ii) completely cease performing and/or being a party to the Irregular Activity/ies; and
- 13.2.2 immediately suspend the provision of the Services (or any part thereof) pursuant to which any Irregular Activity is being performed, until the confirmation from the Offending Party referred to in clause 13.2.1.2 is received, provided clause 13.4 is not applicable.
- 13.3 The Parties hereby acknowledge that Irregular Activity diminishes the quality of and degrade electronic communication services and the Aggrieved Party has a right to mitigate its potential losses and reputational risk by exercising its right of immediate suspension in clause 13.2.2.
- 13.4 If the Aggrieved Party detects that the Offending Party is performing or is a party to any Irregular Activities on more than one occasion during the duration of this Agreement -
- 13.4.1 the first breach of this clause 13 will not be regarded as having been remedied within 30 (thirty) days, provided 30 (thirty) days have elapsed since the notice of the first breach in terms of clause 13.2.1 was sent; and
- 13.4.2 without prejudice to its other rights in law, the Aggrieved Party will be entitled to cancel this Agreement and/or any and all Service Contracts or to claim immediate specific performance of all the Offending Party's obligations, without prejudice to the Aggrieved Party's right to claim damages.
- 13.5 For the avoidance of doubt, a breach of this clause 13 constitutes a material breach of this Agreement and any and all Service Contracts.

#### 14. CREDIT MANAGEMENT

The Parties shall comply with the provisions of **Schedule 2: Credit Management**.

#### 15. GENERAL WARRANTIES AND OBLIGATIONS

- 15.1 For the duration of this Agreement each Party shall ensure that:
- 15.1.1 it has full power and authority to enter into, perform and observe its obligations under this Agreement;

- 15.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- 15.1.3 it does not use (including permitting, tolerating or allowing others to use) any Service for improper, fraudulent or unlawful purposes; and
- 15.1.4 it holds and maintains all statutory authorisations, licences and registrations as are required to perform its obligations hereunder and all Service Contracts and which are appropriate to or necessary for its provision/receipt of the Services.
- 15.2 The OLO represents and warrants to MTN SA that the Request to Interconnect, any request for the provision of Services (and accompanying information), the forecasts provided pursuant to clause 12 and any other information provided to MTN SA, including pursuant to clause 14, is accurate and complete and is not misleading.

## **16. INDEMNITY**

- 16.1 The Service Recipient hereby indemnifies and holds the Service Provider harmless from and against all claims and all liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Service Provider as a result of or in connection with:
- 16.1.1 any acts or omissions on the part of the Service Recipient;
- 16.1.2 non-compliance of the Service Recipient with the terms of its Licence (if any) or any applicable law.
- 16.1.3 any breach of the provisions of the Consumer Protection Act, 68 of 2008;
- 16.1.4 any breach of clause 15.2; or
- 16.1.5 any breach by the Service Recipient or any of the Service Recipient's Personnel of any of the provisions of this Agreement.
- 16.2 The provisions of this clause 16 shall survive termination or expiry of this Agreement and all Service Contracts, however arising.

## **17. LIMITATION OF LIABILITY**

- 17.1 Subject to clause 17.2 below, the Service Provider's maximum aggregate liability to the Service Recipient for any loss or damages suffered by the Service Recipient throughout the duration of this Agreement and all Service Contracts shall not exceed in the

aggregate an amount equivalent to the fees received by the Service Provider from the Service Recipient in respect of the relevant Service in the 12 (twelve) months preceding the date on which the cause of action giving rise to the claim arose.

- 17.2 Subject to clause 17.3, in no event will either Party be liable to the other hereunder including in respect of any Service Contracts for any type of indirect or consequential loss, damage, injury or expense including any loss of profits, goodwill, revenue, production, anticipated savings, use or contracts.
- 17.3 Nothing in this Agreement, any Service Contracts or otherwise shall exclude or limit either Party's liability for: (i) fraud; (ii) death or personal injury resulting from that Party's negligence; (iii) disclosure of confidential information; (iv) knowingly participating in, encouraging, aiding or assisting any Irregular Activity; (v) claims by third parties, (vi) infringes on Intellectual Property Rights and (vii) gross negligence or wilful misconduct; (viii) penalties imposed by government regulatory bodies for non-compliance with applicable laws, Regulations, by-laws and/ or directives; and (ix) any liability which cannot be excluded by law.
- 17.4 All warranties, conditions and other terms pertaining to the Services or the Service Provider's obligations under this Agreement or any Service Contract whether implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement and any Service Contract.

