

Republic of South Africa
Companies Act, No 71 of 2008 as amended

MEMORANDUM OF INCORPORATION FOR A PUBLIC COMPANY

Name of company: **MTN ZAKHELE FUTHI (RF) LIMITED**
Registration No.: 2016/268837/06

This Memorandum of Incorporation ("MOI") was adopted by Special Resolution passed on 9 August 2016 ("2016 MOI"), a copy of which was filed, together with the notice of amendment, in substitution for the Company's existing MOI and was amended by a Special Resolution passed on [17 May 2019], a copy of which amended MOI was filed, together with the notice of amendment, in substitution for the 2016 MOI. This amended MOI takes effect (in terms of section 16(9)(b)(i) of the Companies Act) on the date of filing hereof, together with the notice of amendment.



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1. INTERPRETATION

In this MOI:

- 1.1 Subject to clauses 1.2, 1.3 and 1.4 of this MOI, words that are defined in the Companies Act (which are contained in Annexe B for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2 save as set out in clauses 1.3 and 1.4 and in Annexe A to this MOI, capitalised terms used herein shall bear the meanings assigned to them in the Relationship Agreement, a copy which as at 10 August 2016 is annexed, marked Annexe E and which definitions include, without limitation, the following (adapted, as applicable, to the context of this MOI and as at 10 August 2016):
- 1.2.1 "**Approved Nominee**" means the Custodian and/or any Nominee Holder who is permitted to hold MTN Zakhele Futhi Ordinary Shares on behalf of a Beneficial Holder thereof pursuant to the BEE Listing Terms and Conditions;
- 1.2.2 "**Authority**" any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions and/or which is responsible for applying national security, foreign investment, exchange control, telecommunications, merger control or other competition or antitrust legislation or regulations, in the Republic of South Africa, including without limitation ICASA;
- 1.2.3 "**BBBEE Act**" means the Broad-Based Black Economic Empowerment Act, 53 of 2003, and any regulations and codes of good practice published thereunder (including the Codes);
- 1.2.4 "**BEE**" means black economic empowerment;
- 1.2.5 "**BEE Legislation**" means each and all of (i) the BBBEE Act, (ii) any codes of good practice and/or any transformation charters issued under sections 9 and/or 12 of the BBBEE Act applicable to the MTN SA Group or a material member thereof, (iii) any communications sector legislation (including the EC Act) and any regulations published under such legislation and any Licence conditions made pursuant to such legislation from time to time, as applicable

to the MTN SA Group or a material member thereof; and (iv) any other charter, law, condition of a material Licence, regulation or (mandatory or voluntary) practice pursuant to which ownership and/or control by black people in the MTN SA Group or a material member thereof is measured or a requirement relating thereto is imposed on it, or its rights, interests and/or obligations are affected thereby whether directly or through its customers;

- 1.2.6 **"BEE Listing"** means the admission to listing of the MTN Zakhele Futhi Ordinary Shares as BEE Securities on the Empowerment Segment of the main board of the exchange operated by the JSE (or such other licensed exchange as MTN may approve of in its sole and absolute discretion);
- 1.2.7 **"BEE Listing Period"** means the period commencing on the date upon which the BEE Listing takes place (if applicable) and ending on the earlier of (i) the last day of the MTN Zakhele Futhi Empowerment Compliance Period and (ii) the date on which the BEE Listing terminates for any reason;
- 1.2.8 **"BEE Listing Terms and Conditions"** means the terms and conditions applicable to the holding and/or transfer of MTN Zakhele Futhi Ordinary Shares (and beneficial interests therein) pursuant to the BEE Listing, as are or are to be set out in this MOI and the Relationship Agreement read with the BEE Market Notice (if any) and any other terms and conditions notified to a Person by or on behalf of MTN and/or the Company from time to time;
- 1.2.9 **"BEE Market Notice"** means a market notice published by the JSE in respect of the BEE Listing, as amended from time to time, which sets out particulars in respect of the restrictions, limitations and requirements applicable to the listing and transfer of the MTN Zakhele Futhi Ordinary Shares (and/or beneficial interests therein) as BEE Securities, including as regards the various mandates and other contractual arrangements which a Verified MTN Zakhele Futhi Shareholder is required to conclude with persons acceptable to MTN in its sole and absolute discretion;
- 1.2.10 **"BEE Securities"** has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.2.11 **"BEE Transaction Documents"** means the Transaction Documents, and such further agreements and documents which MTN and MTN Zakhele Futhi

may agree in writing to designate as BEE Transaction Documents from time to time;

1.2.12 **"BEE Verification"** means the verification of a Person by the MTN Zakhele Futhi Verification Agent, which verification must conclude, *inter alia*, that:

1.2.12.1 the Person is an Eligible MTN Zakhele Futhi Shareholder;

1.2.12.2 such Eligible MTN Zakhele Futhi Shareholder has been notified of the necessary restrictions, limitations and requirements applicable to the MTN Zakhele Futhi Ordinary Shares from time to time as set out in this MOI and the Relationship Agreement (read with the BEE Market Notice, if any), and has agreed to be bound by the provisions of this MOI and the Relationship Agreement by executing a Deed of Adherence hereto (or otherwise is bound in a form and on terms to the reasonable satisfaction of MTN); and

1.2.12.3 such Eligible MTN Zakhele Futhi Shareholder has accepted the Verification Terms and Conditions and has signed all documents and contracts required in terms of the Verification Terms and Conditions;

1.2.13 **"Beneficial Holder"** means in relation to any Uncertificated MTN Zakhele Futhi Ordinary Shares, the Person who from time to time holds a Beneficial Interest in such Uncertificated MTN Zakhele Futhi Ordinary Shares, regardless of whether they are registered in the Company's uncertificated securities register in the name of such Person directly by way of "own name" registration or in the name of a Nominee Holder;

1.2.14 **"BFC2"** means Jabisan 04 Proprietary Limited, registration number 2014/021122/07, a private company incorporated in accordance with the laws of South Africa;

1.2.15 **"Black Company"** means a company incorporated in accordance with the laws of South Africa, and which is both a Black Majority Owned Company and a Black Majority Controlled Company, and a reference to "company" in this definition shall include a reference to a close corporation;

1.2.16 **"Black Entity"** means (i) a vesting trust, (ii) a broad based ownership scheme, and (iii) an unincorporated entity or association, including a partnership, joint venture, syndicate or Stokvel, in each case under (i) to (iii) as may be determined from time to time (generally or in relation to any particular Black

Entity or category of Black Entities) by MTN in its sole discretion as an entity or association which qualifies under the BEE Legislation (and the Codes in particular) for recognition and measurement of ownership, economic interest and control by Black People such that the MTN SA Group may claim recognition of such ownership, economic interest and control under the BEE Legislation as all being held by a majority of Black People;

- 1.2.17 **"Black Majority Controlled Company"** means a "B-BBEE Controlled Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at 10 August 2016 is as follows: *"means juristic person, having shareholding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is at least 51% of the total such rights measured using the Flow Through Principle"*; provided that where the BEE Legislation contains more than one definition of a "Black Majority Controlled Company" and such definitions are not the same, then the term "Black Majority Controlled Company" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 1.2.18 **"Black Majority Owned Company"** means a "B-BBEE Owned Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at 10 August 2016 is as follows: *"means juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a right to Economic Interest that is at least 51% of the total such rights measured using the Flow Through Principle"*; provided that where the BEE Legislation contains more than one definition of a "Black Majority Owned Company" and such definitions are not the same, then the term "Black Majority Owned Company" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 1.2.19 **"Black Participants"** means individually and collectively (as the context may dictate), Black People, Black Companies and Black Entities (i) who are eligible to subscribe for and beneficially own MTN Zakhele Futhi Ordinary Shares pursuant to the MTN Zakhele Futhi Public Offer, (ii) who are MTN Zakhele Shareholders and who are eligible to elect MTN Zakhele Futhi Consideration Shares pursuant to the MTN Zakhele Unwinding Scheme; or (iii) who are otherwise permitted to own MTN Zakhele Futhi Ordinary Shares in terms of the provisions of the Relationship Agreement (as read with this MOI);
- 1.2.20 **"Black People"** or **"Black Persons"** means "black people" (or comparable term) as defined from time to time under the BEE Legislation; provided that

where the BEE Legislation contains more than one definition of "black people" (or comparable term) and such definitions are not the same, then the term "Black People" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;

- 1.2.21 **"Call Event"** is as defined in clause 2.1.5, incorporating clause 11 of the Relationship Agreement;
- 1.2.22 **"Central Securities Depository"** means a person who is licensed as a central securities depository under section 29 of the Financial Markets Act;
- 1.2.23 **"Certificated MTN Zakhele Futhi Ordinary Share"** means a MTN Zakhele Futhi Ordinary Share which is evidenced by way of a certificate, and which is recorded as such in the Company's securities register (maintained by the Company, or on behalf of the Company, from time to time);
- 1.2.24 **"Codes"** means the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Minister of Trade and Industry on 2 October 2013 in terms of Section 9 of the BBBEE Act;
- 1.2.25 **"CSDP"** means a person that holds in custody and administers securities or an interest in securities, and that has been accepted in terms of section 31 of the Financial Markets Act by a Central Securities Depository as a participant in that Central Securities Depository;
- 1.2.26 **"Custodian"** a Nominee identified and appointed from time to time by MTN and/or MTN Zakhele Futhi (with MTN's approval) to fulfil the functions assigned to it under the Relationship Agreement;
- 1.2.27 **"Deed of Adherence"** means a deed of adherence, which is to be completed and executed by each person who acquires any MTN Zakhele Futhi Ordinary Shares, whereby such person undertakes to be bound by the provisions of the Relationship Agreement materially in the form or on the terms set out in Annexe B thereto (or such other form and terms as MTN may permit from time to time), including through the BEE Listing Terms and Conditions and associated BEE Market Notice);
- 1.2.28 **"Dispose"** or **"Sell"** means sell, alienate, donate, exchange, distribute, transfer or in any manner whatsoever dispose of, whether voluntarily or involuntarily, or enter into any arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned sale, alienation,

donation, exchange, distribution, transfer or disposal (including but not limited to any transaction, or series of arrangements or transactions, or the cession of any rights or the granting of any option or any similar transaction/s which would have the same economic effect), or realise any value in respect of, and **"Sale"** and **"Sold"** shall be construed accordingly;

- 1.2.29 **"EC Act"** means the Electronic Communications Act, 36 of 2005;
- 1.2.30 **"Effective Date"** means the earlier of the date on which (i) MTN Zakhele Futhi Ordinary Shares are allotted and issued to or on behalf of Black Participants under the MTN Zakhele Futhi Public Offer or (ii) MTN Zakhele Futhi Ordinary Shares are issued to MTN Zakhele pursuant to the New Empowerment Transaction;
- 1.2.31 **"Eligible MTN Zakhele Futhi Shareholder"** means (a) any Black Participant who is accepted to become a MTN Zakhele Futhi Shareholder (whether pursuant to the MTN Zakhele Futhi Public Offer, the MTN Zakhele Unwinding Scheme or otherwise) (i) in MTN's (or its nominee's, delegatee's or agent's) sole discretion, such acceptance to be recorded in writing; or (ii) pursuant to any decision made by the ESTC (or its nominee, delegatee or agent) as contemplated in the Relationship Agreement (unless MTN determines otherwise on written notice to the ESTC in respect of such decision), such acceptance by the ESTC to be recorded in writing, (and in the case of either (i) or (ii), including, if applicable, through the BEE Listing and its related processes, for example BEE Verification); and (b) such other persons as are permitted from time to time (and for the period so permitted) under clauses 9, 10, 11, 13 and 14 of the Relationship Agreement to hold, or have Beneficial Interests in, MTN Zakhele Futhi Ordinary Shares, including the Warehousing MTN Zakhele Futhi Shareholders;
- 1.2.32 **"Empowerment Requirements"** means, in relation to a person, the requirements, obligations, commitments and/or measurement methodologies applicable from time to time to such person or its business or assets, relating to ownership of (and/or economic interest in) and control by Black Persons of the person or its business or assets under the BEE Legislation, and including any requirements, obligations, commitments and/or measurement methodologies which apply (i) pursuant to any Licenses held by the person and/or (ii) in respect of the present or future grant, extension, renewal, conversion or the like in respect of any Licenses issued or applied for by the person;

- 1.2.33 **"Empowerment Segment"** has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.2.34 **"Encumbrance"** means, in relation to any property, includes any pledge, security cession, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over or in respect of that property or class of property (or any part or proceeds thereof), or any lending of that property, and the words **"Encumber"**, **"Encumbered"** and **"Encumbering"** shall have corresponding meanings;
- 1.2.35 **"ESTC"** or **"Empowerment Share Transfer Committee"** means MTN or such committee/s or third party/ies or third party agent/s as MTN may nominate from time to time to fulfil the functions assigned to the ESTC under the Relationship Agreement;
- 1.2.36 **"ICASA"** means the Independent Communications Authority of South Africa, a regulatory body established in terms of section 3 of the Independent Communications Authority of South Africa Act, 13 of 2000;
- 1.2.37 **"JSE"** means JSE Limited, registration number 2005/022939/06, a limited liability company duly registered and incorporated in South Africa being licensed in terms of section 9 of the Financial Markets Act;
- 1.2.38 **"JSE Listings Requirements"** means the Listings Requirements of the JSE as amended from time to time;
- 1.2.39 **"Licence"** means any license or other form of regulatory right or permission issued or granted by or under any Authority, including telecommunications licenses issued pursuant to the EC Act;
- 1.2.40 **"MTN"** means MTN Group Limited, registration number 1994/009584/06, a public company incorporated in accordance with the laws of the Republic of South Africa, the ordinary shares of which are listed on the main board of the stock exchange maintained by the JSE Limited;
- 1.2.41 **"MTN Consideration Shares"** means the MTN Shares which MTN Zakhele Shareholders may elect to receive in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme;
- 1.2.42 **"MTN Shares"** means ordinary shares with a par value of R0.0001 each in the issued share capital of MTN;

- 1.2.43 **"MTN SA Group"** means Mobile Telephone Networks Proprietary Limited and its South African subsidiaries from time to time and any other South African operating subsidiary of any of MTN, Mobile Telephone Networks Holdings Proprietary Limited and/or MTN International Proprietary Limited designated in writing by MTN to MTN Zakhele Futhi from time to time;
- 1.2.44 **"MTN Zakhele"** means MTN Zakhele (RF) Limited, registration number 2010/004693/06, a public company incorporated in accordance with the laws of the Republic of South Africa;
- 1.2.45 **"MTN Zakhele Board"** means the board of directors of MTN Zakhele, as constituted from time to time;
- 1.2.46 **"MTN Zakhele Futhi Consideration Shares"** means the MTN Zakhele Futhi Ordinary Shares which MTN Zakhele Shareholders may elect to receive in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme;
- 1.2.47 **"MTN Zakhele Futhi Empowerment Compliance Period"** means a period of eight years commencing on the Effective Date and ending on the Termination Date;
- 1.2.48 **"MTN Zakhele Futhi Ordinary Shares"** means ordinary shares of no par value in the issued share capital of the Company. For the avoidance of doubt, references to the MTN Zakhele Futhi Ordinary Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 1.2.49 **"MTN Zakhele Futhi Preference Share Subscription Agreement"** means the BIC2 preference share subscription agreement entered into or to be entered into between BFC2, the Company and the Preference Share Agent, as amended and restated from time to time, in terms of which BFC2 will subscribe for, and the Company will allot and issue to BFC2, the MTN Zakhele Futhi Preference Shares;
- 1.2.50 **"MTN Zakhele Futhi Preference Shares"** means the cumulative redeemable non-participating no par value preference shares in the issued Share Capital of the Company having the rights, terms, limitations and preferences set out in Annexe A to this MOI;

- 1.2.51 **"MTN Zakhele Futhi Public Offer"** means the public offering in terms of which Black Participants are invited to subscribe for and beneficially own MTN Zakhele Futhi Ordinary Shares, subject to the qualification criteria of such offer as set out in the prospectus published in respect of the offer;
- 1.2.52 **"MTN Zakhele Futhi Shareholder"** means:
- 1.2.52.1 in the case of Certificated MTN Zakhele Futhi Ordinary Shares, the Person who is the registered holder of such MTN Zakhele Futhi Ordinary Shares from time to time; and
- 1.2.52.2 in the case of Uncertificated MTN Zakhele Futhi Ordinary Shares, the Person who is the Beneficial Holder of such Uncertificated MTN Zakhele Futhi Ordinary Shares from time to time and includes, where applicable and as the context requires, the Nominee Holder thereof;
- 1.2.53 **"MTN Zakhele Futhi Shareholder Minimum Investment Period"** means a period of 3 (three) years commencing on the Effective Date and ending on the third anniversary of the Effective Date;
- 1.2.54 **"MTN Zakhele Futhi Verification Agent"** means, during the BEE Listing Period, a person appointed from time to time by MTN and/or MTN Zakhele Futhi (with the consent of MTN), to fulfil the functions assigned to it under the Relationship Agreement in respect of performing BEE Verification;
- 1.2.55 **"MTN Zakhele Ordinary Shares"** means ordinary shares having a par value of R0.01 in the issued share capital of MTN Zakhele;
- 1.2.56 **"MTN Zakhele Shareholders"** means the Persons registered as holders of MTN Zakhele Ordinary Shares from time to time in its certificated or uncertified share register including, as the context requires, the beneficial holders thereof;
- 1.2.57 **"MTN Zakhele Unwinding Scheme"** means the scheme of arrangement pursuant to section 114 of the Companies Act to be proposed by the MTN Zakhele Board as between MTN Zakhele and the MTN Zakhele Shareholders, for the purposes of MTN Zakhele buying back and cancelling all of the MTN Zakhele Ordinary Shares from MTN Zakhele Shareholders (other than the MTN Zakhele Ordinary Share to be held by MTN or its subsidiary), and pursuant to which scheme and subject to the terms thereof each MTN Zakhele Shareholder will be entitled to elect to

receive (i) MTN Consideration Shares, (ii) cash, (iii) MTN Zakhele Futhi Consideration Shares; or (iv) a combination of the MTN Consideration Shares, cash and MTN Zakhele Futhi Consideration Shares;

- 1.2.58 **"New Empowerment Transaction"** means the empowerment transaction or series of transactions given effect to under the Transaction Documents pursuant to which, *inter alia*, (i) MTN Zakhele Futhi will subscribe for MTN Shares, up to an approximate maximum of 4% of the diluted issued share capital of MTN (measured as at the "Signature Date", as such term is defined in the Relationship Agreement), (ii) MTN Zakhele Futhi will issue MTN Zakhele Futhi Ordinary Shares to Black Participants pursuant to the MTN Zakhele Futhi Public Offer and (iii) MTN Zakhele will acquire and distribute MTN Zakhele Futhi Ordinary Shares to MTN Zakhele Shareholders who elect to receive MTN Zakhele Futhi Consideration Shares pursuant to the MTN Zakhele Unwinding Scheme should such scheme be implemented;
- 1.2.59 **"Nominee"** has the meaning given to this term in the Financial Markets Act;
- 1.2.60 **"Nominee Holder"** in relation to any Uncertificated MTN Zakhele Futhi Ordinary Shares, the Person in whose name such shares are registered from time to time as a Nominee;
- 1.2.61 **"Relationship Agreement"** means the written agreement titled "Relationship Agreement" entered into between the Company and MTN on 9 August 2016, as amended from time to time (and which is binding on the MTN Zakhele Futhi Shareholders who are bound thereby from time to time in accordance with its terms);
- 1.2.62 **"Stokvel"** means an association of two or more members who contribute funds to the association on a regular basis, the funds of which are paid, in whole or in part, to its members in accordance with its rules, whether on a rotational basis or upon the occurrence of an event or otherwise;
- 1.2.63 **"Strate Rules and Directives"** means the depository rules of Strate made or amended from time to time in accordance with section 35 of the Financial Markets Act, and any depository directive issued or amended by Strate in accordance with such depository rules from time to time;
- 1.2.64 **"Termination Date"** the eighth anniversary of the Effective Date;

- 1.2.65 **"Transaction Documents"** has the meaning given to this term in Annexe A to this MOI;
- 1.2.66 **"Uncertificated MTN Zakhele Futhi Ordinary Share"** means a MTN Zakhele Futhi Ordinary Share which is dematerialised (ie not evidenced by way of a certificate), and which is recorded as such in MTN Zakhele Futhi's uncertificated securities register (as administered and maintained by a CSDP or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of MTN Zakhele Futhi's securities register);
- 1.2.67 **"Verification Terms and Conditions"** means the terms, conditions, restrictions and limitations applicable to each Verified MTN Zakhele Futhi Shareholder and acknowledged and accepted by such Verified MTN Zakhele Futhi Shareholder during the BEE Verification process;
- 1.2.68 **"Verified MTN Zakhele Futhi Shareholder"** means during the BEE Listing Period, any Eligible MTN Zakhele Futhi Shareholder which MTN Zakhele Futhi (or its nominee, delegate or agent) has notified has successfully completed BEE Verification, and whose BEE Verification status has not expired or been withdrawn in accordance with the Verification Terms and Conditions or the Relationship Agreement;
- 1.2.69 **"Warehousing MTN Zakhele Futhi Shareholder"** means any person who acquires MTN Zakhele Futhi Ordinary Shares pursuant to clause 11 of the Relationship Agreement (where, pursuant to such acquisition, such person is designated by MTN as a "Warehousing MTN Zakhele Futhi Shareholder") or pursuant to clauses 13 and/or 14 of the Relationship Agreement;
- 1.3 unless the context otherwise requires:
- 1.3.1 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.3.2 **"Companies Act"** the Companies Act, No. 71 of 2008;
- 1.3.3 **"the Company"** or **"MTN Zakhele Futhi"** means MTN Zakhele Futhi (RF) Limited (formerly named BIC B Limited), registration number 2016/26637/06, a public company incorporated in accordance with the laws of the Republic of South Africa;

- 1.3.4 **"Conditions"** means the limitations to the powers of, and special conditions applicable to, the Company set out in clause 7;
- 1.3.5 **"Debenture"** means the debentures, stock, debentures bonds, loan stock, notes and other debt Securities from time to time of the Company;
- 1.3.6 **"Deliver"** means to deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 37 (*Notices*) and the Companies Act;
- 1.3.7 **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by any Person;
- 1.3.8 **"Finance Documents"** has the meaning given to this term in Annexe A to this MOI;
- 1.3.9 **"Financial Markets Act"** means the Financial Markets Act, No 19 of 2012 as amended, or any legislation which replaces it;
- 1.3.10 **"Incorporated Provisions"** means the terms of the Relationship Agreement, as set out in clause 2 of this MOI;
- 1.3.11 **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in Annexe C for easy reference but which does not form part of this MOI for purposes of interpretation) which shall apply not only to Directors and Alternate Directors but also to members of Board committees and members of Audit committees and Prescribed Officers and the secretary of the Company;
- 1.3.12 **"MOI"** means this Memorandum of Incorporation, as amended or replaced from time to time;
- 1.3.13 **"MTN ~~Appointed~~ Nominated Directors"**, means the Directors (and, as applicable, Alternate Directors) ~~appointed~~ nominated by MTN for appointment pursuant to clause 24.3 of this MOI;
- 1.3.14 **"Paid Up"** means paid up or credited as paid up;
- 1.3.15 **"Refinancing Agreements"** has the meaning given to this term in the MTN Zakhele Futhi Preference Share Subscription Agreement;
- 1.3.16 **"Regulations"** means regulations published pursuant to the Companies Act from time to time;

- 1.3.17 **"Round Robin Resolution"** means:
- 1.3.17.1 in respect of a resolution of the Shareholders or any class thereof, a resolution adopted in accordance with section 60 of the Companies Act, including any signature thereof by counterparts, and includes any other resolution of Shareholders (or any class thereof) which may from time to time be permitted under the Companies Act to be adopted other than by way of a meeting;
- 1.3.17.2 in respect of a resolution of the Directors, a resolution passed in accordance with section 74 of the Companies Act;
- 1.3.18 **"Share Capital"** means the share capital of the Company from time to time (including, where applicable, any share premium);
- 1.3.19 **"Writing"** or **"Written"** includes Electronic Communication but, as regards any Shareholder, only to the extent that such Holder has notified the Company of an Electronic Address;
- 1.4 capitalised terms defined in Annexe A shall, unless the context provides otherwise, for the purposes of clause 7 and Annexe A to this MOI (but for the avoidance of doubt no other clauses), have the meanings ascribed to them in Annexe A;
- 1.5 subject to the provisions of Annexe A where applicable, in the event that the day for payment of any amount due or scheduled or required to be paid in terms of this MOI should fall on a day which is not a Business Day, the relevant day for payment shall be the immediately succeeding Business Day;
- 1.6 references to Holders represented by proxy shall include Holders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.7 references to Holders entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representative or acting in the manner prescribed in, or permitted under, the Companies Act;
- 1.8 all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.9 the headings are for reference purposes only and shall not affect the interpretation of this MOI;

- 1.10 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the other genders, and words importing Persons shall include created entities (corporate or not);
- 1.11 if any term is defined within the context of any particular clause in this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.12 save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.13 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI;
- 1.14 if and for so long as the Company might be a Wholly-owned Subsidiary, nothing shall be read or interpreted as removing or restricting the rights granted to such a company in terms of section 57(2) of the Companies Act;
- 1.15 if any provision of this MOI is in conflict with the Incorporated Provisions, as incorporated herein, the Incorporated Provisions shall prevail. For the avoidance of doubt, the provisions of this MOI shall be deemed to be in conflict with the Incorporated Provisions to the extent that this MOI permits (in whole or in part) the doing of anything by the Company and/or the MTN Zakhele Futhi Shareholders which is not permitted by the Incorporated Provisions, or which would or is reasonably likely to give rise to a Call Event;
- 1.16 the clauses of this MOI must further be read in conjunction with each other and, accordingly, clauses which permit the Company (through its Directors or in general meeting) or its Shareholders to do or not do something ("**permissive clauses**") and clauses of general application must be read subject to any clause(s) and/or and provisions of the MOI which expressly limit or qualify the permitted actions or powers of the Company and/or its Shareholders or which require the Company and/or its Shareholders to do something ("**limiting provisions**"), notwithstanding that no specific reference is made in the permissive clauses or clauses of general application to such limiting provisions;

- 1.17 the expression "meeting" shall include an adjourned meeting;
- 1.18 unless a contrary intention clearly appears from the context:
- 1.18.1 any reference to a "person" or "Person" includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, Stokvel, firm, partnership, trust, close corporation, company, undertaking, joint venture, government or public entity, or other incorporated or unincorporated entity or association;
- 1.18.2 references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act, save that the interpretation and application of these definitions in the Companies Act shall not be limited to South African companies;
- 1.18.3 the use of the words "including", or "in particular" or "for example" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s. Such references to "including", "in particular" and "for example" shall not be construed restrictively but shall mean "including, but without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing" and "for example, but without prejudice to the generality of the foregoing" respectively;
- 1.18.4 any reference to any "law" (including the BEE Legislation), or any part thereof, shall be a reference to:
- 1.18.4.1 any law, legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any Authority, which have force of law or which it would be an offence not to obey, and any regulations and subordinate legislation promulgated thereunder, and the common law; and
- 1.18.4.2 such "laws" (as defined above) as interpreted, amended, modified, re-enacted, consolidated or substituted from time to time, whether before or after the Effective Date, including, without limitation, in relation to the repealed provisions of the Companies Act 1973 (Act No. 61 of 1973) ("**the Old Companies Act**"), the provisions of the Companies Act which, in substance, replace those repealed provisions of the Old Companies Act; and

- 1.18.5 any reference to any document or agreement (including this MOI) shall be a reference to that document or agreement as at the Effective Date (or, if later, as at the date on which such agreement is first concluded or document first executed), and as novated, amended, reinstated or substituted from time to time thereafter in accordance with its terms;
- 1.19 references to a "day" shall be to any calendar day;
- 1.20 unless stated otherwise, where any reference is made in this MOI to the consent or agreement of or election by any person, such consent, agreement or election may, for the avoidance of doubt, be made, given or withheld, conditionally or unconditionally, in the relevant person's sole and absolute discretion;
- 1.21 any references in clause 2 of this MOI to the Empowerment Requirements and/or the "requirements" of or under the BEE Legislation shall, in addition to any mandatory obligations thereunder, include:
- 1.21.1 any matter, fact or circumstance which is measured or evaluated thereunder, and the target set in respect of such matter, fact or circumstance, whether or not such target or measurement criteria are mandatory under law; and
- 1.21.2 any matter, fact or circumstance which may result in a right or benefit being withdrawn or detrimentally varied or not being granted and/or may result in a significant liability being imposed,
- in each case in relation solely to the ownership, economic interest and/or control elements by Black People under the BEE Legislation and such requirements shall be considered to be satisfied or met or complied with in relation to the matters, facts or circumstances referred to in clause 1.21.1 only if the measurement or evaluation return or result in an outcome which is the maximum favourable outcome which can apply to such category of matters, facts or circumstances (and, accordingly, meets in full any target set therefor), but excluding any bonus points, and shall be considered to be satisfied or met or complied with in relation to the matters, facts of circumstances referred to in clause 1.21.2 only if the relevant right or benefit is granted in full, without qualification or penalty, is not withdrawn or detrimentally varied, and if no significant liability is imposed;
- 1.22 references to "control" (without capitalisations) in clauses 1.2 and 1.21 shall include any manner by which the business or affairs of a company or entity may be directed, in whole or in part (including where such part is capable, when aggregated with the rights of other persons, of conferring effective control (eg securities carrying voting

rights)), and includes through the exercise of rights under an agreement, the exercise of rights as a holder of securities and the right to appoint persons who (alone or together with other persons) have the authority or power to direct the business or affairs of the company or entity; and

- 1.23 the phrase "by a resolution of Shareholders passed in accordance with the Companies Act" shall mean (i) where the form of the resolution (ie whether it is an Ordinary Resolution or a Special Resolution) is mandatorily specified in the Companies Act, the relevant resolution as so specified, or (ii) where the form of the resolution is either not specified in the Companies Act or is permitted under the Companies Act to be by way of an Ordinary Resolution, such resolution shall be an Ordinary Resolution.

2. INCORPORATED PROVISIONS OF THE RELATIONSHIP AGREEMENT

- 2.1 Without derogating from the provisions of the Relationship Agreement, but subject to clause 2.2 below, each of the provisions of:

- 2.1.1 clause 7 (*BIC2 Shareholder undertakings*) of the Relationship Agreement;
- 2.1.2 clause 8 (Restriction on Disposal or Encumbrance of *BIC2* Ordinary Shares) of the Relationship Agreement;
- 2.1.3 clause 9 (*Death*) of the Relationship Agreement;
- 2.1.4 clause 10 (*Involuntary sequestration / liquidation*) of the Relationship Agreement;
- 2.1.5 clause 11 (*Call Option in favour of MTN*) of the Relationship Agreement;
- 2.1.6 clause 12 (*Calculation of the Call Reference Price*) of the Relationship Agreement;
- 2.1.7 clause 13 (*Funding of BIC2 by MTN*) of the Relationship Agreement;
- 2.1.8 clause 14 (No restriction on MTN, its nominees or subsidiaries holding *BIC2* Ordinary Shares, and founding shareholders) of the Relationship Agreement;
- 2.1.9 clause 15 (*MTN ~~representation on~~ nominations to the BIC2 Board*) of the Relationship Agreement;
- 2.1.10 clause 16 (*BIC2 Ordinary Shares certificates*) of the Relationship Agreement;

- 2.1.11 clause 19 (*BIC2 Ownership Certificate of Compliance*) of the Relationship Agreement;
- 2.1.12 clause 20 (*Listing*) of the Relationship Agreement;
- 2.1.13 clause 21 (Maximum shareholding);
- 2.1.14 clause 22 (*Refinancing*); and
- 2.1.15 in so far as such clause relates to the foregoing provisions, clause 24 (*Breach*) of the Relationship Agreement,

are hereby incorporated into this MOI and binding on the Company and its Shareholders hereunder (including in relation to the grant of rights in favour of MTN and other third parties, as specified in such provisions) in accordance with the stipulated terms as if such terms were expressly set out herein. Each such clause and sub-clause so incorporated will be numbered with reference to the clause by which it is so incorporated and assigned a sub-clause number equal to the relevant clause number in the Relationship Agreement, and clause cross-references within such clauses are amended accordingly. (For example, clause 16.1 of the Relationship Agreement will be incorporated as clause 2.1.10.16.1.)

- 2.2 The application of any of the Incorporated Provisions or part thereof shall, however, for the purposes of this MOI be capable of being suspended or waived, whether for a specific matter, or class of matters, or generally, and whether conditionally or unconditionally, and from time to time: (i) by Written notice from MTN to the Company in respect of matters stipulated for the benefit of MTN, and/or in respect of rights specifically accorded to it and (ii) in respect of any other matter, with the Written consent of MTN and, if prior to the MTN Zakhele Futhi Discharge Date, the Preference Share Agent.

3. **CALCULATION OF BUSINESS DAYS**

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by –

- 3.1 excluding the day on which the first such event occurs;
- 3.2 including the day on or by which the second event is to occur; and
- 3.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 3.1 and 3.2 respectively.

4. PUBLIC COMPANY

The Company is a Public Company as it is not a Private Company or a State-Owned Company or a Personal Liability Company.

5. OBJECTS

5.1 Subject to the provisions of clause 7, the main objects of the Company are solely:

5.1.1 to enter into the Transaction Documents, the BEE Transaction Documents and (subject to the provisions of the Transaction Documents) the Refinancing Agreements to which it is a party;

5.1.2 to exercise its rights and perform its obligations under the Transaction Documents, the BEE Transaction Documents and (subject to the provisions of the Transaction Documents) the Refinancing Agreements to which it is a party;

5.1.3 to carry on the business of holding and managing and generally dealing in MTN Shares, cash and such other property as may be received or acquired solely by virtue of or in relation to the MTN Shares, in each case in accordance with and subject to the Transaction Documents and the BEE Transaction Documents to which it is a party;

5.1.4 receiving and distributing dividends and other distributions in terms of the Transaction Documents and the BEE Transaction Documents to which it is a party; and

5.1.5 such other main activities and/or objectives as may, subject to the Finance Documents to which the Company is a party, be approved in Writing by MTN in its sole discretion from time to time.

5.2 The Company shall have unlimited ancillary objects.

6. POWERS AND CAPACITY OF THE COMPANY

6.1 The Company has all of the powers and capacity of an Individual to enable it to realise its main and ancillary objects in clause 5, subject to the limitations and exclusions set out in clause 7 of this MOI.

6.2 Notwithstanding the omission from this MOI of any provision to that effect, the Company may, subject to any limitations in clause 6.1, do anything which the Companies Act empowers a company to do if so authorised by its MOI.

7. RESTRICTIVE CONDITIONS

7.1 The following special conditions shall apply to the Company (and the authority of the Directors, officers and other organs and bodies of the Company shall be limited accordingly):

7.1.1 capitalised terms used in this clause 7.1.1 and in clause 7.3 shall bear the meanings ascribed to them in this clause 7.1.1 and/or in clause 1.4 read with Annexe A. Notwithstanding anything to the contrary contained in this MOI, until the later of the date on which:

7.1.1.1 all the MTN Zakhele Futhi Preference Shares and/or BFC2 Preference Shares have been redeemed and the Company has paid the Indemnified Amount, if any, into the BIC2 Security Account and/or the SARS Amount, if any, into the BIC2 Security Account (as contemplated in clause 14 of the MTN Zakhele Futhi Preference Share Subscription Agreement) ("**Preference Share Discharge Date**"); and

7.1.1.2 all obligations of the Company to MTN and any MTN Acceded Nominee under each Transaction Document to which the Company is a party have been unconditionally discharged in full ("**MTN Discharge Date**");

7.1.1.2.1 no (a) agreement, or undertaking, whether directly or indirectly given, issued or entered into by the Company (including, without limitation, any deed or instrument, arrangement, undertaking or understanding whatsoever), (b) indebtedness incurred including, without limitation any indebtedness incurred by the Company entering into or becoming a party to any guarantee, suretyship or indemnity, (c) assent to or any participation in any amendment to its issued or authorised Share Capital or issue of any new Shares in its capital or (d) assumption of any obligation of whatsoever nature and howsoever arising, shall be of any force and effect unless, and until, reduced to Writing and signed by the Company, MTN and, if prior to the Preference Share Discharge Date, the Preference Share Agent save for:

7.1.1.2.1.1 the entry into, the performance of its obligations and enforcement of its rights under and in terms of (a) the Transaction Documents to which the Company is a party and/or which may be required to render same unconditional;

- and (b) all documents, waivers, agreements, instruments or certificates required to be delivered or performed by the Company under and in terms of the Transaction Documents and implementation thereof, whether in order to render the same unconditional, or otherwise; (c) any amendments or reinstatement of any of the Transaction Documents; and (d) any Refinancing Agreements;
- 7.1.1.2.1.2 the incurral of costs and expenses in the ordinary course and scope of its business and which are necessary for the maintenance of its corporate existence (including, without limitation, any audit and/or legal fees) and which are permitted by the Transaction Documents;
- 7.1.1.2.1.3 exercising any voting or other rights attaching to the Subject Shares or the Additional Shares (as defined in Annexe A to this MOI);
- 7.1.1.2.1.4 issuing of MTN Zakhele Futhi Ordinary Shares in its Share Capital to the MTN Zakhele Futhi Ordinary Shareholders;
- 7.1.1.2.1.5 the appointment of Professional Advisors;
- 7.1.1.2.1.6 the borrowing of BIC2 Subordinated Loans;
- 7.1.1.2.1.7 the opening of the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Top-Up Loan Account, the Subject Share Securities Account, the BIC2 Public Offer Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account and any other bank account referred to in the Account Bank and Agency Agreement in terms of which *inter alia* each of the Security Custodian, the Calculation Agent, the Account Bank, the BIC2 Administrator and the BFC2 Administrator are appointed to perform certain functions in relation to the Transaction Documents, all on the terms and conditions contained therein;
- 7.1.1.2.1.8 rendering tax and other statutory returns; and
- 7.1.1.2.1.9 the carrying on the business of holding and managing the MTN Shares, cash and other property as may be received or

acquired solely by virtue of or in relation to the MTN Shares, subject to the provisions of the Transaction Documents;

- 7.1.2 without derogating from the restrictions set out in clause 7.1.1 and in addition thereto, (i) prior to the Preference Share Discharge Date, except pursuant to or as expressly required or permitted under the Transaction Documents to which it is a party or with the prior Written consent of the Preference Share Agent; and (ii) during the MTN Zakhele Futhi Empowerment Compliance Period, except pursuant to or as is expressly required or permitted under the BEE Transaction Documents to which it is a party, unless, and until, the Company obtains the prior Written consent of MTN, none of the following shall be of any force or effect (and, to the maximum extent permitted by law, the powers of the board of Directors of the Company and each other body and organ shall be restricted accordingly):
- 7.1.2.1 any alteration to the Company's issued or authorised Share Capital including issuing any options or instruments which are by nature equity;
 - 7.1.2.2 any variation, amendment or other alteration by the Company of the rights attaching to any class of Shares in its Share Capital;
 - 7.1.2.3 any cancellation, repurchase, consolidation, subdivision or extension of any rights offer over its Shares;
 - 7.1.2.4 any incurrence of any material indebtedness other than as is permitted in terms of the BEE Transaction Documents;
 - 7.1.2.5 any change by the Company to this MOI (to the extent such is within the Company's power) or the Company agreeing to an amendment to this MOI;
 - 7.1.2.6 any holding by the Company of any investment or conducting of any business, other than as set out in clause 5 of this MOI;
 - 7.1.2.7 any Disposal of or Encumbrance or entry into of any other transaction in respect of the MTN Shares (or any rights and interests therein);
 - 7.1.2.8 any Disposal of or Encumbrance of or ceasing to exercise direct control over the whole or any material part of the Company's present or future undertakings, assets, rights or revenues, whether by one or a series of transactions related or not;

- 7.1.2.9 any amendment or modification by the Company, or consent by the Company to the amendment or modification of, any BEE Transaction Document to which it is a party, the effect of which is or may, in the opinion of MTN, be materially adverse to the rights, obligations or interests of MTN and/or any member of the MTN SA Group, including under the BEE Legislation;
- 7.1.2.10 any entry into by the Company of any merger, consolidation, or amalgamation or similar restructuring;
- 7.1.2.11 making any loans, the granting by the Company of any credit or giving of any guarantee, insurance or indemnity to or for the benefit of any person or otherwise voluntarily assuming any liability by the Company, whether actual or contingent, in respect of any obligation of any other person; and/or
- 7.1.2.12 undertaking, issuing or entering into, whether directly or indirectly, by the Company of any agreement, arrangement, undertaking or understanding whatsoever except only as is necessary for or reasonably incidental to the purpose of conducting the limited business permitted in clause 5 or for exercising its rights, or performing its obligations, under the BEE Transaction Documents to which it is a party.
- 7.2 For the avoidance of doubt, subject to compliance with clauses 6 and 7, the Company shall have the capacity and authority to negotiate, enter into and implement the Transaction Documents, the BEE Transaction Documents and the Refinancing Agreements to which it is a party.
- 7.3 No amendment, variation, modification, supplement or deletion of clause 7.1.1 shall be effective unless reduced to Writing and executed by (i) the Company, MTN and the Preference Share Agent if such amendment, variation, modification, supplement or deletion occurs prior to the Preference Share Discharge Date; and (ii) the Company and MTN if such amendment, variation, modification, supplement or deletion occurs after the Preference Share Discharge Date.
- 7.4 No amendment, variation, modification, supplement or deletion of clause 7.1.2 and/or of any provision of this MOI shall be effective unless specifically consented to in Writing by MTN and, if such amendment, variation, modification, supplement or deletion is proposed prior to the Preference Share Discharge Date, also the prior Written consent of the Preference Share Agent.