## 18. FORCE MAJEURE

- 18.1 The term **Force Majeure Event** means any event or circumstance listed in clause 18.2, provided that such Force Majeure Event:
- 18.1.1 is beyond the reasonable control of the Party affected by such Force Majeure Event (the **Affected Party**);
- 18.1.2 wholly or partially prevents or delays the performance by the Affected Party of its obligations under this Agreement or any Service Contract; and
- 18.1.3 could not have been avoided by steps which might reasonably be expected to have been taken by the Affected Party.
- 18.2 The events and circumstances referred to in clause 18.1 are as follows:

- 18.2.1 fire, flood, atmospheric disturbance, lightning, storm, typhoon, tornado, tsunami, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other acts of God;
- 18.2.2 war (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of public enemies, civil disturbances, acts of terrorism and sabotage;
- 18.2.3 strike, lockouts, labour disputes or other industrial disturbances;
- 18.2.4 accidents of navigation or breakdown of or injury to vessels;
- 18.2.5 any law, order, rule or regulation of any governmental authority, or compliance with such law, order, rule or regulation or any act or failure to act of any governmental authority; or
- 18.2.6 any event or circumstance beyond the reasonable control of the Affected Party other than any Force Majeure Event listed above.
- 18.3 No Party shall be relieved from liability by reason of a Force Majeure Event from making timely payment of any monies otherwise due and payable under this Agreement.
- 18.4 The Affected Party shall be excused from performance of its obligations under this Agreement to the extent made necessary by a Force Majeure Event and during the continuance of such Force Majeure Event, and the Affected Party shall incur no liability by reason of its failure to perform the obligations so excused.
- 18.5 If any Force Majeure Event continues in effect for a period of more than 60 (sixty) Business Days, then either Party shall have the right to terminate the Service Contract/s affected by giving written notice to the other Party of such termination at any time prior to the cessation of such Force Majeure Event.

## 19. CONFIDENTIALITY

- 19.1 The provisions of this clause 19 shall not apply: (i) to prevent the public disclosure of the Agreement or any Service Contract by ICASA or by either of the Parties; or (ii) to any Confidential Information that:
  - 19.1.1 is or becomes generally freely available to the public (other than as a result of its disclosure by the Receiving Party or its Representatives in breach of this clause 19);



- 19.1.2 was available to the Receiving Party on a non-confidential basis before disclosure by the Disclosing Party;
  - 19.1.3 was, is or becomes available to the Receiving Party on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party;
  - 19.1.4 was known to the Receiving Party before the information was disclosed to it by the Disclosing Party; or
  - 19.1.5 the Parties agree in writing is not confidential or may be disclosed.
- 19.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 19.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or any Service Contract (**Permitted Purpose**); or
  - 19.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 19.
- 19.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this Agreement or any Service Contract.
- 19.4 The OLO:
- 19.4.1 acknowledges and agrees that MTN SA's Confidential Information includes any signalling traffic data, IMSI information, MSISDN information, number portability information, active subscriber database information; and
  - 19.4.2 agrees not to make use of any such signalling traffic data, IMSI information, MSISDN information, number portability information, active subscriber database information for any purpose other than Interconnection and receipt or provision (as applicable) of the Services.
- 19.5 OLO acknowledges and agrees that the MTN SA Data is the Confidential Information of MTN SA.

- 19.6 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 19.6.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 19.6.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 19.
- 19.7 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 19.7, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 19.8 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement or a Service Contract are granted to the other Party or to be implied from this Agreement.
- 19.9 The provisions of this clause 19 shall continue to apply after expiry or termination of this Agreement and any Service Contract for any reason.
- 19.10 The OLO shall not make, or permit any person to make, any public announcement concerning this Agreement or any Service Contract without the prior written consent of MTN SA (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## 20. DATA

- 20.1 Each Party (**Data Recipient**) shall take all necessary steps to ensure that the other Party's Data (**Data Owner's Data**) which comes into its possession or control in the course of Interconnection or providing or receiving Services is kept strictly private and confidential and, in particular, the Data Recipient shall not:

- 20.1.1 use or reproduce the Data Owner's Data in whole or in part in any form, except as may be required by this Agreement or a Service Contract; or
- 20.1.2 directly or indirectly communicate any information about the Data Owner's Data otherwise than as required for the Interconnection or to perform its obligations in terms of this Agreement or a Service Contract;
- 20.1.3 disclose the Data Owner's Data to any third party or to persons not authorised by the Data Owner to receive it, except with the prior written consent of the Data Owner.
- 20.2 The Data Recipient shall not delay, manipulate, remit or capture, or in any other way interfere with any of the Data Owner's Data which is, at the relevant time, in the possession or under the control of the Data Recipient, except when this is done to enable the Data Recipient to Interconnect or comply with its obligations in terms of this Agreement or a Service Contract, and with the Data Owner's prior written consent, in which case the Data Recipient shall provide the Data Owner with such audit trails as the Date Owner may consider necessary to show the way in which the Data Recipient has delayed, manipulated, remitted, captured or otherwise interfered with the Data Owner's Data.
- 20.3 Each Party shall be solely responsible for complying with its obligations under applicable privacy and protection of personal information laws governing data protection and privacy in relation to the Data Owner's Data transferred to it, where applicable.
- 20.4 Upon reasonable request, the Data Recipient shall submit documentation on its data processing facilities, data files and information related to processing for review or audit by: (i) the Data Owner; or (ii) independent inspection agents or auditors selected by the Data Owner, and not reasonably objected to by the Data Recipient; to ascertain compliance with the warranties and undertakings in this clause 20, with reasonable notice and during business hours.
- 20.5 Each Party warrants and undertakes that it shall:
  - 20.5.1 comply with all applicable data protection and privacy laws;
  - 20.5.2 not access, use or process Data Owner's Data except to the extent reasonably necessary for performance of its obligations under this Agreement;

- 20.5.3 implement appropriate technical and security measures to preserve the integrity of the Data Owner's Data; and
- 20.5.4 prevent any unauthorised or unlawful access, accidental or unauthorised destruction, corruption, loss, alteration or disclosure or other prohibited processing of the Data Owner's Data.
- 20.6 The Data Recipient shall ensure that any third party who accesses any Data, including any person who acts under the authority of the Data Recipient, contractually agrees in writing to comply with obligations in relation to the processing of data which are equivalent to those agreed by the Data Recipient, as set out in this Agreement and, in the case of a third party who acts under the authority of the Data Recipient, the third party agrees to process the Data only on instructions from the Data Recipient. This does not apply to persons authorised or required by law to have access to the Data.
- 20.7 The Data Recipient shall not transfer the Data Owner's Data outside South Africa for any reason, without the Data Owner's prior written consent. In the event that the Data Owner consents to any such cross-border transfer, the Data Recipient shall ensure that the transfer is conducted in accordance with applicable laws relating to data protection and privacy .
- 20.8 The Data Recipient warrants and undertakes to assist the Data Owner in relation to all access to information requests made by third parties, including data subjects, under any applicable law and such co-operation includes providing all available information to the Data Owner to enable the Data Owner to respond to the relevant information request.
- 20.9 Each Party agrees to indemnify, keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable due to any failure by the Party or its employees, subcontractors or agents to comply with any of its obligations under this Agreement or any applicable data protection legislation.
- 20.10 The provisions of this clause 20 shall survive the termination of this Agreement and any Service Contract, irrespective of the reason for such termination.

## **21. INSURANCE**

- 21.1 Each Party undertakes and agrees to take out and maintain adequate insurance cover with an insurance office of repute to cover the liability accepted by it under all Service Contracts and at the other Party's request agrees to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection by the requesting Party. On the renewal of each of the OLO's policies, the OLO shall promptly send a copy of the premium receipt to MTN SA.
- 21.2 Each Party shall, during the term of this Agreement, and for a period of 2 (two) years thereafter:
- 21.2.1 administer the insurance policies and its relationship with its insurers at all times to preserve the benefits for the other Party set out in this Agreement and all Service Contracts;
- 21.2.2 do nothing to invalidate any such insurance policy or to prejudice the other Party's entitlement thereunder; and
- 21.2.3 procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to the other Party of the policies as provided at the Interconnection Commencement Date.