7.5 There are no other conditions applicable to the Company.

8. AMENDMENTS TO THE MOI

8.1 During the MTN Zakhele Futhi Empowerment Compliance Period, each of the MTN Zakhele Futhi Shareholders undertakes in favour of MTN that she shall not vote in favour of any resolution for the amendment or substitution or other alteration of this MOI, except in accordance with the Conditions, unless the amendment, substitution or alteration thereto, as the case may be, has received the prior Written approval of MTN and, if such amendment, substitution or alteration is requested prior to the Preference Share Discharge Date, the Preference Share Agent.

8.2 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall, subject to clause 8.1, be effected in accordance with section 16(1) and 16(4) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site (if any).

9. THE MAKING OF RULES

The Board is not entitled to make any Rules.

10. AUTHORISED SECURITIES

10.1 The Company is authorised to issue (and, as applicable, re-issue if and upon any such issued Shares being cancelled or repurchased and otherwise being restored to authorised, but unissued, Shares) the following numbers and classes of Shares (which includes Shares already issued at any time):

10.1.1 300 000 000 ordinary Shares of no par value, designated as "MTN Zakhele Futhi Ordinary Shares", which shall have voting rights, on the basis set out in clause 21.23, in respect of every matter that may be decided by voting and which shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the MTN Zakhele Futhi Ordinary Shares as regards Distributions, except as otherwise provided under the conditions of issue of such other class of Shares (provided that, for the avoidance of doubt, no such other Shares shall rank ahead of or *pari passu* with the MTN Zakhele Futhi Preference Shares);

- 10.1.2 3 200 000 cumulative redeemable non-participating preference Shares of no par value, designated as "MTN Zakhele Futhi Preference Shares", having the preferences, rights, limitations and other terms set out in Annexe A to this MOI.
- 10.2 Save as otherwise expressly limited in this MOI, and subject to the provisions of clause 7 hereof, the Board shall have the powers under section 36(3) of the Companies Act where so permitted by MTN in Writing (whether in relation to a specific exercise of such power/s or generally), and otherwise such powers shall vest in the Shareholders in general meeting.
- 10.3 Subject to the provisions of the Companies Act and this MOI (including clause 2 and clause 7), any Share in the Company may be issued with or have attached thereto such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, return of Share Capital or otherwise, and (subject as provided by the Companies Act) such limited or suspended rights to voting as the Company in general meeting may from time to time determine; provided that the Company may by Resolution passed at a general meeting direct that Shares shall be issued by the Directors on such terms and conditions, and with such rights, privileges or restrictions attached thereto as the Directors may determine; provided further that special rights previously conferred on the Holders of existing Shares or class of Shares shall not be varied other than in accordance with clauses 10.4 and Annexe A (as applicable).
- 10.4 Save as otherwise provided for in Annexe A, and subject to clause 7, the Companies Act and any other provisions of this MOI, no preferences, rights, limitations and other terms for the time being attached to any class of Shares of the Company may (unless otherwise provided by the terms of the Shares of that class) whether or not the Company is being wound up, be varied in any manner adverse to the Holders of that class of Shares, unless:
- 10.4.1 the prior Written consent of the Holders of not less than 75% (seventy five per cent) of the issued Shares of that adversely affected class has been obtained; or
- 10.4.2 a Special Resolution has been passed by the Holders of that adversely affected class of Shares with the support of more than 75% (seventy five per cent) of the voting rights exercised on the Special Resolution at a separate meeting of the Holders of that class; or

- 10.4.3 in relation to clause 2 (and any consequential provisions of any other clause which refers to or incorporates the provisions of such clause 2), by any agreement between MTN and the Company which is approved by a Special Resolution passed by the Holders of MTN Zakhele Futhi Ordinary Shares with the support of more than 65% (sixty five per cent) of the Voting Rights exercised on the Special Resolution (or such higher percentage or basis as MTN and the Company may agree to in writing from time to time), at a separate meeting of the Holders of the MTN Zakhele Futhi Ordinary Shares at that meeting.
- 10.5 The provisions of this MOI relating to Shareholders Meetings shall *mutatis mutandis* apply to any such separate meeting except that:
- 10.5.1 subject to section 63(3)(a) of the Companies Act, the necessary quorum shall (unless there is only 1 (one) Shareholder of such class) be Holders holding or representing by proxy not less than 25% (twenty five per cent) of the issued Shares of that class in respect of MTN Zakhele Futhi Ordinary Shares and 25% (twenty five per cent) of the issued Shares of that class in respect of any other class of Shares; and
- 10.5.2 if at any adjourned meeting such quorum is not present, the Shareholders Present shall form a quorum and that any Holder of Shares of the class Present in person or by proxy may demand a poll and, on a poll, shall have one vote for each Share of the class of which she is a Holder.
- 10.6 Save as otherwise provided for in Annexe A, and subject to clause 7, the creation or issue of additional Shares ranking in all respects as to capital and dividends after the MTN Zakhele Futhi Preference Shares and/or MTN Zakhele Futhi Ordinary Shares shall not be deemed to be a variation of the preferences, rights, limitations and other terms of the Holders of any MTN Zakhele Futhi Preference Shares and/or MTN Zakhele Futhi Ordinary Shares.
- 10.7 Save as otherwise provided for in Annexe A, and subject to clause 7, the preferences, rights, limitations and other terms conferred upon the Holders of the Shares of any class shall not, unless otherwise expressly provided by the conditions of issue of such Shares, be deemed to be varied by the creation or issue of further Shares ranking *pari passu* therewith.
- 10.8 Save as otherwise provided for in Annexe A, and subject to clause 7, the preferences, rights, limitations and other terms conferred upon the Holders of the

MTN Zakhele Futhi Ordinary Shares shall not be deemed to be varied by the creation or issue of Shares ranking in priority to such Shares, whether as to Distributions, capital or otherwise.

11. INCREASE OR REDUCTION OF SHARE CAPITAL

Subject to clauses 10.2 and 7:

- 11.1 the Company may from time to time by a resolution of Shareholders passed in accordance with the Companies Act increase the number of its Shares of no par value to such number, as the resolution shall prescribe;
- 11.2 the Company may increase its Share Capital, if any, constituted by Shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of Shares;
- 11.3 except insofar as is otherwise provided by the conditions of issue or by this MOI, any capital raised by the creation and issue of new Shares shall be considered part of the original capital, and shall be subject to the provisions herein contained with reference to transfer and transmission and otherwise;
- 11.4 the Company may from time to time by a resolution of Shareholders passed in accordance with the Companies Act reduce its Share Capital, stated capital or any capital redemption reserve fund in any manner permitted by law and, without prejudice to the generality of the power hereby conferred, may cancel any Paid-Up capital which is lost or unrepresented by available assets, or pay off any Paid-Up capital which is in excess of the wants of the Company. Any capital which is in excess of the wants of the Company may be paid in cash or may be satisfied either wholly or in part, by the distribution of specific assets, including Paid-Up Shares or debentures of any other company or in any way specified in the Special Resolution reducing the capital. If any difficulty arises in regard to the distribution, the Directors may settle the same as they think expedient, and in particular may fix the value for distribution of such specific assets and they may determine that cash payments shall be made to any Shareholders on the basis of the value so fixed in order to adjust the rights of all parties and they may vest any such assets in trustees upon such trusts as the Directors deem appropriate. If as a result of a reduction of capital, any Shareholder becomes entitled to specific assets and does not claim such assets within 6 (six) months from the date she became so entitled, the Directors may sell such assets and, after deducting the expenses of such sale, hold the balance of the proceeds of the sale for the account of the Shareholder. All

unclaimed amounts due as a result of a reduction of capital or a consolidation of any Shares in terms of clause 12 may be invested or otherwise utilised by the Directors for the benefit of the Company until claimed.

11.5 Dividends shall be declared in the currency of South Africa. The Directors may from time to time make such regulations as they may think fit in regard to the payment of dividends to Shareholders having registered addresses outside South Africa, and such regulations may provide for the payment of such dividends in any foreign currency and the rate of exchange at which such payment shall be made and such other matters as the Directors may think fit.

11.6 Upon a resolution of Shareholders passed in accordance with the Companies Act authorising the Directors to apply for the name of the Company to be struck off the register of companies, the Directors may nominate a trustee or trustees as paying agent for the final repayment of capital and may pay to such trustee or trustees for distribution to Shareholders in accordance with their rights the full amount of such final repayment of capital, and may also pay to such trustee or trustees all amounts unclaimed in respect of dividends and repayments of capital not forfeited pursuant to the provisions of the MOI to be held by such trustee or trustees for the benefit of the Persons entitled thereto until the said amounts are claimed by such Persons, or until such amounts become liable to or qualify for payment into the Guardians Fund in accordance with the provisions of the Administration of Estates Act, No 66 of 1965, as amended. Upon payment to the trustee or trustees pursuant hereto, the Company shall be absolved from all or any claims which any Shareholder may have had in respect of such dividends or repayments of capital and the said Shareholder's rights shall thenceforth be confined to making claim upon the said trustee or trustees or the Guardians Fund as the case may be.

12. ALTERATIONS OF CAPITAL AND ALTERATION OF THIS MOI

12.1 Subject to clauses 10.2 and 7, the Company may from time to time by a resolution of Shareholders passed in accordance with the Companies Act, and subject to applicable law:

12.1.1 consolidate and reduce the number of the issued Shares;

12.1.2 increase the number of its issued Shares without an increase of its stated capital;

12.1.3 cancel any Shares which, at the time of passing of the resolution in respect thereof, have not been taken or agreed to be taken by any Person, and

diminish the amount of its Share Capital by the amount of the Shares so cancelled;

- 12.1.4 vary, modify or amend any preferences, rights, limitations and other terms attached to any Shares whether issued or not (including the conversion of any Shares into preferred Shares) subject to any consent or sanction required from the Holders of that and/or any other class of shares under clause 10;
 - 12.1.5 approve the acquisition of Shares or debentures issued by the Company or, if the Company is a subsidiary, by its holding company, which approval may be a general approval subject to the provisions of the Companies Act or a specific approval for a particular transaction;
 - 12.1.6 convert all its Shares of one class having a par value into stated capital constituted by Shares of no par value;
 - 12.1.7 convert any of its Shares, whether issued or not, into Shares of another class, including preference Shares which are, or at the option of the Company are liable to be redeemed; and/or
 - 12.1.8 amend, vary or substitute this MOI, or any part thereof.
- 12.2 Anything done in pursuance of clause 12.1 shall be done in a manner provided and subject to any conditions imposed by the Companies Act and subject to any restrictions in the MOI, so far as they shall be applicable, and so far as they shall not be applicable, in accordance with the terms of the resolution authorising the same and, so far as such resolution shall not be applicable, in such manner as the Directors deem most expedient. Whenever as the result of any consolidation a fraction of a Share is included in the holding of any Shareholder such fraction (together, where applicable, with other fractions included in holdings of other Shareholders) may be sold by some person appointed by the Directors for that purpose and the proceeds thereof paid to such Shareholder. When a fraction is sold as aforesaid the person so appointed to sell it shall be deemed to be authorised to make such sale the validity of which shall not be questioned. The Directors shall cause a rateable proportion of the net proceeds of the sale to be accounted for to the Holders whose fractions of Shares are so sold.

13. ACQUISITION BY THE COMPANY OF ITS OWN SHARES

Subject to the Companies Act and this MOI (including clause 7), the Company may from time to time acquire Shares in itself and may also permit a subsidiary of the Company to acquire Shares issued by the Company.

14. AUTHORITY TO ISSUE SECURITIES

Subject to clauses 2 and 7:

- 14.1 subject to the provisions of the Companies Act and this MOI, any Shares for the time being unissued (whether forming part of the original or any increased capital) shall, subject as hereinafter provided, only be disposed of or dealt with in such manner as the Company in general meeting may have directed or may direct by way of a resolution of Shareholders passed in accordance with the Companies Act, but so that the Company in general meeting may resolve that all or any of such Shares shall be at the disposal of the Directors, who may in such event allot, grant options over, or otherwise deal with or dispose of them to such Persons at such times, and generally on such terms and conditions, and for such consideration, whether payable in cash or otherwise, as they may think proper;
- 14.2 any such approval under clause 14.1 may be in the form of a general authority to the Directors, whether conditional or unconditional, to allot or issue any such Shares in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Shares. Any such general authority shall endure for the period provided in the Ordinary or Special Resolution in question. Any unexercised general authority may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time;
- 14.3 notwithstanding clause 14.1, the Board shall have the power to issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act;
- 14.4 the Board shall determine the terms of any trust agreement contemplated in section 40(5)(b) of the Companies Act in respect of the issue of Shares which is subject to the provisions of such sub-section of the Companies Act;
- 14.5 the Board shall have the power to allot and issue any secured or unsecured debt instruments and any unissued Securities (other than Shares); provided that the Directors shall not have the power to allot or issue same without the prior approval of a resolution of Shareholders passed in accordance with the Companies Act

where such debt instruments or relevant Securities have or are proposed to have special privileges as contemplated in section 43(3) of the Companies Act or where the relevant Securities are convertible to Shares; and

- 14.6 the provisions of section 39(2) of the Companies Act shall not apply to any issue of Shares by the Company.

15. CERTIFICATED AND UNCERTIFICATED SECURITIES AND SECURITIES REGISTER

- 15.1 Subject to clause 15.2, during the MTN Zakhele Futhi Empowerment Compliance Period, unless otherwise agreed between MTN and MTN Zakhele Futhi:

- 15.1.1 all MTN Zakhele Futhi Ordinary Shares shall be held as Uncertificated MTN Zakhele Futhi Ordinary Shares in the name of the Custodian to act as the registered Nominee Holder, holding such Uncertificated MTN Zakhele Futhi Ordinary Shares for and on behalf of each MTN Zakhele Futhi Shareholder who will be the Beneficial Holder thereof. Each MTN Zakhele Futhi Shareholder agrees to be bound by the provisions of the Strate Rules and Directives, as well as any applicable custody / mandate arrangement with the Custodian (to the extent that they relate to them (save that they shall not be liable for the fees of the Custodian in respect of the custodial role during the MTN Zakhele Futhi Shareholder Minimum Investment Period)), in respect of her MTN Zakhele Futhi Ordinary Shares;

- 15.1.2 if and to the extent that, for whatever reason, any MTN Zakhele Futhi Ordinary Share is at any time held as either (i) a Certificated MTN Zakhele Futhi Ordinary Shares or (ii) an Uncertificated MTN Zakhele Futhi Ordinary Share with the registered holder being someone other than the Custodian, and MTN and MTN Zakhele Futhi have not agreed that MTN Zakhele Futhi Ordinary Shares may be held otherwise than as Uncertificated MTN Zakhele Futhi Ordinary Shares with the Custodian, then each relevant MTN Zakhele Futhi Shareholder unconditionally undertakes to MTN and the Company and agrees that:

- 15.1.2.1 it shall, at MTN's election, either:

- 15.1.2.1.1 allow any Certificated MTN Zakhele Futhi Ordinary Share to be dematerialised into an Uncertificated MTN Zakhele Futhi Ordinary Share within 14 (fourteen) days of receipt of a Written notice from MTN requesting that such MTN Zakhele Futhi Ordinary Share be so dematerialised, and the relevant MTN Zakhele

Futhi Shareholder hereby unconditionally and irrevocably consents to, and authorises and instructs MTN and/or the Company to procure the dematerialisation, with such Uncertificated MTN Zakhele Futhi Ordinary Share to be held in the name of a Nominee Holder appointed by the Company to act as the registered holder; or

15.1.2.1.2 deposit the share certificate in respect of any Certificated MTN Zakhele Futhi Ordinary Share with the Custodian within 14 (fourteen) days of receipt of a written notice from MTN requesting that the share certificate for such MTN Zakhele Futhi Ordinary Share be so deposited with the Custodian, who will retain such Certificated MTN Zakhele Futhi Ordinary Share for so long as it is held in such form;

15.1.2.2 for so long as such MTN Zakhele Futhi Ordinary Share is held in uncertificated form other than in the name of the Custodian, it shall only be deposited with a CSDP approved of by MTN, it being recorded that MTN shall require that such MTN Zakhele Futhi Shareholder's mandate agreement with the relevant CSDP recognises the relevant terms and restrictions in respect of such MTN Zakhele Futhi Ordinary Share as contained in the Relationship Agreement and this MOI; and

15.1.2.3 it shall not give any instructions to its CSDP which would constitute or result in a contravention of the Relationship Agreement or this MOI; and

15.1.2.4 a MTN Zakhele Futhi Shareholder will, subject to clause 15.2, be entitled to rematerialise her Uncertificated MTN Zakhele Futhi Ordinary Shares in accordance with section 49(6) read with section 54 of the Companies Act, whereupon her MTN Zakhele Futhi Ordinary Shares will be held in certificated form subject to the principles recorded in clause 15.1.2.1.2.

15.2 During the BEE Listing Period, the MTN Zakhele Futhi Ordinary Shares may be held as Certificated MTN Zakhele Futhi Ordinary Shares or Uncertificated MTN Zakhele Futhi Ordinary Shares; provided that:

15.2.1 if a MTN Zakhele Futhi Ordinary Share is held as a Certificated MTN Zakhele Futhi Ordinary Share, the share certificate in respect thereof shall be deposited with and retained by the Custodian for so long as it is held in such form; and

- 15.2.2 if a MTN Zakhele Futhi Ordinary Share is held as an Uncertificated MTN Zakhele Futhi Ordinary Share:
- 15.2.2.1 the relevant MTN Zakhele Futhi Shareholder's mandate agreement with the person providing custody and administration services in respect of such Uncertificated MTN Zakhele Futhi Ordinary Share (including any nominee or intermediary of such service provider) must be an Approved Nominee and shall accordingly be required to recognise the restrictions imposed upon the holding and/or transfer of such MTN Zakhele Futhi Ordinary Share as contained in the Verification Terms and Conditions; and
- 15.2.2.2 the relevant MTN Zakhele Futhi Shareholder shall not give any instruction to its broker or CSDP (or any nominee or intermediary thereof or Nominee Holder) which would constitute or result in a contravention of the provisions of the BEE Listing Terms and Conditions.
- 15.2.3 should the BEE Listing be terminated for whatsoever reason at any time during the MTN Zakhele Futhi Empowerment Compliance Period, the provisions of clauses 15.2.1 and 15.2.2 shall cease to apply and the provisions of clause 15.1 shall thereupon again apply for the remainder of the MTN Zakhele Futhi Empowerment Compliance Period.
- 15.3 The Company shall maintain a Securities Register which shall reflect:
- 15.3.1 the number of Securities authorised and the number available to be issued and the date of authorisation;
- 15.3.2 the total number of Securities of a class that have been issued, re-acquired or surrendered to the Company;
- 15.3.3 the number of Securities of that class that are the subject of options or conversion rights which, if exercised, would require Securities of that class to be issued.
- 15.4 As soon as practicable after:
- 15.4.1 issuing any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of every class of Securities evidenced by certificates that it has issued:

- 15.4.1.1 the names and addresses and identity numbers of the Persons to whom the Securities were issued;
- 15.4.1.2 those Persons' Electronic Addresses who have furnished them;
- 15.4.1.3 the number and class of Securities issued to each of them, the date of issue, distinguishing numbers and the Consideration;
- 15.4.1.4 the total number of Securities of a class held by any Person;
- 15.4.1.5 the date on which any such Securities were transferred by the Holder or by operation of law to another Person or re-acquired by or surrendered to the Company;
- 15.4.1.6 the number of, and prescribed circumstances relating to, any Securities:
 - 15.4.1.6.1 that have been placed in trust as contemplated in section 40(5)(b)(ii) of the Companies Act by reason of not having been fully paid for; or
 - 15.4.1.6.2 whose transfer has been restricted;
- 15.4.1.7 as regards debt instruments as contemplated in section 43 of the Companies Act:
 - 15.4.1.7.1 the number of those Securities still in issue;
 - 15.4.1.7.2 the names and addresses of the Holders of the Securities;
- 15.4.2 the re-acquisition or surrender of any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities re-acquired or surrendered:
 - 15.4.2.1 the date on which the Securities were re-acquired or surrendered to the Company;
 - 15.4.2.2 the distinguishing number or numbers of any certificated Securities re-acquired or surrendered to the Company;
 - 15.4.2.3 the Consideration for which the Securities were re-acquired by, or surrendered to the Company; and
 - 15.4.2.4 the name of the Person from or by whom the Securities were re-acquired or surrendered, as the case may be;

15.4.3 transferring any Securities, the Company must enter or cause to be entered in its Securities Register, in respect of Securities evidenced by certificates that it has transferred:

15.4.3.1 the name and address of the transferee;

15.4.3.2 the description of the Securities, or interest transferred;

15.4.3.3 the date of the transfer;

15.4.3.4 the value of any Consideration still to be received by the Company on each Security or interest, in the case of a transfer of Securities the subscription price for which has not been fully paid; and

15.4.3.5 any other information contemplated in clause 15.4.1, any reference to issue being read as a reference to transfer,

provided that such entry may only be made where to do so is in compliance with section 51(6) of the Companies Act

15.5 Securities certificates shall be issued in such manner and form as the Directors shall from time to time prescribe save that they must, if and to the extent so required under the Companies Act:

15.5.1 state on the face:

15.5.1.1 the name of the Company;

15.5.1.2 the name of the Person to whom the Securities were issued;

15.5.1.3 the number and class of Shares and the designation of the series, if any, evidenced by that certificate; and

15.5.1.4 any restriction on the transfer of the Securities evidenced by that certificate;

15.5.2 be signed by two Persons authorised by the Board by autographic, mechanical or electronic means.