## **22. INTELLECTUAL PROPERTY**

- 22.1 Each Party agrees not to display or use any of the other Party's trade names, service marks, brands or trademarks, and shall not permit the same to be used or displayed by any third party, without the prior written consent of that other Party.
- 22.2 It is expressly understood by each Party that the trade names, service marks, brands, trademarks of the other Party, together with all and any intellectual property rights pertaining to that Party's business, are proprietary to that Party and nothing in this Agreement and any Service Contract constitutes the grant of a general licence to use the said trade names, service marks, brands trademarks or other intellectual property rights.

## **23. ADDRESSES FOR LEGAL PROCESS AND NOTICES**

- 23.1 The OLO chooses, for the purposes of this Agreement and any Service Contract, the address, e-mail address and telefax number specified in the Agreement Data Schedule.

MTN SA chooses, for the purposes of this Agreement, the following physical address and email address:

<b>MTN SA</b>	<u>Physical</u> : 216 Fourteenth Avenue, Fairland, Roodepoort
<b>Email:</b>	<a href="mailto:Interconnect.za@mtn.com">Interconnect.za@mtn.com</a>
<b>For Attention:</b>	"The Carrier Services Senior Manager"
With a <b>copy</b> to be sent for the attention of	"The Legal General Manager" and "The Regulatory General Manager"
<b>Physical:</b>	216 Fourteenth Avenue, Fairland, Roodepoort.
<b>Email</b>	<a href="mailto:CommercialLegal.ZA@mtn.com">CommercialLegal.ZA@mtn.com</a> <a href="mailto:RegulatoryAffairs.ZA@mtn.com">RegulatoryAffairs.ZA@mtn.com</a>

- 23.2 Any legal process to be served on either Party may be served on it at the address specified for it in clause 23.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.
- 23.3 Any notice or other communication to be given to either of the Parties in terms of this Agreement or any Service Contract shall be valid and effective only if it is given in writing, provided that any notice given by telefax or by e-mail shall be regarded for this purpose as having been given in writing.
- 23.4 A notice to either Party which is sent by prepaid registered post in a correctly addressed envelope to the address specified for it in clause 23.1 shall be deemed to have been received (unless the contrary is proved) within 14 (fourteen) days from the date on which it was posted.
- 23.5 Each notice by telefax or by e-mail to a Party at the telefax number or e-mail address specified for it in clause 23.1 shall be deemed to have been received (unless the contrary is proved) within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 4 (four) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.
- 23.6 Notwithstanding anything to the contrary in this clause 23.1 a written notice or other communication actually received by a Party (and for which written receipt has been

obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

- 23.7 Either Party may by written notice to the other Party change its address or telefax number for the purposes of this clause 23.1 to any other address (other than a post office box number) in the Republic of South Africa provided that the change shall become effective on the seventh day after the receipt of the notice.

## 24. GENERAL

- 24.1 Waiver. Any delay or waiver by any Party in exercising its rights under this Agreement or a Service Contract does not limit or restrict the future exercise or enforceability of those rights.
- 24.2 No Partnership, Agency or Joint Venture. The Parties agree that this Agreement or a Service Contract does not constitute any kind of partnership, agency or joint venture between them.
- 24.3 Joint and Several. If the OLO constitutes (under applicable laws) a joint venture, consortium or other unincorporated grouping of two or more persons: (i) these persons shall be deemed to be jointly and severally liable to MTN SA for the performance of this Agreement and all Service Contracts; (ii) these persons shall notify MTN SA of their leader who shall have authority to bind the OLO and each of these persons; and (iii) the OLO shall not alter its composition or legal status without the prior written consent of MTN SA.
- 24.4 Communications between the Parties. All notices, demands and other oral or written communications given or made by or on behalf of any Party to the other Party or any of them shall be in English or accompanied by a certified translation into English.
- 24.5 Remedies. No remedy conferred by this Agreement or a Service Contract is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy shall be cumulative and in addition to every other remedy given under this Agreement or a Service Contract or under any existing or future law. The election of any one or more remedy by one of the Party's shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 24.6 Conventional Penalties Act. If there are any provisions in this Agreement or a Service Contract which may qualify as a penalty in terms of the Conventional Penalties Act,

1962 (as amended) in relation to any act or omission by a Party, such provisions shall not be deemed to preclude the other Party from recovering damages in lieu of the relevant penalty.