15.6 Each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.

- 15.7 Each Holder shall be entitled to 1 (one) certificate for all the Securities of a particular class registered in his name, or to several certificates, each for a part of such Securities.
- 15.8 A certificate for Securities registered in the names of 2 (two) or more Persons shall be Delivered (but clause 37.3 shall not apply) to the Person first named in the Securities Register and Delivery of a certificate for Securities to that Person shall be a sufficient Delivery to all joint Holders.
- 15.9 If a certificate for Securities is defaced, lost or destroyed, it may be renewed, on such terms, as to evidence and indemnity and payment of such fee as the Directors think fit, and (in case of defacement) on delivery of the old certificate to the Company.
- 15.10 A Person:
- 15.10.1 acquires the rights associated with any particular Securities of the Company when that Person's name is entered in the Company's Securities Register as a Person to whom those Securities have been issued or transferred; and
- 15.10.2 ceases to have the rights associated with any particular Securities of the Company when the transfer to another Person, re-acquisition by the Company, or surrender to the Company of those Securities has been entered in the Company's Securities Register.
- 15.11 The Directors may suspend the registration of transfers of Shares (other than the MTN Zakhele Futhi Preference Shares) during the period up to 14 (fourteen) Business Days immediately preceding any general meeting of the Company and at any other times, provided that the periods of suspension at such other times shall not in any 1 (one) year exceed 60 (sixty) Business Days. During the BEE Listing Period, the provisions of this clause 15.11 shall be subject to the JSE Listings Requirements.
- 15.12 The Directors may decline to register any transfer unless:
- 15.12.1 the instrument of transfer, duly stamped, is lodged with the Company, accompanied (unless the Directors either generally or in any particular case otherwise resolve) by the certificate of the Shares to which it relates, and such other evidence as the Company may reasonably require to show the right or capacity of the transferor to make the transfer and of the transferee to accept it;

- 15.12.2 the Securities transfer tax (if any) thereon has been paid;
- 15.12.3 the instrument of transfer is in respect of only one class of Share;
- 15.12.4 the provisions of any law affecting transfer have been complied with; and
- 15.12.5 (where applicable) the provisions of clause 17 have been complied with.
- 15.13 In addition to clause 15.12, during the MTN Zakhele Futhi Empowerment Compliance Period, save as MTN may otherwise permit by prior Written consent, no transfer of MTN Zakhele Futhi Ordinary Shares may be effected, and the Directors shall decline to register any such transfer, unless:
- 15.13.1 such transfer is permitted in accordance with clauses 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.1.8 and/or 2.1.13;
- 15.13.2 the transferee has agreed to be bound by the terms of the Relationship Agreement and this MOI by executing a Deed of Adherence (or otherwise is bound in a form and on terms to the reasonable satisfaction of MTN), and has delivered such Deed of Adherence to the secretary.
- 15.14 If the Directors refuse to register a transfer they shall within 30 (thirty) Business Days after the date on which the instrument of transfer was lodged, send to the transferee notice of the refusal.
- 15.15 Nothing contained in this MOI (but for the avoidance of doubt subject to clause 17) shall preclude the Company from recognising a renunciation of the allotment of any Share by the allottee in favour of some other Person.
- 15.16 As regards any uncertificated Securities issued by the Company at any time, the Company shall comply with the provisions of sections 52 to 55 (both sections inclusive) of the Companies Act.

16. **BENEFICIAL INTERESTS**

- 16.1 The Company shall permit Securities to be held by one Person for the Beneficial Interest of another pursuant to section 56(1) of the Companies Act; provided that:
- 16.1.1 subject to clause 16.1.2, during the MTN Zakhele Futhi Empowerment Compliance Period, Securities shall not be held by one Person for the Beneficial Interest of another without the prior Written consent of MTN; and

- 16.1.2 during the BEE Listing Period, the prohibition contemplated in clause 16.1.1 shall cease to apply; provided, however, that the Person who holds any MTN Zakhele Futhi Ordinary Shares for the Beneficial Interest of another as a condition to such holding recognises the terms and restrictions transferrin respect of such MTN Zakhele Futhi Ordinary Share as contained in the Relationship Agreement, this MOI and the Verification Terms and Conditions, and the relevant MTN Zakhele Futhi Shareholder shall procure that the registered holder shall not give any instructions in respect of such MTN Zakhele Futhi Ordinary Shares which would constitute or result in a contravention of the Relationship Agreement, this MOI and the Verification Terms and Conditions.
- 16.2 Save as set out in the specific terms and conditions of any documents in terms of which Securities other than Shares are to be issued, the Company shall not permit Securities to be voted upon by the holder of a Beneficial Interest who does not hold a proxy appointment from the Holder, notwithstanding any agreement permitting the holder of the Beneficial Interest to vote the Securities to the exclusion of the Holder between the Holder and the holder of the Beneficial Interest.
- 16.3 If any Securities of the Company are registered in the name of a Person who is not the Holder of the Beneficial Interests in all such Securities of the Company, that registered Holder of Securities must disclose:
- 16.3.1 the identity of the person on whose behalf the Securities are held; and
- 16.3.2 the identity of each Person with a Beneficial Interest in the Securities so held, the number and class of Securities held for each such Person with a Beneficial Interest, and the extent of each such Beneficial Interest,
- in accordance with the time periods as stipulated in section 56(4) of the Companies Act.

17. RESTRICTIONS ON THE SALE OR ENCUMBRANCE AND TRANSMISSION OF MTN ZAKHELE FUTHI ORDINARY SHARES

Notwithstanding any provision of clause 15 (and such clause being read as subject to this clause 17), during the MTN Zakhele Futhi Empowerment Compliance Period, the Disposal and/or Encumbrance and/or transfer and/or registration of transfer of MTN Zakhele Futhi Ordinary Shares shall be subject to and, as applicable and where permitted, shall be effected in accordance with clauses 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5 (read with clause 2.1.6), 2.1.7, 2.1.8 and 2.1.13 (incorporating respectively the provisions of clauses 7.1.1,

7.1.2, 8, 9, 10, 11 (read with clause 12), 13, 14 and 21 of the Relationship Agreement), as read with clause 2.2.

18. TRANSMISSION OF SECURITIES BY OPERATION OF LAW

Subject to the laws relating to securities transfer tax upon or in respect of the estates of deceased Persons and the administration of the estates of insolvent and deceased Persons and Persons under disability, and subject to the provisions of clause 2:

- 18.1 the parent or guardian or curator of any Holder who is a minor; or
- 18.2 the trustee of an insolvent Holder; or
- 18.3 the liquidator of a body corporate Holder; or
- 18.4 the tutor or curator of a Holder under disability; or
- 18.5 the executor or administrator of the estate of a deceased Holder; or
- 18.6 any other Person becoming entitled to any Securities held by a Holder by any lawful means other than transfer in terms of this MOI,

shall, upon production of such evidence as may be required by the Directors, have the right either:

- 18.7 to exercise the same rights and to receive the same Distributions and other advantages to which she would be entitled if she was the Holder of the Securities registered in the name of the Holder concerned; or
- 18.8 herself to be registered as the Holder in respect of those Securities and to make such transfer of those Securities as the Holder concerned could have made, but the Directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the Securities by the Holder.

19. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 19.1 The Directors shall cause to be kept such books of account as are prescribed by the Companies Act. The books of account shall be kept at the Registered Office, or at such other place or places as the Directors think fit, and such books shall always be open to the inspection of the Directors.
- 19.2 The Company shall prepare its Financial Statements in accordance with the standards prescribed under the Companies Act from time to time and, where so

required under the Companies Act, shall have its annual Financial Statements audited.

19.3 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Holders and holders of Beneficial Interests not being Directors are entitled to inspect and take copies of pursuant to the Companies Act.

19.3.1 this MOI;

19.3.2 amendments to this MOI;

19.3.3 records in respect of Directors;

19.3.4 Accounting Records required to be maintained by the Company;

19.3.5 reports to Annual General Meetings;

19.3.6 annual Financial Statements;

19.3.7 notices and minutes of Shareholders Meetings;

19.3.8 communications generally to Holders; and

19.3.9 the Securities Register.

19.4 No Holder (other than as a Director), in its capacity as such, shall have any right by virtue of this MOI to inspect any account or book or document of the Company, except as conferred by applicable law or as authorised by the Directors (including pursuant to any contract approved by the Directors). The Company shall notify the Holders of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Holder requests a copy of the annual Financial Statements, the Company shall make same available to such Holder free of charge.

20. AUDIT COMMITTEE AND AUDITOR

20.1 The Company shall, to the extent so required under the Companies Act, appoint an audit committee in accordance with the provisions of the Companies Act.

20.2 The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors

must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting.

21. SHAREHOLDERS MEETINGS AND ROUND ROBIN RESOLUTIONS

21.1 The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, deal with such matters as are required under the Companies Act to be dealt with at such meeting.

21.2 The Company shall, as determined by the Board, either:

21.2.1 hold a Shareholders Meeting in order to consider one or more resolutions; or

21.2.2 as regards such resolution/s that could be voted on at a Shareholders Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution.

21.3 A Company must hold a Shareholders Meeting or propose the proposed resolution by way of a Round Robin Resolution:

21.3.1 at any time that the Board is required by the Companies Act or this MOI to refer a matter to Holders entitled to vote thereon for decision; or

21.3.2 whenever required to fill a vacancy on the Board other than in accordance with clause 24.15.

21.4 The Board or a Shareholder/s holding not less than 10% (ten per cent) of the voting rights attached to the ordinary Shares, or not less than 3 (three) of the ordinary Shareholders or, if the Company has no Directors, any single Holder entitled to vote, may, whenever he thinks fit, convene a Shareholders Meeting or propose the proposed resolution by way of a Round Robin Resolution. A Shareholders Meeting must be convened or the Board must propose the proposed resolution by way of a Round Robin Resolution if one or more Written and signed demands for such a Shareholders Meeting or Round Robin Resolution is/are delivered to the Company, and:

21.4.1 each such demand describes the specific purpose for which the Shareholders Meeting is proposed; and

- 21.4.2 in aggregate, demands for substantially the same purpose are made and signed by the Holders at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholders Meeting.
- 21.5 Round Robin Resolutions will be passed if signed by Persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Shareholders Meeting.
- 21.6 Every Shareholders Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Shareholders Meeting entirely by Electronic Communication, or to provide for participation in a Shareholders Meeting by Electronic Communication in the manner contemplated in section 63(2) of the Companies Act, is not limited or restricted; except, to the extent so permitted by law, for if and for so long as there are more than 20 Holders of MTN Zakhele Futhi Ordinary Shares any meeting at which such Shareholders are entitled to participate and Vote shall not be held by electronic communication as contemplated in section 63(2)(a) of the Companies Act.
- 21.7 Subject to section 62(2A) of the Companies Act, a Shareholders Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company (but for this purpose clause 37.3 shall not apply) to all Holders entitled to vote or otherwise entitled to receive notice in accordance with, and subject to, the provisions of the Companies Act.
- 21.8 Business may be transacted at any Shareholders Meeting only while a quorum is present.
- 21.9 The quorum necessary for the commencement of a Shareholders Meeting shall be sufficient MTN Zakhele Futhi Shareholders present at the Shareholders Meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the voting rights attaching to the MTN Zakhele Futhi Ordinary Shares that are entitled to be exercised in respect of at least one matter to be decided at the Shareholders Meeting, provided that if the Company has more than 2 (two) Persons entitled to vote, the Shareholders Meeting may not begin unless additionally at least 3 (three) ~~additional~~ Persons entitled to vote are Present.
- 21.10 Subject to the provisions of clause 2.6.2 of Annexe A, a matter to be decided at the Shareholders Meeting may not begin to be considered unless sufficient MTN Zakhele Futhi Shareholders are present at the Shareholders Meeting to exercise, in

aggregate, at least 25% (twenty five per cent) of all of the voting rights attaching to the MTN Zakhele Futhi Ordinary Shares that are entitled to be exercised on that matter at the time the matter is called on the agenda for the Shareholders Meeting, provided that if the Company has more than 2 (two) Persons entitled to vote, a matter may not begin to be debated, unless additionally at least 3 (three) ~~additional~~ Persons entitled to vote, are Present.

21.11 Subject to section 64(5) of the Companies Act, if within 30 (thirty) minutes from the time appointed for the Shareholders Meeting to commence, a quorum is not present or if the quorum requirements in clause 21.10 cannot be achieved for any one or more matters, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 21.15, for 1 (one) week to the same time on the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday or such other earlier or later date, time and place as the chairperson of the meeting may announce at the meeting or may subsequently specify by notice to Shareholders. If at such adjourned Shareholders Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Shareholders Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.

21.12 A Shareholders Meeting, or the consideration of any matter being debated at the Shareholders Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the voting rights:

21.12.1 held by all of the Persons who are present at the Shareholders Meeting at the time; and

21.12.2 that are entitled to be exercised on at least one matter remaining on the agenda of the Shareholders Meeting, or on the matter under debate, as the case may be.

21.13 An adjournment contemplated in clause 21.12 may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Holders), as resolved by Ordinary Resolution at the Shareholders Meeting.

21.14 A Shareholders Meeting may not be adjourned beyond the earlier of:

21.14.1 the date that is 120 (one hundred and twenty) Business Days after the Record Date of notice for the relevant Shareholders Meeting; or

21.14.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

21.15 No further notice is required to be Delivered by the Company of a Shareholders Meeting that is postponed or adjourned as contemplated in clauses 21.11 and 21.12, unless the location or time for the Shareholders Meeting is different from:

21.15.1 the location or time of the postponed or adjourned Shareholders Meeting; or

21.15.2 a location or time announced at the time of adjournment, in the case of an adjourned Shareholders Meeting.

21.16 Business may be transacted at any Shareholders Meeting only while the quorum requirements are met.

21.17 The chairperson, if any, of the Board shall preside as chairperson at every Shareholders Meeting. If there is no such chairperson, or if at any Shareholders Meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Shareholders Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director present at the Shareholders Meeting, or if no Director is present at the Shareholders Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Shareholders Meeting.

21.18 At any Shareholders Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by:

21.18.1 not less than 2 (two) Persons having the right to vote on that matter; or

21.18.2 a Person/s entitled to exercise not less than 1/10th (one tenth) of the total voting rights entitled to vote on that matter; or

21.18.3 by Person/s entitled to vote at the meeting and holding in the aggregate not less than 1/10th (one tenth) of the issued Share Capital of the Company; or

21.18.4 the chairperson,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the

votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Shareholders Meeting or adjourned Shareholders Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Shareholders Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Shareholders Meeting, whose decision shall be final and conclusive.

- 21.19 If a poll is duly demanded it shall be taken in such manner as the chairperson directs save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Shareholders Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to count the relevant votes and declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Shareholders Meeting, shall be deemed to be the resolution of the Shareholders Meeting at which the poll is demanded. The demand for a poll shall not prevent the continuation of a Shareholders Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 21.20 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Shareholders Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 21.21 Any Person entitled to a Share in terms of clause 18 may vote at any Shareholders Meeting in respect thereof in the same manner as if he were the Holder of that Security: provided that (except where the Directors have previously accepted his right to vote in respect of that Security, and such recognition has not been withdrawn by the Directors) at least 24 (twenty four) hours before the time of holding the Shareholders Meeting at which he proposes to vote, he shall have satisfied the Directors that he is entitled to exercise the right referred to in clause 18.
- 21.22 Every resolution of Shareholders is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the voting rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five per cent) of the voting rights exercised on the resolution.

- 21.23 Subject to any rights or restrictions attaching to any class or classes of Securities, on a show of hands a Person entitled to vote Present at the Meeting shall have only 1 (one) vote, irrespective of the number of voting rights that Person would otherwise be entitled to Exercise. A proxy shall irrespective of the number of holders of Securities entitled to vote he represents have only 1 (one) vote on a show of hands. On a poll every Person entitled to vote who is Present at the Meeting or represented by proxy, shall have 1 (one) vote for every Share held by him.
- 21.24 The Persons entitled to attend and vote at general meetings of the Company shall be:
- 21.24.1 the Shareholders, subject to the provisions of the MOI as regards joint Holders of Shares and subject to any special terms upon which any Share may be issued or may for the time being be held (including the holders of the MTN Zakhele Futhi Preference Shares which shall only be entitled to attend and vote at general meetings in the circumstances and on the matters set out in Annexe A); and
- 21.24.2 proxies of the Persons referred to in clause 21.24.1, duly appointed in the manner prescribed in this MOI.
- 21.25 Every such Person shall also be entitled to speak at general meetings and, subject to clause 21.18, to demand a poll.
- 21.26 In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names stand in the Securities Register.
- 21.27 No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but, subject to the remaining provisions of this clause 21.27, it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in Writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the Company. The appointment of a proxy shall be suspended at any time if and to the extent that the Holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Holder entitled to so vote.
- 21.28 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall

be delivered to the Company or any Person which it has identified in the notice of meeting as being a Person to whom proxies may be delivered on behalf of the Company, at any time before the proxy exercises any rights of the Holder entitled to vote at a Shareholders Meeting, ~~48 (forty eight) hours prior to the time scheduled for the commencement of the Shareholders Meeting~~ (or, as applicable, adjourned or postponed Shareholders Meeting), ~~or such shorter period as may be specified in the notice convening the meeting.~~

- 21.29 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in Writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholders Meeting or postponed or adjourned Shareholders Meeting at which the proxy is used.
- 21.30 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in Writing, or such other form as the Company may make available from time to time.
- 21.31 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue (including any new resolution, whether procedural or substantive, which is put to a vote at the Shareholder Meeting), the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.
- 21.32 Notwithstanding anything to the contrary contained in this section entitled "Shareholders Meetings and Round Robin Resolutions", the requirements for convening and holding meetings in respect of the Securities other than Shares, including notices, notice periods, requisition rights, quorum provisions, adjournment, proxies, voting rights and voting percentages for adoption of resolutions, shall be in accordance with the specific terms and conditions set out in the document(s) in terms of which such Securities are issued, insofar as such terms and conditions amend the relevant provisions of the Companies Act and to the extent such amendments are permissible in terms of the Companies Act, and otherwise in accordance with the provisions of the Companies Act.

22. STIPULATIONS IN FAVOUR OF MTN; AND TRANSFER OF MTN'S RIGHTS

- 22.1 Each representation, warranty, undertaking and/or right in this MOI given to or in favour of MTN constitutes an irrevocable and unconditional contractual undertaking or right for the benefit of MTN and accordingly the relevant representations, warranties, undertakings and/or rights (and related terms of this MOI) may at any time be accepted (either expressly, tacitly or by conduct) and are intended to be, and shall be enforceable at any time, by MTN (by virtue of such provisions constituting a *stipulatio alteri* or a contract for the benefit of a third party) as though MTN was a party to this MOI in relation to such representations, warranties, undertakings and/or rights (and related terms of this MOI).
- 22.2 In addition to any other rights of MTN under this MOI and/or the Relationship Agreement (in particular the rights under clause 2.1.5 (incorporating clause 11 of the Relationship Agreement) and in respect of the ESTC or the MTN Zakhele Futhi Verification Agent), MTN shall be entitled on notice to the Company to transfer any right or rights which it has under this MOI (including any warranties and/or representations given in its favour; any discretions, elections, notices or consents which it may exercise, make or give; and the rights under clauses 2.1.1, 2.1.5, 2.1.9 and/or 2.1.11 (incorporating clauses 7, 11, 15 and 19 of the Relationship Agreement) and/or delegate any obligations which it has hereunder to any of its subsidiaries and/or to any member/s of the MTN SA Group, or to any other single person nominated by it, or to such subsidiary/ies and/or members of the MTN SA Group and such one other person, as it deems fit.

23. RECORD DATE

- 23.1 The Board shall determine, and publish, the Record Date in accordance with the provisions of the Companies Act and, if applicable, the rules of the applicable Central Securities Depository.
- 23.2 If at any time the Board fails to determine a Record Date, the Record Date for the relevant matter shall be as determined in accordance with the provisions of the Companies Act.

24. ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND VACANCIES

- 24.1 The minimum number of Directors shall, subject to any further requirements under section 66(2) of the Companies Act, be 3 (three). During the MTN Zakhele Futhi Empowerment Compliance Period, unless MTN consents otherwise in Writing, the maximum number of Directors shall be the greater of (i) 5 (five) and (ii) the least

number of persons which are required under the Companies Act to constitute the Company's board having regard to its composition from time to time and the mandatory requirements of the Companies Act. Any failure by the Company at any time to have the minimum number of Directors, or its exceeding the maximum number, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.

24.2 Subject to ~~MTN's rights to appoint Directors~~ maintaining the 2 (two) positions on the Board available (subject to the further provisions of this MOI) to be filled by the MTN Nominated Directors during the MTN Zakhele Futhi Empowerment Compliance Period pursuant to clause 24.3 and any appointments made thereunder, the number of Directors which constitute the Board (within the restrictions in clause 24.1) shall be set by Ordinary Resolution from time to time; provided that where the number of Directors which constitute the Board is reduced to below the number of Directors which then hold office then, unless the resolution by which the number of Directors was reduced provides otherwise, the Director/s appointed most recently in time (and their associated Alternate Director/s) (and as between persons of equal seniority, the person to retire shall, in the absence of agreement between those of equal seniority, be selected from among them by lot) shall cease to hold office such that the exact reduced number of positions is filled, and not exceeded.

24.3 Further to clause 2.1.9, during the MTN Zakhele Futhi Empowerment Compliance Period:

24.3.1 2 (two) positions on the Board shall be reserved for persons appointed from time to time pursuant to the provisions of this clause 24.3 ("Reserved Positions"):

24.3.2 in respect of each Reserved Position which at any time is vacant for any reason, MTN shall be entitled to ~~nominate~~ ~~appoint, remove and replace~~ ~~2 (two) Directors to the Board of the Company a person~~ (and ~~his/her~~ ~~their~~ respective alternates) to be appointed to such position. Any such nomination shall be made in writing to the Board:

24.3.3 if the person nominated by MTN to fill the vacancy of a Reserved Position (and/or act as Alternate Director in respect of such Reserved Position, as the case may be) is approved by the Board (which approval it may give or withhold in its discretion), then the Board shall appoint the person to fill such vacancy (and/or act as Alternate Director, as the case may be) pursuant to the provisions of clause 24.15 and, upon such appointment the relevant Director

(and her Alternate, as applicable) shall hold the position as an ~~the~~ MTN Nominated ~~Appointed~~ Directors";

24.3.4 in making such nomination, MTN shall ensure that ~~provided that~~ at least 1 (one) of ~~the such~~ MTN ~~Nominated Appointed~~ Directors is a Black Person;

~~24.3.1~~ 24.3.5 ~~the~~ MTN ~~Nominated Appointed~~ Directors shall:

~~24.3.1.1~~ 24.3.5.1 meet the criteria prescribed by law from time to time;

24.3.5.2 subject to the Companies Act, be entitled to vote on any matter under consideration by the Board, and in this regard shall each have the same number of votes as each other Director; ~~and~~

~~be nominated, appointed, removed, replaced and/or substituted by Written notice from MTN to the Company from time to time, and at any time in its sole discretion.~~

24.3.6 MTN may from time to time remove any MTN Nominated Director (and/or any Alternate Director to an MTN Nominated Director) from office. Such removal shall be effected by written notice to the Company, and shall be effective on and as from the date on which the notice is given to the Company or, if a later effective date is stated in the notice, such later date;

24.3.7 in addition to clause 24.3.6, each MTN Nominated Director (and/or any Alternate Director to an MTN Nominated Director) may be removed from office and shall be subject to retirement by rotation (and, if approved, re-election on such retirement) in all respects on the same terms and conditions as apply to the other Directors, and the provisions of clauses 24.7 and 25.1.8 shall accordingly apply to the MTN Nominated Directors;

24.3.8 for the avoidance of doubt, an MTN Nominated Director who is elected or re-elected to hold office pursuant to clauses 24.8 and/or 24.15 shall continue to hold such position as an MTN Nominated Director following such election and/or re-election, as the case may be, until such time as their term of office ceases (including pursuant to clauses 24.3.6 and/or 24.3.7); and

~~24.3.2~~ 24.3.9 the Directors (and their Alternate Directors) who hold office as "MTN Appointed Directors" as at the time of commencement of this amended clause 24.3 shall thereupon continue to hold office and shall be classified as MTN Nominated Directors until such time as their respective terms of office cease (including pursuant to clauses 24.3.6 and/or 24.3.7).

24.4 During the MTN Zakhele Futhi Empowerment Compliance Period:

~~24.4.1 the chairman of the Board shall be one of the MTN Appointed Directors as they may determine between them or, failing agreement, as MTN may specify;~~

~~24.4.2~~ 24.4.1 save in respect of the MTN ~~Appointed~~ Nominated Directors, no person shall be appointed as a Director (and any such appointee shall immediately cease to hold office) if:

~~24.4.2.1~~ 24.4.1.1 as a result of such appointment the majority of the Directors will not be Black People; or

~~24.4.2.2~~ 24.4.1.2 immediately prior to such appointment the minority of the Directors were Black People, unless such proposed Director is himself a Black Person.

24.5 During the MTN Zakhele Futhi Empowerment Compliance Period, no resolution proposing the appointment of a Director (other than an MTN Nominated Director) may be put to a general or Annual General Meeting and/or no nomination for a Director may be proposed at any general or Annual General Meeting (other than, in each case, a resolution or proposal for the re-election and/or confirmation of an existing Director, including a Director retiring by rotation):

24.5.1 if the election of such person as a Director would be in conflict with clause 24.4.1;

24.5.2 unless the intended resolution or proposal is notified to the Company not less than 14 (fourteen) Business Days prior to the meeting, and, if applicable, contains such information concerning the identity, background and qualifications of the proposed Director as Directors or the Company in general meeting may reasonably specify from time to time;

24.5.3 unless the intended resolution or proposal is in respect of a person who:

24.5.3.1 has been approved by either MTN or by the then current Directors of the Company;

24.5.3.2 will, if such proposed Director is appointed, meet the criteria to be an independent non-executive Director of the Company as contemplated in the Code of Good Governance Principles for South Africa - 2009 as laid out in the King III Report on Corporate Governance for South Africa – 2009 published by the Institute of Directors in Southern Africa, as such is amended and substituted from time to time ("**King III**"); and

- 24.5.3.3 meets the criteria to be classified as an independent non-executive director of MTN (as contemplated in King III) if he were to hold a directorship in such company and, further, is not (i) an existing employee of the MTN Group; (ii) a director of any company in the MTN Group or (iii) a beneficial owner of more than 2% (two per cent) of MTN Shares.
- 24.6 An Alternate Director may serve in the place of 1 (one) or more Director/s named in the resolution electing him during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any. Save for the Alternate Directors appointed under clause 24.3, Alternate Directors shall be elected by the Shareholders in general meeting and shall serve in office until the earlier of (i) the cessation of office of the Director in respect of whom they are an Alternate Director (for which purpose any such Director retiring by rotation and being re-elected shall not be deemed to have ceased office) or (ii) such Alternate Director otherwise ceasing to hold office as contemplated in clause 25.1 or otherwise pursuant to the Companies Act. An Alternate Director shall be entitled to act at all meetings and in all proceedings in which, and on all occasions when, the Director in respect of whom he acts as an Alternate Directors shall not act himself.
- 24.7 At the Annual General Meeting held in each year, 1/3 (one-third) of the Directors (~~other than~~including the MTN ~~Appointed~~Nominated Directors), or if their number is not a multiple of three then the number nearest to, but not less than 1/3 (one-third), shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who by reason of the provisions of clause 29.2 is not subject to retirement. The Directors to retire at each Annual General Meeting shall be those who have been longest in office since their last election or appointment. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot; provided that notwithstanding anything herein contained, if, at the date of any Annual General Meeting any Director will have held office for a period of 2 (two) years since his last election or appointment, he shall retire at such meeting, either as 1 (one) of the Directors to retire in pursuance of the foregoing or additionally thereto. A retiring Director shall act as a Director throughout the meeting at which he retires. The length of time a Director has been in office shall, save in respect of Directors appointed or elected in terms of the provisions of clause 24.15 be computed from the date of his last election or appointment. The length of time a Director has been in office shall be computed from his last election; appointment or

date upon which he was deemed re-elected. A Director retiring at a meeting shall retain office until the close or adjournment of the meeting.

24.8 Retiring Directors shall be Eligible for re-election. No person other than a Director retiring at the Annual General Meeting or a Director standing for confirmation pursuant to clause 24.15 shall, unless recommended by the Directors for election, be Eligible for election to the office of Director at any general meeting unless the provisions of clause 24.4 are complied with.

24.9 Subject to clauses 24.3 and 24.8, the Company in general meeting may fill the vacated offices by electing a like number of persons to be Directors, and may fill any other vacancies other than those in respect of positions reserved for the MTN ~~Appointed~~ Nominated Directors. In electing Directors, the provisions of the Companies Act shall be complied with.

24.10 If at any Annual General Meeting and/or Shareholders Meeting at which an election of Directors ought to take place, the place of any retiring Director or a Director standing for confirmation pursuant to clause 24.15 is not filled, she shall, if willing, continue in office until the dissolution of the next succeeding Annual General Meeting ~~in the next year~~, and so on from year to year until his place is filled, unless it shall be determined by Ordinary Resolution at such meeting not to fill such vacancy. This provision shall not apply to any MTN Nominated Director who retires and/or stands for confirmation pursuant to clause 24.15 but is not appointed and/or re-appointed, as the case may be, at the relevant meeting; and any such Director who is not appointed and/or re-appointed, as the case may be, at such meeting shall accordingly cease to hold office upon the conclusion of the meeting.

24.11 There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act.

24.12 In any election of Directors and Alternate Directors, the election is to be conducted as follows:

24.12.1 a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and

24.12.2 in each vote to fill a vacancy –

- 24.12.2.1 each Voting Right entitled to be exercised may be exercised once; and
- 24.12.2.2 the vacancy is filled only if a majority of the Voting Rights exercised support the candidate.
- 24.13 No Person shall be elected as a Director or Alternate Director, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 24.14 No election of a Director (or Alternate Director) shall take effect until he has delivered to the Company a Written consent to serve in such capacity.
- 24.15 Any vacancy occurring on the Board may be filled by the Board, but the Individual so appointed [\(including any MTN Nominated Director\)](#) shall cease to hold office at the termination of the first Shareholders Meeting to be held after the appointment of such Individual as a Director unless he is elected at such Shareholders Meeting or by Round Robin Resolution. This provision shall not apply to Alternate Directors.
- 24.16 The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director must, as soon as is reasonably practicable, fill the vacancy or call a Shareholders Meeting to fill such vacancy.
- 24.17 If there is no Director able and willing to act, then any Holder entitled to exercise Voting Rights in the election of a Director may convene a Shareholders Meeting for the purpose of electing Directors.

25. CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR

- 25.1 A Director or Alternate Director shall cease to hold office as such:
- 25.1.1 immediately if she becomes Ineligible or Disqualified or the Board resolves to remove her on such basis, and in the latter case the Director or Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she shall be suspended);

- 25.1.2 ~~(save in respect of the MTN Appointed Directors)~~, if she is requested in Writing by all his co-Directors to resign;
- 25.1.3 when her term of office contemplated in clause 24.5 expires;
- 25.1.4 when she dies;
- 25.1.5 when she resigns by Written notice to the Company;
- 25.1.6 ~~(save in respect of the MTN Appointed Directors)~~ if there are more than 3 (three) Directors in office and if the Board determines that she has become incapacitated to the extent that the Person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director or Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she shall be suspended) *(if he is found or becomes of unsound mind)*; or
- 25.1.7 if she is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company; or
- 25.1.8 ~~(save in respect of the MTN Appointed Directors)~~ if she is removed by Ordinary Resolution of the Shareholders; or
- 25.1.9 if there are more than 3 (three) Directors in office and if she is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director or Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she shall be suspended); or
- 25.1.10 she files a petition for the surrender of her estate or an application for an administration order, or if she commits an act of insolvency as defined in the insolvency law for the time being in force, or if she makes any arrangement or composition with her creditors generally; or
- 25.1.11 she is otherwise removed in accordance with any provisions of this MOI; or
- 25.1.12 she is absent from 3 (three) consecutive meetings of the Directors without leave of the Directors or otherwise than on the business of the Company and is not represented at any such meetings by an Alternate Director and the

Directors resolve that her office be, by reason of such absence, vacated; provided that the Directors shall have power to grant to any Director not resident in South Africa leave of absence for any or an indefinite period.

26. REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES

- 26.1 The Directors or Alternate Directors or members of Board committees shall be entitled to such remuneration for their services as the Directors or Alternate Directors or members of Board committees as may have been determined from time to time by Special Resolution, or the Company in general meeting within the previous 2 (two) years, and to the payments otherwise provided for in this MOI, but subject always to the limits on administration costs applicable to the Company under clause 3 of Annexe A, and the Transaction Documents.
- 26.2 In addition, the Directors and Alternate Directors shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the Directors and Holders, and the members of the Board committees shall be entitled to all reasonable expenses in travelling (including hotels) to and from meetings of the members of the Board committees. The Company may pay or grant any type of remuneration, including as contemplated in sections 30(6)(b) to (g) of the Companies Act, to any executive Directors in respect of their holding of employment with the Company. A Director may be appointed to more than one Board Committee.

27. FINANCIAL ASSISTANCE

Subject to the provisions contained in clause 7, the Board's powers to provide direct or indirect financial assistance as contemplated in sections 44(2) and/or 45(2) of the Companies Act, or otherwise, are not limited in any manner.

28. GENERAL POWERS AND DUTIES OF DIRECTORS

- 28.1 Subject to the express limitations set out in this MOI, (i) the powers and authority granted to the Directors in terms of section 66(1) of the Companies Act are not limited and (ii) the Directors shall, in addition to the powers and authorities expressly conferred upon them by this MOI, may exercise all such powers and do all such acts and things as may be exercised or done by the Company, and are not hereby or by the Companies Act expressly directed or required to be exercised or done by the Company in general meeting, have all such further and additional powers and authority (including as to delegation) as may validly be invested by law in the

Directors, including the power to conduct, or cease to conduct, or to operate, or cease to operate, the business or affairs of the Company, and/or to cause such matters to be done, or not done, as the case may be. The general powers given by this clause 28.1 shall not be limited or restricted by any special authority or power given to the Directors by any other clause of this MOI.

28.2 Subject to clause 7, the Directors may:

28.2.1 establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

28.2.2 give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any Persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a subsidiary of the Company or is or was in any way allied to or associated with it or any such subsidiary, and the wives, widows, families and dependants of such Persons. The Directors may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds or associations or persons as may seem to them advisable or desirable in the interest of the Company.

28.3 Where the Directors power to enter into an agreement or take any action pursuant to such an agreement is subject to an approval of the Company in general meeting (whether by way of Ordinary or Special Resolution), or is subject to other approval under the Companies Act, the Directors shall be permitted to enter into such contract or to undertake to take such action on the basis that such agreement or undertaking is suspensively conditional upon the Directors obtaining the relevant Shareholder or other approval.

28.4 For the purpose of this MOI, the expression "executive Director" shall mean a Director appointed to an executive office in the Company and receiving salary or remuneration for additional services whether under a service agreement or otherwise.

~~28.5 Notwithstanding anything to the contrary herein, during the MTN Zakhele Futhi Empowerment Compliance Period, the exercise by the Directors of their authority and powers under clauses 28.2, 28.3, 29 and/or 30, shall require the consent or approval of at least 1 (one) of the MTN Appointed Directors.~~

29. MANAGING AND EXECUTIVE DIRECTORS

- 29.1 The Board may from time to time appoint one or more of the Directors to the office of managing Director or general manager or executive Director (with or without specific designation) of the Company, or to any other executive office with the Company as the Directors shall think fit, for such period and at such remuneration (whether by way of salary or commission, or participation in profits or partly in one way and partly in another) and generally on such terms it may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office. Subject to any contract between the Company and such Director, from time to time terminate his appointment and appoint another or others in his stead.
- 29.2 Subject to any provisions either in this MOI or in the contract under which he is appointed, any Director appointed to any position of executive office pursuant to clause 29.1 shall not, while she continues to hold that position or office under a contract for a term of years which provides for her to be exempted from retirement by rotation during such term of years, be so subject during the currency of such contract and she shall not, in such case, be taken into account in determining the rotation of retirement of directors but, subject to any provisions in such contract, she shall be subject to the same removal terms as the other Directors of the Company and, if she ceases to hold office as Director, her appointment to such position or executive office shall *ipso facto* and immediately be terminated but without prejudice to any claims or damages which may accrue under any such contract in respect of such termination; provided that the Directors shall not appoint more than 1 (one) of the Directors who are not MTN ~~Appointed~~ Nominated Directors to any position or executive office under a contract as aforesaid which provides for her to be so exempted, unless MTN agrees otherwise in Writing.
- 29.3 The Board may from time to time entrust to and confer upon a managing Director or general manager or executive Director, for the time being such of the powers vested in the Directors as it may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as it may think expedient; and it may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers.
- 29.4 A managing Director appointed pursuant to the provisions of the MOI shall not be regarded as an agent or delegate of the Directors and after powers have been

conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause.

- 29.5 A Director who is appointed in terms of the provisions of clause 29.3 to the office of managing Director of the Company or to any other executive office in the Company may be paid, in addition to or in substitution of the remuneration payable in terms of clause 26 or otherwise under this MOI, such remuneration not exceeding a reasonable maximum in each year in respect of such office or services as may be determined by a disinterested quorum of the Directors or a disinterested committee of Directors.

30. **BOARD COMMITTEES**

- 30.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors who shall not be able to vote.
- 30.2 No Person shall be appointed as a member of a Board committee, if she is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 30.3 There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 30.4 A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.
- 30.5 Save as the Directors may otherwise determine from time to time, meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

31. PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF BOARD COMMITTEES

- 31.1 For the purposes of this clause 31, a reference to "Director" includes an Alternate Director, a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 31.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, or Holders (if the circumstances contemplated in section 75(3) of the Companies Act prevail), a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 31.3 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 31.4 Subject to any limitation in the Companies Act and to compliance therewith in relation to the approval of the contract, a Director may have a Personal Financial Interest, or other interest, in any contract between the Company and himself, or any other Person.

32. PROCEEDINGS OF DIRECTORS

- 32.1 The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that there shall be at least 2 (two) Board meetings *per annum*.
- 32.2 A Director may at any time convene or require the secretary to convene a meeting of the Directors. Notice of a meeting shall be given to a Director at the address of the Director as nominated by the Director, or such other means and/or place as such Director may permit from time to time. A meeting of the Directors shall not be called on less than 48 (forty eight) hours' notice, unless the chairperson determines in their sole discretion that the business to be conducted is so urgent that shorter notice is required or unless all Directors waive such notice. The minutes of a meeting called on less than 48 (forty eight) hours' notice shall, as soon as reasonably possible after the meeting, be circulated to all Directors.

- 32.3 The Directors may determine the means of giving notice of Directors meetings, which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 32.4 If all of the Directors:
- 32.4.1 acknowledge actual receipt of the notice;
 - 32.4.2 are present at a meeting of the Directors; or
 - 32.4.3 waive notice of the meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 32.5 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 32.6 Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication in accordance with section 73(3) of the Companies Act.
- 32.7 The quorum for a Directors' meeting is any 2 (two) Directors present and voting throughout the meeting, ~~provided that, during the MTN Zakhele Futhi Empowerment Compliance Period, at least 1 (one) such Director is an MTN Appointed Director.~~
- 32.8 If within 30 (thirty) minutes from the time appointed for a meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is a public holiday in South Africa, to the next succeeding Business Day. If present within 30 (thirty) minutes from the time appointed for the meeting, the Directors at that meeting shall constitute a quorum.
- 32.9 ~~Subject to clause 24.4.1, t~~he Directors may elect a chairperson of their meetings and determine the period for which she/he is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.

- 32.10 Each Director has 1 (one) vote on a matter before the Board and, save as provided in clauses ~~s 28.5 and~~ 32.15, a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 32.11 In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 32.12 The Company must keep minutes of the meetings of the Board, and any of its committees.
- 32.13 Resolutions adopted by the Board:
- 32.13.1 must be dated and sequentially numbered; and
- 32.13.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 32.14 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be, without the necessity for further proof of the facts stated.
- 32.15 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted; provided that each Director has received notice of the matter to be decided upon, and it is signed by such number of Directors (or Alternate Directors) as are sufficient to constitute a quorum, and who between them exercise a majority of the votes which may be passed on the relevant matters; ~~and provided further that, during the MTN Zakhele Futhi Empowerment Compliance Period, such resolution includes the affirmative vote of at least 1 (one) of the MTN Appointed Directors.~~ One or more Alternate Directors shall be entitled to sign a Round Robin Resolution if one or more Directors are not present in South Africa to sign, and without his vote/s the requisite majority cannot be achieved. A resolution passed in terms of this clause 32.15 may consist of several documents in like form each signed by one or more Directors (or Alternate Directors). A resolution passed in terms of this clause 32.15 shall be deemed to be passed on the day it was signed by the last Director or Alternate Director entitled to sign it (and constituted the necessary majority), unless a statement to the contrary is made in that resolution.