- 24.7 Severance. If any provision of this Agreement or a Service Contract, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 24.8 Survival of Rights, Duties and Obligations. Termination of this Agreement or a Service Contract for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 24.9 Entire Agreement. This Agreement and all Service Contracts contains the entire agreement between the Parties and supersedes any prior written or oral agreement between them in relation to the matters dealt with in this Agreement and all Service Contracts. Save as expressly provided for in this Agreement or a Service Contract, none of the Parties shall have any claim or right arising from any undertaking, representation or warranty not included in this Agreement or a Service Contract.
- 24.10 Variations and Non-variation.
- 24.10.1 MTN SA may on not less than 90 (ninety) days written notice to the OLO (or such shorter period as may be required by or agreed with ICASA) vary this Agreement and/or any and all Service Contracts so as to align them with any document setting out the standard terms and conditions for interconnection agreements approved by ICASA.
- 24.10.2 Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Agreement or any Service Contract or to cancel or terminate any of them shall be effective unless made in writing and duly signed by the Parties or on their behalf by their duly authorised agents.
- 24.11 Non-Solicitation.



- 24.11.1 Neither Party shall (except with the prior written consent of the other) during the term of a Service Contract, and for a period of 6 months thereafter, solicit the services of any staff of the other Party who have been engaged in the provision of the Services or the management of this Agreement, Service Contract or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.
- 24.11.2 The aforementioned restraint shall not be applicable: (i) where the prior written approval to make such an offer has been obtained from the Party, who is or has been the employer of such staff member; or (ii) where an offer is made to a staff member of a Party who has left the employ of such Party, on his own accord (i.e. not as a result of having been approached or solicited by the other Party) and at the time the offer is made a period of at least 6 months has lapsed since the staff member has left the employment of such Party; (iii) against a Party where such Party terminates this Agreement or a Service Contract in terms of the provisions of clause 9.3.1 or clause 9.5.1 (as applicable); or (iv) if the staff was employed through a normal recruitment process that was open to the general public.
- 24.12 Assignment. Save as otherwise expressly provided in this Agreement or a Service Contract, neither of the Parties may cede or delegate this Agreement or a Service Contract or any of its rights and obligations under any of them without the prior written consent of the other Party provided that MTN SA may at any time assign, cede and/or delegate any of its rights or obligations under this Agreement and any Service Contract to any Affiliate(s) provided that MTN SA shall remain responsible for any obligations delegated to an Affiliate if the Affiliate ceases to be an Affiliate.
- 24.13 Subcontracting.
- 24.13.1 The OLO shall not sub-contract any of its obligations under this Agreement or any Service Contract without MTN SA's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 24.13.2 Where the OLO engages a sub-contractor to perform any of its obligations under this Agreement or any Service Contract the OLO shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractors as if they were its own. An obligation on the OLO

to do, or to refrain from doing, any act or thing shall include an obligation on the OLO to procure that its employees, staff and agents and sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

- 24.14 Costs. Each Party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement and all Service Contracts.
- 24.15 Further Assurance. Each Party shall co-operate with the other Party and execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm that Party's rights and the intended purpose of this Agreement and all Service Contracts.
- 24.16 Counterparts. This Agreement and each Service Contract may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement or a Service Contract by signing any such counterpart.
- 24.17 Successors Bound. This Agreement and all Service Contracts shall be binding on and shall inure for the benefit of the successors and permitted assigns and personal representatives (as the case may be) of each of the Party's.
- 24.18 Good Faith. Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and all Service Contracts.
- 24.19 Governing Law. The validity of this Agreement and all Service Contracts, their interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or any of their expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

## 25. INTERPRETATION

### 25.1 General interpretation

For the purposes of this Agreement and a Service Contract the following rules of interpretation shall apply, unless the context clearly requires otherwise:

- 25.1.1 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 25.1.2 any reference to a person includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 25.1.3 any word or expression defined in, and for the purposes of, this Agreement or a Service Contract shall if expressed in the singular include the plural and vice versa, and a cognate word or expression shall have a corresponding meaning;
- 25.1.4 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement, a Service Contract or any transaction entered into in accordance with this Agreement or a Service Contract;
- 25.1.5 a “law” shall be construed as any law, common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
- 25.1.6 any reference in this Agreement or a Service Contract to this Agreement, Service Contract or any other agreement, document or instrument shall be construed as a reference to this Agreement, Service Contract or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
- 25.1.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Agreement and all Service Contracts;
- 25.1.8 no rule of construction shall be applied to the disadvantage of a Party to this Agreement or a Service Contract because that Party was responsible for or participated in the preparation of this Agreement, Service Contract or any part of any of them;

- 25.1.9 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day; and
- 25.1.10 all the headings and sub-headings in this Agreement or a Service Contract are for convenience only and are not to be taken into account for the purposes of interpreting it.
- 25.1.11 where the words include(s), including or in particular are used in these terms and conditions, such words are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

25.2 Inconsistency between documents comprising this Agreement

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of: (i) this document; (ii) a schedule; and (iii) a document expressly incorporated by reference in: (a) this document; or (b) a Schedule, the order of precedence between them will be the order listed above, this document having the highest level of precedence.

25.3 Inconsistency between this Agreement and any Service Contract

- 25.3.1 The terms and conditions of any Service Contract must not be inconsistent with the terms and conditions of this Agreement unless otherwise agreed in writing by MTN SA and the OLO, or unless otherwise expressly permitted by this Agreement.
- 25.3.2 If there is an inconsistency between the terms and conditions of any Service Contract and the terms and conditions of this Agreement which is not agreed in writing by MTN SA and the OLO, or which is not otherwise expressly permitted by this Agreement, the terms and conditions of this Agreement prevails.

SIGNED at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

For and on behalf of **Mobile Telephone Networks  
(Pty) Ltd**

---

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Who warrants his/her authority hereto

SIGNED at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

For and on behalf of [ \_\_\_\_\_ ] **(Pty) Ltd / OLO**

---

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Who warrants his/her authority hereto

## Schedule 1: Agreement Data Schedule

**1. OLO (refer Parties, (2))**

(Proprietary) Limited

(a private company registered and incorporated in terms of the company laws of the Republic of South Africa, Registration Number )

**2. OLO Address (refer clause 23.1)**

Proprietary Limited

Physical:

E-mail Address:

Telefax No: +27

For Attention:

## Schedule 2: Credit Management

### 1. Credit Management Process

1.1 Upon or prior to execution of this Agreement MTN SA may require such financial security from the OLO as MTN SA regards as adequate to protect MTN SA against a breach by the OLO of its payment obligations under this Agreement.

1.2 This financial security may take the form of:

1.2.1 a parent company, bank or third party guarantee;

1.2.2 an on demand bond issued by a financial institution acceptable to MTN SA; or

1.2.3 such other mechanisms;

as MTN SA may, in its sole and absolute discretion, accept.

1.3 If, at any time during the duration of this Agreement:

1.3.1 the OLO is more than 30 (thirty) days in arrears with any payment obligations arising hereunder (excluding such amounts as are subject to the provisions of the Billing Dispute Procedure);

1.3.2 the Agreement is no longer economically feasible for MTN SA in as much as for MTN SA to continue with the Agreement will give rise to material adverse financial consequences for MTN SA; or

1.3.3 MTN SA has information to ground a reasonable suspicion that the OLO's financial circumstances have altered detrimentally;

MTN SA may require the OLO to provide such financial security as MTN SA in its sole and absolute discretion regards as adequate to protect MTN SA against a breach by the OLO of its payment obligations under this Agreement.

1.4 The Parties agree that any financial security required pursuant to this paragraph 1 shall be provided within 30 (thirty) days of the date of request.

If the OLO fails to pay any invoice issued by MTN SA hereunder by the due date for payment thereof MTN SA shall be entitled to retain such part of any monies deposited with MTN SA hereunder or to enforce its rights under any bond or other financial

security provided so as to meet the payment of the relevant invoice issued by MTN SA (together with applicable interest thereon).



### Schedule 3: Template Form of Service Contracts

#### Schedule 3.1: Template Form of Service Contract (National Voice)

[Refer to Attachment: Service Contract (National Voice)]