33. **PRESCRIBED OFFICERS**

- 33.1 No Person shall hold office as a Prescribed Officer, if she is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 33.2 A Prescribed Officer shall cease to hold office as such immediately if she becomes Ineligible or Disqualified in terms of the Companies Act.

34. **APPOINTMENT OF SECRETARY**

- 34.1 The Directors must appoint the secretary from time to time, who:
- 34.1.1 shall be a permanent resident of South Africa and remain so while serving as secretary;
 - 34.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and
 - 34.1.3 may be a Juristic Person subject to the following –
 - 34.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;
 - 34.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 34.1.1 and 34.1.2.
- 34.2 Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 34.1.3.
- 34.3 If at any time a Juristic Person or partnership holds office as company secretary of the Company –

- 34.3.1 the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 34.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
- 34.3.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 34.1.3, until the Company has received a notice contemplated in clause 34.3.1; and
- 34.3.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 34.1.3 at the time of that action.
- 34.4 The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 34.5 If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

35. DISTRIBUTIONS

Subject to clauses 2, 7 and the rights attached to the MTN Zakhele Futhi Preference Shares:

- 35.1 the Directors may from time to time, and in accordance with the provisions of the Companies Act, declare and/or make any Distribution; provided that any Distribution in the form of a dividend which is declared or paid by the Company generally on the Shares of a class of Shares shall be such that each Share in such class shall (subject to the further clauses of this clause 35) enjoy a proportionate right to the dividend so declared or paid. For the avoidance of doubt, no Shareholder shall, unless the terms of such Share expressly provide otherwise, (i) have a right to any Distribution, either specifically or proportionately, or (ii) have a proportionate right to any Distribution other than a dividend as contemplated in the first sentence of this clause 35.1, including any right as to any Distribution contemplated in sub-

paragraphs (a)(ii), (a)(iii), (a)(iv), (b) or (c) of the definition of 'distribution' under the Companies Act;

- 35.2 dividends payable in monetary form shall, unless the Board determines otherwise, be declared in the currency of South Africa ("**ZAR**"). The Board may determine the exchange rate applicable to distributions declared in ZAR and to be paid in another currency, or declared in another currency and payable in ZAR. The directors may from time to time make such regulations as they may think fit in regard to the payment of dividends to members having registered addresses outside South Africa, and such regulations may provide for the payment of such dividends in any foreign currency and the rate of exchange at which such payment shall be made and such other matters as the directors may think fit;
- 35.3 a dividend may be declared out of any lawful source (including from capital, reserves, realised or unrealised profits), and any dividend so declared may be paid and satisfied either wholly or in part by the distribution of specific assets, and in particular of paid-up shares or debentures of any other company, or in cash, or in any one or more of such ways as the Directors may at the time of declaring the dividend determine and direct. Where any difficulty arises in regard to the distribution of such specific assets or any part thereof the Directors may settle the same as they think expedient, and in particular may fix the value for distribution of such specific assets or any part thereof, and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to them;
- 35.4 except as otherwise provided under the conditions of issue of the Shares in respect of which the dividend is payable, no dividend shall carry interest as against the Company. Dividends may be declared either free of or subject to the deduction of income tax and any other tax or duty chargeable on or in respect of such dividend;
- 35.5 in cases where several persons are registered as the joint holders of any Shares, any one of such persons may give effectual receipts for all dividends and payments on account of dividends in respect of such Shares, as the Directors may determine;
- 35.6 all dividends, interest or other moneys payable to the Holder of Shares may be paid by cheque, electronic transfer or otherwise as the Directors may from time to time determine, and may be sent by post to the last registered address requested by him, or, in the case of joint holders, to that one of them first named in the register in

respect of such joint holdings; and the payment of such cheque or electronic transfer shall be a good discharge to the Company in respect thereof;

- 35.7 no notice of change of registered address or instructions as to payment being made at any other address which is received by the Company between the record date for the payment and the respective date on which the payment is made shall, unless the Directors permit otherwise, become effective until after such date of payment;
- 35.8 all unclaimed dividends or other monies payable as contemplated in this clause 35 may be invested or otherwise be made use of by the Directors for the benefit of the Company until claimed, without the payment of interest, provided that any dividend remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Company;
- 35.9 the Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends to any person or persons; and
- 35.10 the provisions of clauses 35.2 to 35.9 shall apply *mutatis mutandis* to any Distributions, to the extent not already constituting a dividend.

36. LOSS OF DOCUMENTS

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

37. NOTICES

- 37.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Holder or by sending them prepaid through the post or by transmitting them by telegram, Electronic Communication or fax, or by any other means authorised or permitted under the Companies Act from time to time.
- 37.2 Any Holder who/which has furnished an Electronic Address to the Company, by doing so –
- 37.2.1 authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and

- 37.2.2 confirms that same can conveniently be printed by the Holder within a reasonable time and at a reasonable cost.
- 37.3 Any notice required to be given by the Company to the Holders or the holder of a Share warrant to bearer, and not expressly prohibiting the provisions of this clause 37 from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with clause 37.1 or 37.2), if given by posting it on the Company's web site until at least the date when the event to which the notice refers occurs.
- 37.4 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the Regulations (which is included as Annexe D for easy reference but which does not form part of this MOI for purposes of interpretation).
- 37.5 A Holder or Person entitled to Securities (or his/her executor) shall be bound by every notice in respect of the Securities Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Holder of or Person entitled to the Securities, notwithstanding that the Holder or Person entitled to Securities may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Securities, and notwithstanding any transfer of the Securities was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Securities until that Person gives the Company an address for entry on the Securities Register.
- 37.6 If joint Holders are registered in respect of any Securities or if more than 1 (one) Person is entitled to Securities, all notices shall be given to the Person named first in the Securities Register in respect of the Securities, and notice so Delivered shall be sufficient notice to all the Holders of or Persons entitled to or otherwise interested in the Securities.
- 37.7 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given

number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 3), the provisions of clause 3 shall also be applied.

- 37.8 The holder of a Share warrant to bearer shall not, unless it be otherwise expressed in the warrant, be entitled in respect thereof to notice of any Shareholders Meeting or otherwise.
- 37.9 As regards the signature of an Electronic Communication by a Holder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Holder indicating in the Electronic Communication that it is the Holder's intention to use the Electronic Communication as the medium to indicate the Holder's approval of the information in, or the Holder's signature of the document in or attached to, the Electronic Communication which contains the name of the Holder sending it in the body of the Electronic Communication.
- 37.10 Holders' consent to the Company applying to the High Court for an order permitting service of notices and other documents and communications to Holders by way of ordinary mail, fax and/or e-mail (including in each instance where the Company is required, by virtue of the provisions of the Companies Act, to communicate with its shareholders as at a record date), and that, where the Company posts a notice or document to Holders it will be deemed to have delivered such notice or document on the 7th calendar day following the date on which such notice or document was put into the post.

38. INDEMNITY

- 38.1 For the purposes of this clause 38, a reference to "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board and a member of the Audit committee.
- 38.2 The Company may:
- 38.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction was based on strict liability;

- 38.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 38.2.3 directly or indirectly indemnify a Director for –
 - 38.2.3.1 any liability, other than in respect of –
 - 38.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
 - 38.2.3.1.2 any fine contemplated in clause 38.2.1;
 - 38.2.3.2 any expenses contemplated in clause 38.2.2, irrespective of whether it has advanced those expenses, if the proceedings:
 - 38.2.3.2.1 are abandoned or exculpate the Director; or
 - 38.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 38.2.3.1.
- 38.3 The Company may purchase insurance to protect:
 - 38.3.1 a Director against any liability or expenses contemplated in clause 38.2.2 or 38.2.3; or
 - 38.3.2 the Company against any contingency including but not limited to:
 - 38.3.2.1 any expenses:
 - 38.3.2.1.1 that the Company is permitted to advance in accordance with clause 38.2.2; or
 - 38.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 38.2.3.2; or
 - 38.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 38.2.3.1.
- 38.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

39. RESERVE FUND

Subject to section 46 of the Companies Act, clauses 2 and 7 and to the rights of the Holders of the MTN Zakhele Futhi Preference Shares:

- 39.1 the Directors may, before declaring or recommending any dividends, set aside out of the amount available for dividends such sum as they think proper as a reserve fund or as an addition thereto. The Directors may divide the reserve fund into such special funds as they think fit, with full power to employ the assets constituting such fund or funds in the business of the Company, or may invest the same upon such investments (other than Shares of the Company) as they may select, without being liable for any depreciation of or loss in consequence of such investments whether the same be usual or authorised investments for trust funds or not;
- 39.2 the reserve fund shall, at the discretion of the Directors be available for the equalisation of dividends or for making provision for exceptional losses, expenses or contingencies, or for the extension or development of the Company's business, or for writing down the value of any of the assets of the Company, or for repairing, improving and maintaining any buildings, plant, machinery or works connected with the business of the Company, or to cover the loss in wear and tear or other depreciation in value of any property of the Company, or for any other purpose to which the profits of the Company may be properly applied; and the Directors may at any time divide among the Shareholders by way of bonus, or special dividends, any part of the reserve funds which they, in their discretion, may determine not to be required for the purposes aforesaid.

40. CAPITALISATION

Subject to section 46 of the Companies Act, clauses 2 and 7 and to the rights of the Holders of the MTN Zakhele Futhi Preference Shares:

- 40.1 subject to the provisions of the Companies Act, the Company in general meeting, or the Directors, may at any time and from time to time pass a resolution to capitalise any sum forming part of the undivided profits standing to the credit of the Company's reserve fund, or any sum in the hands of the Company and available for dividend, or any sum carried to reserve as the result of a sale or revaluation of the assets of the Company or any part thereof, or any sum received by way of premium on the issue of any Shares, Debentures or Debenture stock of the Company. Such resolution may provide that any such sum or sums shall be set free for Distribution and be appropriated to and amongst the Shareholders holding MTN Zakhele Futhi Ordinary

Shares either with or without deduction for income tax, rateably according to their rights and shareholdings in such manner as the resolution may direct; provided that no such Distribution shall be made by the Company unless recommended by the Directors, and the Directors shall, in accordance with such resolution, apply such sum or sums in paying up Shares, Debentures or Debenture stock of the Company and appropriate such Shares, Debentures or Debentures stock to or distribute the same amongst the Holders of the MTN Zakhele Futhi Ordinary Shares rateably according to their shareholding thereof respectively as aforesaid, or shall otherwise deal with such sum or sums as provided for in such resolution;

- 40.2 where any difficulty arises in respect of such Distribution, the Directors may settle the same as they think expedient, fix the value for distribution of any fully paid Shares, Debentures or Debenture stock, make cash payments to any Holders of Shares on the footing of the value so fixed in order to adjust rights, and vest any Shares or assets in trustees upon such trusts for the persons entitled in the appropriation or Distribution, and generally shall do all acts and things required to give effect thereto, with full power to the Directors to provide that fractions shall be ignored altogether, or by payment in cash or otherwise, in all such instances as may seem just and expedient to the Directors. When deemed requisite, a contract shall be entered into and filed in accordance with the Companies Act, and the Directors may appoint any person to sign such contract on behalf of the Persons entitled in the appropriation or Distribution, and such appointments shall be effective, and the contract may provide for the acceptance by the Holders of the Shares to be allotted to them respectively in satisfaction of their claims in respect of the sum so capitalised.

41. REGISTER OF DISCLOSURES

The Company must establish and maintain a register of the disclosures made in terms of section 56(7) of the Companies Act.

42. WINDING UP

Save as otherwise provided for in Annexe A, and subject to clause 7:

- 42.1 if the Company is wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:
- 42.1.1 to repay to the MTN Zakhele Futhi Shareholders the amounts Paid Up on the Shares respectively held by each of them; and

- 42.1.2 the balance (if any) shall be distributed among the MTN Zakhele Futhi Shareholders in proportion to the number of Shares respectively held by each of them;

provided that the provisions of this clause 42 shall be subject to the rights of the Holders of Shares (if any) issued upon special conditions.

- 42.2 In a winding-up, any part of the assets of the Company, including any Shares or Securities of other companies may, with the sanction of a Special Resolution of the Company, be paid to the MTN Zakhele Futhi Shareholders of the Company *in specie*, or may, with the same sanction, be vested in trustees for the benefit of such MTN Zakhele Futhi Shareholders, and the liquidation of the Company may be closed and the Company dissolved.

Annexe A

**RIGHTS, TERMS AND PRIVILEGES ATTACHING TO THE MTN ZAKHELE
FUTHI PREFERENCE SHARES**

1. INTERPRETATION

In this MOI –

1.1. terms that are defined in –

1.1.1. the Companies Act (which are contained in **Annexe B** for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act; and

1.1.2. clause 1.3 shall bear the meanings ascribed thereto therein when used in this MOI.

1.2. In the event that the day for payment of any amount due or scheduled or required to be paid in terms of this MOI should fall on a day which is not a Business Day, the relevant day for payment shall be the immediately succeeding Business Day unless such day falls in the next calendar month, in which event the date for payment shall be the immediately preceding Business Day, provided that if as a result of such adjustment any redemption of a BIC2 Preference Share will occur before 3 (three) years and 1 (one) day after the Issue Date, then the relevant day for payment shall be the succeeding Business Day (notwithstanding that it falls within the next calendar month).

1.3. Unless the context otherwise requires -

1.3.1. "**Account Bank**" means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement, initially being Nedbank;

1.3.2. "**Account Bank and Agency Agreement**" means the account bank and agency agreement entered into or to be entered into between MTN, BFC2, the Company, the BIC2 Administrator, the BFC2 Administrator, the Preference Share Agent, the Account Bank, the Calculation Agent, the Security Custodian, the Preference Share Custodian and the BFC2 Preference Shareholders, all on the terms and conditions contained therein;

1.3.3. "**Acquisition Event**" has the meaning specified in clause 1.3.211.2.4;

1.3.4. "**Acquisition Revised Total Share Cover Ratio**" has the meaning specified in clause 1.3.211.2.4;

- 1.3.5. **"Acquisition Revised Volatility Protection Share Cover Ratio"** has the meaning specified in clause 1.3.211.2.4;
- 1.3.6. **"Additional Shares"** means, at any time from the Issue Date until the BIC2 Discharge Date, all such shares as are acquired by the Company as a result of any Permitted Action, any capitalisation issue by any company in which the Company holds any shares at such time, the issuing of any Letters of Allocation or the making of any other non-cash Distribution of whatsoever nature by any company in which the Company holds any shares at such time to its shareholders;
- 1.3.7. **"Adjusted Consolidated EBITDA"** means, in relation to a Measurement Period, Consolidated EBITDA for that period adjusted as follows:
- 1.3.7.1. including the operating profit before interest, tax, depreciation, amortisation and impairment charges (EBITDA) of a member of the MTN Group or attributable to a business or assets acquired during the Measurement Period for that part of the Measurement Period when it was not a member of the MTN Group and/or the business or assets were not owned by a member of the MTN Group; and
 - 1.3.7.2. excluding the EBITDA attributable to any member of the MTN Group or to any business or assets sold during that Measurement Period;
 - 1.3.7.3. excluding any non-cash IFRS expense incurred by the MTN Group arising out of or in connection with the Transaction; and
 - 1.3.7.4. in relation to the Measurement Periods ending 31 December 2016 and 30 June 2017 only, excluding any amount (up to a maximum amount of NGN330 000 000 000,00 (three hundred and thirty billion Naira) included in the relevant audited consolidated financial statements of MTN in relation to any liability to pay the fine imposed on MTN Nigeria Communications Limited by the Nigerian Communications Commission in relation to the timing of the disconnection of MTN Nigeria Communications Limited subscribers, who were disconnected in August and September 2015;
- 1.3.8. **"Administration Contingency Amount"** means an amount not exceeding the aggregate of the Initial Administration Contingency Amount and R5 000 000,00 (five million Rand) in the aggregate over the term of the Transaction, which R5 000 000,00 (five million Rand) is limited to

R2 000 000 (two million Rand) per annum, in respect of the fees, expenses, costs and disbursements (plus VAT thereon) incurred in relation to the Company's ongoing operations, including without limitation, in respect of any professional advisers as may be reasonably and properly incurred by the Company or BFC2 as a result of any change or proposed change in, or any change or proposed change in the application or interpretation of, any Applicable Laws or in relation to the implementation of the Transaction Documents (or such higher amounts as may be approved in writing by the Preference Share Agent and MTN);

- 1.3.9. **"Administration Costs"** means, in respect of BIC2 and BFC2:
- 1.3.9.1. reasonable audit fees and reasonable fees and expenses incurred in respect of their respective ongoing administrative, governance, legal and secretarial activities;
 - 1.3.9.2. any and all fees and costs for which they are responsible pursuant to the terms of the Transaction Documents; and
 - 1.3.9.3. such other costs consented to MTN, BIC2 and the Preference Share Agent;
- 1.3.10. **"Applicable Laws"** means all laws, ordinances, writs, orders, regulations, judgements and orders of any competent court or central bank or governmental agency or authority in any jurisdiction applicable to any Party or any BIC2 Preference Shareholder;
- 1.3.11. **"Asset Revised Total Share Cover Ratio"** has the meaning specified in clause 1.3.211.3.2;
- 1.3.12. **"Asset Revised Volatility Protection Share Cover Ratio"** has the meaning specified in clause 1.3.211.3.2;
- 1.3.13. **"Asset Unbundling Transaction"** means, at any time from the Issue Date until the BIC2 Discharge Date, any unbundling or distribution *in specie* made by any company in which the Company holds any shares at such time or a similar corporate event in terms of which holders of any shares in any company in which the Company holds any shares at such time receive assets other than cash from such company and are not given a cash alternative;
- 1.3.14. **"Authority"** means any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions and/or

which is responsible for applying national security, foreign investment, exchange control, telecommunications, merger control or other competition or antitrust legislation or regulations, in South Africa;

- 1.3.15. **"BBBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, and any regulations and codes of good practice published thereunder (including the Codes);
- 1.3.16. **"BEE Listing"** means, on a date not earlier than the 3rd (third) anniversary of the Effective Date, the admission to listing of the BIC2 Ordinary Shares as BEE Securities on the BEE Segment of the main board of the exchange operated by the JSE (or such other licensed exchange as MTN may approve of in its sole and absolute discretion);
- 1.3.17. **"BEE Listing Period"** means the period commencing on the date upon which the BEE Listing takes place (if applicable) and ending on the earlier of (i) the last day of the BIC2 Empowerment Compliance Period or (ii) the date on which the BEE Listing terminates for any reason;
- 1.3.18. **"BEE Securities"** has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.3.19. **"BEE Segment"** has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.3.20. **"BFC2"** means Jabisan 04 Proprietary Limited (Registration No. 2014/021122/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.3.21. **"BFC2 Adjustment Event"** means the occurrence of any Adjustment Event under and in terms of the terms attaching to the BFC2 Preference Shares;
- 1.3.22. **"BFC2 Administrator"** means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement, initially being Nedbank (acting through its Share Scheme Administration division);
- 1.3.23. **"BFC2 Collection Account"** means the bank account maintained by BFC2 with the Account Bank into which, amongst other things, all cash Distributions and other payments whatsoever from time to time received by BFC2 in respect of the BIC2 Preference Shares will be paid;
- 1.3.24. **"BFC2 Enforcement Action"** means;

- 1.3.24.1. the acceleration of any BFC2 Subordinated Claim or any declaration that any BFC2 Subordinated Claim is prematurely due and payable or payable on demand;
- 1.3.24.2. the making of any claim on BFC2 in respect of or arising from any BFC2 Subordinated Claim, including the giving of instructions to BFC2 in relation to the taking of any steps to enforce or require the enforcement of any BFC2 Subordinated Claim (including the taking of any steps which are required to convert security interests into real security);
- 1.3.24.3. the making of any demand against BFC2 in relation to or in respect of any BFC2 Subordinated Claim;
- 1.3.24.4. the exercise of any right of set-off against BFC2 in respect of any BFC2 Subordinated Claim;
- 1.3.24.5. the suing for, commencing or joining of any legal or arbitration proceedings against BFC2 to recover or enforce any BFC2 Subordinated Claim;
- 1.3.24.6. the entering into of any composition, assignment or arrangement with BFC2 in respect of the BFC2 Subordinated Claims or any of them;
- 1.3.24.7. the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the winding up, dissolution, bankruptcy, administration, or reorganisation of BFC2 or taking any steps to place BFC2 under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of BFC2, or any analogous procedure or step in any jurisdiction; and/or
- 1.3.24.8. voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of BFC2 in accordance with the provisions of section 152 of the Companies Act, proposing the development of an alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of BFC2 in the manner contemplated in section 153 of the Companies Act;

- 1.3.25. **"BFC2 Loan Undertaking"** means a **"Loan Undertaking"**, as defined in the MTN Subordination and Undertaking Agreement, in respect of a BFC2 Subordinated Loan which is to be given to BFC2;
- 1.3.26. **"BFC2 Owner Trust"** means the trustees for the time being of the BFC2 Owner Trust, a trust to be established in accordance with the laws of South Africa;
- 1.3.27. **"BFC2 MOI"** means the Memorandum of Incorporation of BFC2 from time to time;
- 1.3.28. **"BFC2 Permitted Enforcement Action"** means –
- 1.3.28.1. in circumstances where BFC2 is obliged, in terms of the MTN Subordination and Undertaking Agreement or the BFC2 Priority of Payments, to repay a BFC2 Subordinated Loan or make payment of any other amount on account of a BFC2 Subordinated Loan and BFC2 has failed to make payment thereof on the due date therefor, the making of a written demand on BFC2 to make payment thereof within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by the BFC2 within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant payment obligation from BFC2, provided that the Preference Share Agent –
- 1.3.28.1.1. is simultaneously provided with a copy of such written demand for payment;
- 1.3.28.1.2. is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant payment obligation from BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;
- 1.3.28.1.3. is provided with copies of all correspondence which is sent by MTN or a MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or a MTN Acceded

Nominee, as the case may be, from BFC2 in respect of such steps or other action;

1.3.28.1.4. is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant payment obligation from BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and

1.3.28.1.5. has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such failure to pay and/or is not otherwise taking steps in order to obtain performance of the relevant payment obligation from BFC2;

1.3.28.2. in circumstances where BFC2 breaches any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on BFC2 to remedy such breach within the grace period specified in the relevant Finance Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from BFC2, provided that the Preference Share Agent –

1.3.28.2.1. is simultaneously provided with a copy of such written demand;

1.3.28.2.2. is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant obligation from BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;

1.3.28.2.3. is provided with copies of all correspondence which is sent by MTN or a MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or a MTN Acceded

Nominee, as the case may be, from BFC2 in respect of such steps or other action;

1.3.28.2.4. is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain specific performance of the relevant obligation from BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and

1.3.28.2.5. has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such breach and/or is not otherwise taking steps in order to obtain specific performance of the relevant obligation from BFC2;

1.3.28.3. in circumstances where BFC2 threatens to breach any material term or condition of any of the Finance Documents to which it and MTN is a party, the making of a written demand on BFC2 to unconditionally withdraw such threat of breach within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is not unconditionally withdrawn within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against BFC2 in respect of the threatened breach, or any other appropriate order against BFC2 to restrain such threatened breach, provided that the Preference Share Agent –

1.3.28.3.1. is simultaneously provided with a copy of such written demand;

1.3.28.3.2. is given prior written notice of all steps proposed to be taken against BFC2 in order to interdict or obtain any other appropriate order against BFC2 in respect of the breach or threatened breach of the relevant obligation by BFC2, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;

- 1.3.28.3.3. is provided with copies of all correspondence which is sent by MTN or a MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or a MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - 1.3.28.3.4. is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to interdict or obtain any other appropriate order against BFC2 will not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and
 - 1.3.28.3.5. has not, in accordance with its rights under any Finance Document, made a written demand on BFC2 to remedy such breach or threatened breach and/or is not otherwise taking steps in order to prevent a breach or threatened breach of the relevant obligation by BFC2;
- 1.3.28.4. any action for the purposes of obtaining declaratory relief against BFC2 in respect of any Finance Document to which it and MTN is a party, provided that the Preference Share Agent -
- 1.3.28.4.1. is given prior written notice of all steps proposed to be taken against BFC2 in order to obtain such declaratory relief against BFC2 in respect of any Finance Document to which it is a party, and written notification of any such steps which are in fact taken against BFC2 promptly after such steps are taken;
 - 1.3.28.4.2. is provided with copies of all correspondence which is sent by MTN or a MTN Acceded Nominee, as the case may be, to BFC2, and which is received by MTN or a MTN Acceded Nominee, as the case may be, from BFC2 in respect of such steps or other action;
 - 1.3.28.4.3. is satisfied, acting reasonably, that the steps proposed to be taken against BFC2 in order to obtain such declaratory relief against BFC2 will

not or are not likely to adversely impact on the rights of the BFC2 Preference Shareholders or the security granted to the BFC2 Preference Shareholders; and

1.3.28.4.4. is not, in accordance with its rights under any Finance Document, otherwise taking steps in order to obtain such declaratory relief against BFC2 in respect of any Finance Document to which it is a party; and/or

1.3.28.5. any BFC2 Enforcement Action which is taken against BFC2 with the prior written consent of the Preference Share Agent;

1.3.29. **"BFC2 Potential Trigger Event"** means any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Key Transaction Documents or any combination of the foregoing) be a BFC2 Trigger Event;

1.3.30. **"BFC2 Preference Shareholders"** means the holders of the BFC2 Preference Shares from time to time and **"BFC2 Preference Shareholder"** shall mean any such holder, as may be appropriate in the context;

1.3.31. **"BFC2 Preference Shares"** means the cumulative redeemable non-participating preference shares in the issued share capital of BFC2 to be issued to the BFC2 Preference Shareholders on the Issue Date and having the rights and privileges attaching thereto set forth in the BFC2 MOI;

1.3.32. **"BFC2 Preference Share Subscription Agreement"** means the BFC2 preference share subscription agreement entered into or to be entered into between the Preference Share Agent, BFC2, Depfin Investments Proprietary Limited (Registration No. 1982/006127/07), FirstRand Bank Limited (acting through its Rand Merchant Bank Division) (Registration No. 1929/001225/06), United Towers Proprietary Limited (Registration No. 1968/015550/07) and Nedbank pursuant to which Depfin Investments Proprietary Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), and United Towers Proprietary Limited agreed to subscribe for the BFC2 Preference Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated time to time;

1.3.33. **"BFC2 Priority of Payments"** means each of the priority of payments contemplated in the BFC2 MOI;

- 1.3.34. **"BFC2 Redemption Amount"** means, in relation to each BFC2 Preference Share, the aggregate redemption amount of each such BFC2 Preference Share as determined in accordance with the provisions of the BFC2 MOI;
- 1.3.35. **"BFC2 Subordinated Claims"** means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by BFC2 to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time during the Term and includes, without limitation:
- 1.3.35.1. all and any claims of MTN and/or the MTN Acceded Nominees against BFC2 arising out of or in connection with or under any Transaction Document;
 - 1.3.35.2. all and any claims of MTN and/or the MTN Acceded Nominees against BFC2 arising out of or in connection with or under the BFC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by BFC2 to MTN and/or the MTN Acceded Nominees or otherwise; and
 - 1.3.35.3. any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against BFC2 as a result of or in connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;
- 1.3.36. **"BFC2 Subordinated Loan"** means a **"BFC2 Subordinated Loan"** made or to be made in accordance with the provisions of the MTN Subordination and Undertaking Agreement, which is given to BFC2;
- 1.3.37. **"BFC2 Subordinated Loan Agreements"** means, if any BFC2 Subordinated Loans are advanced by MTN and/or any MTN Acceded Nominee to BFC2, the loan agreements pursuant to which the interest rates applicable to any such BFC2 Subordinated Loans are set out, provided that all of the other terms applicable to each such BFC2 Subordinated Loan shall be governed by the MTN Subordination and Undertaking Agreement and **"BFC2 Subordinated Loan Agreement"** means any one of them, as the context may require;
- 1.3.38. **"BFC2 Top-Up Loan Account"** means the bank account to be opened by BFC2 with the Account Bank if so required in terms of the MTN

Subordination and Undertaking Agreement and into which all BFC2 Subordinated Loans will be paid;

- 1.3.39. **"BFC2 Trigger Event"** has the meaning specified in clause 33.2.3 of the BFC2 MOI;
- 1.3.40. **"BFC2 Unredeemed Preference Shares"** means, at any time, that number of BFC2 Preference Shares which have not been redeemed by the Company at that time in accordance with the BFC2 MOI;
- 1.3.41. **"BIC2"** or **"the Company"** means MTN Zakhele Futhi (Registration No. 2016/268837/06), a limited liability company incorporated in accordance with the laws of the Republic of South Africa;
- 1.3.42. **"BIC2 Account Cession"** means the account cession entered into or to be entered into between the BFC2 Preference Shareholders (as security cessionaries) and the Company (as cedent) pursuant to which the Company cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to the Subject Share Securities Account and various other bank accounts held by the Company, all as security for its obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein;
- 1.3.43. **"BIC2 Additional Dividend"** means a BIC2 Preference Dividend defined in clause 2.1.6.1.1;
- 1.3.44. **"BIC2 Adjustment Event"** has the meaning specified in clause 2.1.6.1;
- 1.3.45. **"BIC2 Administrator"** means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement, initially being Nedbank (acting through its Share Scheme Administration division);
- 1.3.46. **"BIC2 Agreed Amount"** means, in respect of each BIC2 Scheduled Preference Dividend Date, an amount agreed in writing between the Company, MTN and the Preference Share Agent to be offered to be placed in the BIC2 Security Account and thereafter, if so determined by the Company in its sole and absolute discretion during the Initial Period toward the voluntary redemption of the BIC2 Preference Shares in accordance with clauses 3.1.5 provided that:
 - 1.3.46.1. the aggregate of such amounts shall, in each calendar year, be not less than R150 000 000,00 (one hundred and fifty million Rand); and

- 1.3.46.2. if the Company, MTN and the Preference Share Agent do not agree such amounts within 5 (five) Business Days prior to the applicable BIC2 Scheduled Preference Dividend Date, such amounts shall be no less than R15 000 000,00 (fifteen million Rand) in respect of each BIC2 Scheduled Preference Dividend Date falling on 30 April;
- 1.3.47. **"BIC2 Arrear Dividends"** means, in respect of any BIC2 Preference Share, all BIC2 Preference Dividends which were required or scheduled to have been declared on a BIC2 Dividend Date in respect of such BIC2 Preference Share but which have not been so declared on the applicable BIC2 Dividend Date;
- 1.3.48. **"BIC2 Collection Account"** means the bank account maintained by the Company with the Account Bank into which, amongst other things, all cash Distributions and other payments whatsoever from time to time received by the Company in respect of any of the Subject Shares will be paid;
- 1.3.49. **"BIC2 Collection Amount"** has the meaning specified in clause 3.1;
- 1.3.50. **"BIC2 Consideration Shares"** means the BIC2 Ordinary Shares which reinvesting ordinary shareholders of MTN Zakhele may elect to receive from MTN Zakhele in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme, which shares are initially issued to MTN Zakhele;
- 1.3.51. **"BIC2 Default Rate"** means 200 (two hundred) basis points above the BIC2 Dividend Rate;
- 1.3.52. **"BIC2 Deposit Amount"** has the meaning specified in clause 3.1.5;
- 1.3.53. **"BIC2 Discharge Date"** means if, in accordance with the provisions of the BIC2 Preference Share Subscription Agreement, the Company is required to pay any amounts contemplated in clause 14 thereof into the BIC2 Security Account, the date on which any and all such amounts are paid by BIC2 into the BIC2 Security Account;
- 1.3.54. **"BIC2 Disposal Amount"** has the meaning specified in clause 3.2.4;
- 1.3.55. **"BIC2 Dividend Date"** means, in respect of any BIC2 Preference Share, as applicable –
- 1.3.55.1. in respect of each BIC2 Scheduled Preference Dividend, each BIC2 Scheduled Preference Dividend Date;

- 1.3.55.2. in respect of BIC2 Additional Dividends only, the earlier of:
 - 1.3.55.2.1. the date indicated in any Increase Notice for the declaration and payment of a BIC2 Additional Dividend; and
 - 1.3.55.2.2. any Priority of Payments Date which occurs after the date of the Increase Notice, to the extent funds are available in accordance with the applicable Priority of Payments;
- 1.3.55.3. in respect of any BIC2 Arrear Dividend and any BIC2 Unpaid Dividend, each Priority of Payments Date; and
- 1.3.55.4. in respect of all BIC2 Preference Dividends, the BIC2 Redemption Date of such BIC2 Preference Share;
- 1.3.56. **"BIC2 Dividend Period"** means each period commencing on (and including) the previous BIC2 Scheduled Preference Dividend Date and ending on (but excluding) the subsequent BIC2 Scheduled Preference Dividend Date, provided that –
 - 1.3.56.1. the first BIC2 Dividend Period in respect of the BIC2 Preference Shares shall be the period from (and including) the Issue Date until (but excluding) the first BIC2 Scheduled Preference Dividend Date;
 - 1.3.56.2. the last BIC2 Dividend Period in respect of any BIC2 Preference Share shall be the period from and including the BIC2 Scheduled Preference Dividend Date immediately preceding the BIC2 Redemption Date of such BIC2 Preference Share until (but excluding) the BIC2 Redemption Date of such BIC2 Preference Share;
- 1.3.57. **"BIC2 Dividend Rate"** means the BIC2 Dividend Rate Percentage multiplied by the Prime Rate expressed as a simple rate of interest (compounded on each BIC2 Scheduled Preference Dividend Date), subject to any adjustments pursuant to clause 2.1.5;
- 1.3.58. **"BIC2 Dividend Rate Percentage"** means, 75% (seventy five per cent);
- 1.3.59. **"BIC2 Early Redemption Notice"** has the meaning specified in clause 2.3.2;

- 1.3.60. **"BIC2 Empowerment Compliance Period"** means a period of 8 (eight) years commencing on the Effective Date and ending on the fifth anniversary of the Effective Date;
- 1.3.61. **"BIC2 Enforcement Action"** means:
- 1.3.61.1. the acceleration of any BIC2 Subordinated Claim or any declaration that any BIC2 Subordinated Claim is prematurely due and payable or payable on demand;
 - 1.3.61.2. the making of any claim on the Company in respect of or arising from any BIC2 Subordinated Claim, including the giving of instructions to the Company in relation to the taking of any steps to enforce or require the enforcement of any BIC2 Subordinated Claim (including the taking of any steps which are required to convert security interests into real security);
 - 1.3.61.3. the making of any demand against the Company in relation to or in respect of any BIC2 Subordinated Claim;
 - 1.3.61.4. the exercise of any right of set-off against the Company in respect of any BIC2 Subordinated Claim;
 - 1.3.61.5. the suing for, commencing or joining of any legal or arbitration proceedings against the Company to recover or enforce any BIC2 Subordinated Claim;
 - 1.3.61.6. the entering into of any composition, assignment or arrangement with the Company in respect of the BIC2 Subordinated Claims or any of them;
 - 1.3.61.7. the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, business rescue practitioner or similar officer) in relation to the winding up, dissolution, bankruptcy, administration, or reorganisation of the Company or taking any steps to place the Company under supervision for business rescue proceedings or any suspension of payments or moratorium of any indebtedness of the Company, or any analogous procedure or step in any jurisdiction; and/or
 - 1.3.61.8. voting to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in respect of the Company in accordance with the provisions of section 152 of the Companies Act, proposing the development of an

alternative business rescue plan in the manner contemplated in section 153 of the Companies Act and/or presenting an offer to acquire the interests of any or all of the other creditors of the Company in the manner contemplated in section 153 of the Companies Act;

- 1.3.62. **"BIC2 Funding Position"** means the position of the BIC2 Preference Shareholder as result of issuing the BFC2 Preference Shares to the BFC2 Preference Shareholders and using the proceeds of such subscription for the BIC2 Preference Shareholder to subscribe for the BIC2 Preference Shares;
- 1.3.63. **"BIC2 Illegality Event"** means, in relation to a BIC2 Preference Shareholder, that –
- 1.3.63.1. it becomes unlawful or illegal under any Applicable Laws for such BIC2 Preference Shareholder to hold the BIC2 Preference Shares or to claim and recover all or part of a BIC2 Preference Dividend and/or BIC2 Redemption Amount; or
 - 1.3.63.2. there is any change in Applicable Laws which renders or will render any of the Key Transaction Documents or anything done or to be done pursuant thereto, illegal or unlawful;
- 1.3.64. **"BIC2 Investor"** means BFC2;
- 1.3.65. **"BIC2 Issue Price"** means the price at which the Company shall allot and issue each BIC2 Preference Share to the BIC2 Investor, which price shall be R1 000.00 (one thousand Rand) per BIC2 Preference Share;
- 1.3.66. **"BIC2 Loan Account Cession"** means the cession in security entered or to be entered into between the BFC2 Preference Shareholders (as security cessionaries) and the Company (as security cedent) pursuant to which the Company cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to the MTN Loan Account as security for its obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein;
- 1.3.67. **"BIC2 Loan Undertaking"** means a **"Loan Undertaking"**, as defined in the MTN Subordination and Undertaking Agreement, in respect of a BIC2 Subordinated Loan which is to be given to the Company;
- 1.3.68. **"BIC2 Margin Dividend"** means a further BIC2 Preference Dividend payable to the BIC2 Preference Shareholder in terms of clause 2.1.3;

- 1.3.69. **"BIC2 Margin Dividend Date"** means any BIC2 Redemption Date on which any BIC2 Preference Share is redeemed in accordance with clause 2.1.3;
- 1.3.70. **"BIC2 Offer"** has the meaning specified in clause 3.1.5;
- 1.3.71. **"BIC2 Ordinary Shares"** means ordinary shares having no par value in the issued Share Capital of BIC2. For the avoidance of doubt, references to the BIC2 Ordinary Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 1.3.72. **"BIC2 Ords Subscription Agreement"** means the subscription agreement entitled *"BIC2 Ordinary Share Subscription Agreement"* entered into or to be entered into between MTN and the Company in terms of which, *inter alia*, MTN (or a MTN Acceded Nominee) may elect to subscribe for certain shares, as such agreement is amended, supplemented, varied or novated from time to time;
- 1.3.73. **"BIC2 Permitted Enforcement Action"** means -
- 1.3.73.1. in circumstances where the Company is obliged, in terms of the MTN Subordination and Undertaking Agreement or the Priority of Payments, to repay a BIC2 Subordinated Loan or make payment of any other amount on account of a BIC2 Subordinated Loan and the Company has failed to make payment thereof on the due date therefor, the making of a written demand on the Company to make payment thereof within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as may be agreed by the Preference Share Agent) and, if such failure to pay is not remedied by the Company within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant payment obligation from the Company, provided that the Preference Share Agent is –
- 1.3.73.1.1. simultaneously provided with a copy of such written demand for payment;
- 1.3.73.1.2. given prior written notice of all steps proposed to be taken against the Company in order to obtain specific performance of the relevant payment obligation from the Company, and written

notification of any such steps which are in fact taken against the Company promptly after such steps are taken;

- 1.3.73.1.3. is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to obtain specific performance of the relevant payment obligation from the Company will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and
 - 1.3.73.1.4. provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
- 1.3.73.2. in circumstances where the Company breaches any material term or condition of any of the Key Transaction Documents to which it and MTN is a party, the making of a written demand on the Company to remedy such breach within the grace period specified in the relevant Key Transaction Document and, if such breach is not remedied within such grace period, the taking of such steps as may be reasonable in the circumstances in order only to claim specific performance of the relevant obligation from the Company, provided that the Preference Share Agent is –
- 1.3.73.2.1. simultaneously provided with a copy of such written demand;
 - 1.3.73.2.2. given prior written notice of all steps proposed to be taken against the Company in order to obtain specific performance of the relevant obligation from the Company, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;
 - 1.3.73.2.3. is satisfied, acting reasonably, that the steps proposed to be taken against the Company in

order to obtain specific performance of the relevant obligation from the Company will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and

- 1.3.73.2.4. provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;
- 1.3.73.3. in circumstances where the Company threatens to breach any material term or condition of any of the Transaction Documents to which it and MTN is a party, the making of a written demand on the Company to unconditionally withdraw such threat of breach within a period of not less than 2 (two) Business Days from the date of receipt of such written demand (or such shorter period as the Preference Share Agent may consent to in writing) and, if such breach is not unconditionally withdrawn within such 2 (two) Business Day period, the taking of such steps as may be reasonable in the circumstances in order only to obtain an interdict against the Company in respect of the threatened breach or any other appropriate order against the Company to restrain such threatened breach, provided that the Preference Share Agent is –
 - 1.3.73.3.1. simultaneously provided with a copy of such written demand;
 - 1.3.73.3.2. given prior written notice of all steps proposed to be taken against the Company in order to interdict or obtain any other appropriate order against the Company in respect of the breach or threatened breach of the relevant obligation by the Company, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;
 - 1.3.73.3.3. is satisfied, acting reasonably, that the steps proposed to be taken against the Company in

order to interdict or obtain any other appropriate order against the Company will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and

1.3.73.3.4. provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action;

1.3.73.4. any action for the purposes of obtaining declaratory relief against the Company in respect of any Transaction Document to which it and MTN is a party, provided that the Preference Share Agent -

1.3.73.4.1. is given prior written notice of all steps proposed to be taken against the Company in order to obtain such declaratory relief against the Company in respect of any Transaction Document to which it is a party, and written notification of any such steps which are in fact taken against the Company promptly after such steps are taken;

1.3.73.4.2. is satisfied, acting reasonably, that the steps proposed to be taken against the Company in order to obtain such declaratory relief against the Company will not or are not likely to adversely impact on the rights of the BIC2 Preference Shareholders or the security granted to the BIC2 Preference Shareholders; and

1.3.73.4.3. is provided with copies of all correspondence which is sent by MTN or an MTN Acceded Nominee, as the case may be, to the Company, and which is received by MTN or an MTN Acceded Nominee, as the case may be, from the Company in respect of such steps or other action; and/or

- 1.3.73.4.4. any BIC2 Enforcement Action which is taken against the Company with the prior written consent of the Preference Share Agent;
- 1.3.74. **"BIC2 Pledge and Cession"** means the pledge and cession entered into or to be entered into between the BFC2 Preference Shareholders (as pledgees and security cessionaries) and the Company (as pledgor and security cedent) pursuant to which the Company pledges and cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, the Subject Shares and its claims, if any, against the issuers of the Subject Shares, all as security for its obligations under the First Ranking Guarantee, and all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.75. **"BIC2 Potential Trigger Event"** means any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Key Transaction Documents or any combination of the foregoing) be a BIC2 Trigger Event;
- 1.3.76. **"BIC2 Preference Dividends"** means, in respect of each BIC2 Preference Share, the preferential dividend which is or may be payable in respect of such BIC2 Preference Share in accordance with clause 2.1 or otherwise in accordance with clause 2 including, without limitation, all BIC2 Scheduled Preference Dividends, BIC2 Arrear Dividends, BIC2 Unpaid Dividends, the BIC2 Margin Dividend and/or BIC2 Additional Dividends and a **"BIC2 Preference Dividend"** shall be a reference to any of them, as the context may require;
- 1.3.77. **"BIC2 Preference Shareholders"** means the holders of the BIC2 Preference Shares from time to time and **"BIC2 Preference Shareholder"** shall mean any such holder, as may be appropriate in the context;
- 1.3.78. **"BIC2 Preference Shares"** means the 3 200 000 (three million two hundred thousand) cumulative redeemable non-participating preference shares in the issued Share Capital of the Company, such number of which, as determined in accordance with the Finance Capital Structure Documents, shall be issued to the BIC2 Investor on the Issue Date and having the rights and privileges attaching thereto set forth in this clause 1, 2 and clause 3;
- 1.3.79. **"BIC2 Preference Share Subscription Agreement"** means the BIC2 preference share subscription agreement entered into or to be entered into between BFC2 (as BIC2 Investor), the Company (as issuer) and the Preference Share Agent (as amended and restated from time to time)

pursuant to which the BIC2 Investor agrees to subscribe for the BIC2 Preference Shares;

- 1.3.80. **"BIC2 Proposed Payment"** means, at any relevant time, the amount of any BIC2 Subordinated Loan (and interest thereon, if any) (other than any Permanent Initial Subordinated Loan) which is proposed in writing by MTN or the applicable MTN Acceded Nominee, as the case may be, to the Preference Share Agent, to be repaid to MTN or such MTN Acceded Nominee in accordance with the provisions of the MTN Subordination and Undertaking Agreement;
- 1.3.81. **"BIC2 Provisions Account"** means the bank account maintained by the Company with the Account Bank into which (i) the Company will pay all amounts required to be applied towards the discharge of the obligations of the Company contemplated in the relevant Priority of Payments but which are not due and payable as at the date of the application of the relevant Priority of Payments (other than such amounts on account of any Tax which are paid into the BIC2 Tax Provisions Account); and (ii) during the BEE Listing Period, all BIC2 Subordinated Loans made on account of JSE Losses will be paid;
- 1.3.82. **"BIC2 Public Offer Account"** means the bank account opened and maintained by the Company with the Account Bank into which the subscription monies and interest thereon in relation to the Public Offer and the proceeds of any equity underwrite will be paid by Nedbank, from time to time;
- 1.3.83. **"BIC2 Public Offer Amount"** means the aggregate price at which the BIC2 Ordinary Shares will be issued and allotted to Black Participants (including an equity underwriter, if any, who qualifies as a Black Participant) on the Effective Date, as reflected in the Final Capital Structure;
- 1.3.84. **"BIC2 Redemption Amount"** means, in relation to each BIC2 Preference Share, the aggregate of the following amounts as at the applicable BIC2 Redemption Date –
 - 1.3.84.1. the BIC2 Issue Price of such BIC2 Preference Share; plus
 - 1.3.84.2. all undeclared and/or unpaid BIC2 Preference Dividends in respect of such BIC2 Preference Share, including (without limitation) –
 - 1.3.84.2.1. any accrued and/or accumulated BIC2 Scheduled Preference Dividends;

- 1.3.84.2.2. any BIC2 Arrear Dividends and BIC2 Unpaid Dividends;
- 1.3.84.2.3. any BIC2 Margin Dividend, if applicable;
- 1.3.84.2.4. any BIC2 Additional Dividends, if applicable; plus
- 1.3.84.3. any other amount payable in accordance with these terms and conditions by the Company to the BIC2 Preference Shareholder holding such BIC2 Preference Share;
- 1.3.85. **"BIC2 Redemption Date"** means the date on which such BIC2 Preference Share is actually redeemed and the BIC2 Redemption Amount thereof paid in full to the BIC2 Preference Shareholder;
- 1.3.86. **"BIC2 Reversionary Account Cession"** means the cession entered into or to be entered into between MTN and MTN Holdings (as security cessionary) and BIC2 (as cedent) pursuant to which BIC2 cedes, *in securitatem debiti*, to MTN or a MTN Acceded Nominee, as the case may be, all of its Reversionary Rights to the BIC2 Collection Account and various other accounts, all as security for its obligations under the Transaction Documents to which BIC2 and MTN or a MTN Acceded Nominee, as the case may be, are a party or in respect of which a *stipulatio alteri* is given in favour of MTN or a MTN Acceded Nominee, and all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.87. **"BIC2 Reversionary Pledge and Cession"** means the pledge and cession entered into or to be entered into between MTN and MTN Holdings (as pledgee and security cessionary), and the Company (as pledgor and security cedent) pursuant to which the Company pledges and cedes, *in securitatem debiti*, to MTN or a MTN Acceded Nominee, as the case may be, its Reversionary Rights to the Subject Shares and its Reversionary Rights to its claims, if any, against the issuers of the Subject Shares, all as security for its obligations under the Transaction Documents to which BIC2 and MTN or a MTN Acceded Nominee, as the case may be, are a party or in respect of which a *stipulatio alteri* is given in favour of MTN or a MTN Acceded Nominee, and all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.88. **"BIC2 Scheduled Preference Dividend"** means, in respect of each BIC2 Preference Share, a BIC2 Preference Dividend calculated in accordance with the provisions of clause 2.1.1;

- 1.3.89. **"BIC2 Scheduled Preference Dividend Date"** means (i) 30 April of each year during the Term; and (ii) 30 September of each year during the Term or such earlier or later date as may be agreed in writing by the Company and the Preference Share Agent at least 5 (five) Business Days prior to 30 April or 30 September (as the case may be) of any year during the Term;
- 1.3.90. **"BIC2 Scheduled Redemption Date"** means the date which is 5 (five) years calculated from the Issue Date (or such later date as agreed to in Writing by the Preference Share Agent);
- 1.3.91. **"BIC2 Security Account"** means the bank account to be maintained by the Company with the Account Bank into which certain sums are required under the Finance Documents to be paid in respect of the BIC2 Preference Shares;
- 1.3.92. **"BIC2 Subordinated Claims"** means all present and future amounts, claims, liabilities and obligations, of whatsoever nature and howsoever arising, which are owed or may be owing by the Company to MTN and/or the MTN Acceded Nominees (both actual or contingent and whether incurred solely or jointly or in any other capacity) from time to time during the Term and includes, without limitation:
- 1.3.92.1. all and any claims of MTN against the Company and/or the MTN Acceded Nominees arising out of or in connection with or under any Transaction Document;
- 1.3.92.2. all and any claims of MTN and/or the MTN Acceded Nominees against the Company arising out of or in connection with or under the BIC2 Subordinated Loans, whether in respect of the repayment of any interest, capital or other amount payable by the Company to MTN and/or the MTN Acceded Nominees or otherwise; and
- 1.3.92.3. any claim of whatsoever nature and howsoever arising of MTN and/or the MTN Acceded Nominees against the Company as a result of or in connection with any repudiation, cancellation, termination, voidness, voidability of or misrepresentation (whether innocent, negligent or fraudulent) or breach of representation, warranty or undertaking in relation to any claims contemplated above;
- 1.3.93. **"BIC2 Subordinated Loan Agreements"** means, if any BIC2 Subordinated Loans are advanced by MTN and/or any MTN Acceded Nominee to the Company, the loan agreements pursuant to which the interest rates

applicable to any such BIC2 Subordinated Loans are set out, provided that all of the other terms applicable to each such BIC2 Subordinated Loan shall be governed by the MTN Subordination and Undertaking Agreement and "**BIC2 Subordinated Loan Agreement**" means any one of them, as the context may require;

- 1.3.94. "**BIC2 Subordinated Loans**" means all loans advanced by MTN and/or any MTN Acceded Nominee to the Company in accordance with the provisions of the MTN Subordination and Undertaking Agreement and "**BIC2 Subordinated Loan**", means any one of them as the context may require;
- 1.3.95. "**BIC2 Subscriptions Account**" means the bank account maintained by BIC2 with the Account Bank into which, *inter alia*, the BIC2 Issue Price will be paid,
- 1.3.96. "**BIC2 Tax Provisions Account**" means the bank account opened and maintained by the Company with the Account Bank into which all or any part of amounts on account of Tax required to be provided for or discharged by the Company will be paid;
- 1.3.97. "**BIC2 Top-Up Loan Account**" means the bank account maintained by BIC2 with the Account Bank into which all BIC2 Subordinated Loans, other than the BIC2 Subordinated Loans made on account of any JSE Losses during the BEE Listing Period, will be paid;
- 1.3.98. "**BIC2 Total Proceeds**" has the meaning specified in clause 3.3.1;
- 1.3.99. "**BIC2 Trigger Event**" has the meaning specified in clause 2.3;
- 1.3.100. "**BIC2 Unpaid Dividends**" means, in respect of any BIC2 Preference Share, all the BIC2 Preference Dividends which have been declared in respect of such BIC2 Preference Share but which were not paid on the applicable BIC2 Dividend Date;
- 1.3.101. "**BIC2 Unredeemed Preference Shares**" means, at any time, that number of BIC2 Preference Shares which have not been redeemed by the Company at that time in accordance with this MOI;
- 1.3.102. "**BIC2 Voluntary Redemption**" has the meaning specified in clause 2.2.2;
- 1.3.103. "**BIC2 Voluntary Redemption Date**" has the meaning specified in clause 2.2.2.5;
- 1.3.104. "**BIC2 Voluntary Redemption Notice**" has the meaning specified in clause 2.2.2.1;

- 1.3.105. **"BIC2 Voluntary Redemption Notice Date"** has the meaning specified in clause 2.2.2.1;
- 1.3.106. **"Business Day"** means every day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.3.107. **"Calculation Agent"** means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement, initially being Nedbank;
- 1.3.108. **"Call Option Agreement"** means the call option agreement entered into or to be entered into between MTN, the BFC2 Preference Shareholders and the Preference Share Agent pursuant to which MTN or a Call Option MTN Acceded Nominee is granted various call options in respect of the BFC2 Preference Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.109. **"Call Option Closing Date"** means, in respect of any Trigger Event Call Option pursuant to which MTN or a MTN Acceded Nominee delivers a Call Option Exercise Notice, the 3rd (third) Business Day from the expiry date of the applicable Trigger Event Call Option Period;
- 1.3.110. **"Call Option Exercise Notice"** means a written notice to be delivered by MTN or any MTN Acceded Nominee to the Preference Share Agent during the applicable Trigger Event Call Option Period in order to exercise the Trigger Event Call Option;
- 1.3.111. **"Call Option MTN Acceded Nominee"** means, at any relevant time, each MTN Nominee that has become an MTN Acceded Nominee in accordance with the provisions of the Call Option Agreement, and **"Call Option MTN Acceded Nominees"** shall mean all of them;
- 1.3.112. **"Call Option Notice"** means a written notice to be delivered by the Preference Share Agent to MTN, advising MTN that a Trigger Event Call Option may be exercised by MTN or any MTN Acceded Nominee;
- 1.3.113. **"Call Option Strike Price"** means, in respect of the Trigger Event Call Option, the purchase price payable by MTN or the applicable MTN Acceded Nominee in respect of the applicable BFC2 Preference Shares pursuant to the exercise of a Trigger Event Call Option, which shall (i) be notified by the Preference Share Agent to MTN in the applicable Call Option Notice; and (ii) comprise (but without double counting) –
- 1.3.113.1. the aggregate of any amounts owed by BFC2 to the BFC2 Preference Shareholders under any Finance Document

(including, without limitation, but without duplication, any costs payable by BFC2 to such BFC2 Preference Shareholders pursuant to the BFC2 Preference Share Subscription Agreement or any of the other Finance Documents and any indemnity payments due and payable by the Company to such BFC2 Preference Shareholders under any of the Finance Documents); and

1.3.113.2. with respect to each applicable BFC2 Preference Share, an amount equal to –

1.3.113.2.1. the BFC2 Redemption Amount; plus

1.3.113.2.2. all other amounts necessary to place each BFC2 Preference Shareholder in the same financial and net after Tax position it would have been in had the BFC2 Trigger Event or BFC2 Potential Trigger Event not occurred;

1.3.114. **"Central Securities Depository"** means a person who is licensed as a central securities depository under section 9 of the Financial Markets Act;

1.3.115. **"Codes"** means the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Minister of Trade and Industry on 9 February 2007 in terms of Section 9 of the BBBEE Act;

1.3.116. **"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008) and shall include the provisions of the Companies Act, 1973 (Act No. 61 of 1973) that have not been repealed;

1.3.117. **"Consolidated EBITDA"** means, in relation to each Measurement Period, the aggregate of the consolidated operating profits of MTN (including the results from discontinued operations) before finance costs and tax for that Measurement Period, adjusted by:

1.3.117.1. taking no account of any material items which represent gains or losses arising on:

1.3.117.1.1. restructurings of the activities of any entity and reversals of any provisions for the costs of restructuring;

1.3.117.1.2. disposals of non-current assets;

- 1.3.117.1.3. the disposal of assets associated with discontinued operations; or
- 1.3.117.1.4. reversals of any provision;
- 1.3.117.2. taking no account of any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.3.117.3. taking no account of any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme; and
- 1.3.117.4. adding back any depreciation and amortisation and taking no account of any change for impairment or any reversal of any previous impairment charge made in the period;
- 1.3.118. **"Consolidated Eligible Cash and Cash Equivalents"** means, at any time, the cash and the cash equivalents included as cash, in each case calculated in accordance with the most recent consolidated balance sheet of MTN excluding, for the avoidance of doubt, Restricted Cash;
- 1.3.119. **"Consolidated Total Borrowings"** means at any time and without double counting, the aggregate of the following liabilities calculated at the nominal, principal or other amount at which the liabilities would be carried in a consolidated balance sheet of MTN drawn up at that time:
 - 1.3.119.1. any moneys borrowed;
 - 1.3.119.2. any redeemable preference shares;
 - 1.3.119.3. any acceptance under any acceptance credit (including any dematerialised equivalent);
 - 1.3.119.4. any bond, note, debenture, loan stock or other similar instrument;
 - 1.3.119.5. any indebtedness under a finance or capital lease;
 - 1.3.119.6. any moneys owing in connection with the sale or discounting of receivables (except to the extent that there is no recourse);
 - 1.3.119.7. any indebtedness arising from any deferred payment agreements arranged primarily as a method of raising finance or

financing the acquisition of an asset in circumstances where payment is deferred for any period in excess of 6 (six) months;

1.3.119.8. any indebtedness arising in connection with any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and

1.3.119.9. any indebtedness of any person of a type referred to in the above clauses which are the subject of a guarantee, indemnity or similar assurance against financial loss given by a member of the MTN Group;

1.3.120. **"Consolidated Total Net Borrowings"** means at any time Consolidated Total Borrowings less Consolidated Eligible Cash and Cash Equivalents;

1.3.121. **"Corporate Tax Rate"** means the maximum nominal rate of income tax (expressed as a decimal) levied on each Rand of taxable income of companies (as defined in the Income Tax Act) at the applicable date, which rate expressed as a decimal is 0,28 (zero comma two eight) as at the Signature Date;

1.3.122. **"CPI"** means the weighted average consumer price index of all items of the 12 (twelve) areas specified in the notice as notified by Statistics South Africa (with the average for 2015 as a base which equals 100 (one hundred));

1.3.123. **"CSD"** means STRATE Limited (Registration No. 1998/022242/06), licensed as a central securities depository in terms of the Financial Markets Act, or any other depository institution that may be established under the Financial Markets Act;

1.3.124. **"Designated Additional Shares"** means the Additional Shares acquired by the Company as a result of a Distribution *in specie* in circumstances where the Company does not have an election to receive cash on account of such Distribution;

1.3.125. **"Determination Date"** means the date on which the board of directors of MTN meets in accordance with the provisions of clause 9.3.1 of the Implementation Agreement;

1.3.126. **"Disposal"** or **"Dispose"** or any other cognate expression means to sell, alienate, donate, exchange, distribute, transfer or to in any other manner whatsoever dispose;

1.3.127. **"Disposal Payment Amounts"** has the meaning specified in clause 3.2;

1.3.128. **"Disposal Proceeds"** means all and any proceeds arising from the Disposal by the Company of all or some of the Subject Shares, whether as a result of the enforcement by the BFC2 Preference Shareholders of their rights under the Finance Documents, or otherwise as a result of any Permitted Disposal;

1.3.129. **"Distribution"** means, in relation to any company -

1.3.129.1. any repurchase by that company, in terms of section 48 of the Companies Act of any shares of any class in its issued share capital;

1.3.129.2. the payment of any dividend or the making of any other distribution by that company to its shareholders, or the redemption of any shares by that company; or

1.3.129.3. the making of any payment as envisaged in section 46 of the Companies Act by that company to its shareholders, whether such payment is made in cash or *in specie*;

1.3.129(A) **"Dividend Payment Share Cover Ratio"** means, for the purposes of clauses 3.1.6 and 3.1.9 (Pre BIC2 Trigger Event Priority of Payments), on the applicable Priority of Payments Date and calculated as if all levels of priority in that Priority of Payments, including the payment of any proposed Distribution to Ordinary Shareholders, have been paid or provided for on the applicable Priority of Payments Date: the ratio of A:B, where:

1.3.129(A)1 **A** is the number of MTN Shares which are expected to be reflected in the Subject Share Securities Account on the applicable Priority of Payments Date, multiplied by the Five Day VWAP of the MTN Shares; and

1.3.129(A)2 **B** is the aggregate of:

1.3.129(A)2a the amounts referred to in clause 1.3.263.2 of the definition of Total Share Cover Ratio on the applicable Priority of Payments Date;

1.3.129(A)2b the NVF Balance as defined in the MTN Tranche 1 Subscription and Call Option Agreement on the applicable Priority of Payments Date, minus the amounts required to be applied or provided for by the Company in order to discharge its obligations in clause 3.1.8.1 (Pre BIC2 Trigger Event Priority

of Payment) on the applicable Priority of Payments Date; and

1.3.129(A)2c the balance of any outstanding BIC2 Subordinated Loan and all other amounts outstanding in relation to any such BIC2 Subordinated Loan minus the amounts required to be applied or provided for by the Company in order to discharge its obligations in clause 3.1.8.2 (Pre BIC2 Trigger Event Priority of Payment) on the applicable Priority of Payment Date;

- 1.3.130. **"Dividends Tax"** means any Tax imposed on dividends declared or paid by a company, whether such tax is payable directly by the beneficial owner of such shares or by the company declaring or paying the dividend, or recovered by means of a withholding effected by the company declaring or paying the dividend or effected by any other person (including any intermediary);
- 1.3.131. **"Dividends Tax Credit"** means, if applicable under the Income Tax Act or any other legislation, any credit given or permitted to be given in relation to Dividends Tax and that is capable of being utilised by corporate taxpayers generally;
- 1.3.132. **"Effective Date"** means the date on which BIC2 Ordinary Shares are allotted and issued to Black Participants under the Public Offer;
- 1.3.133. **"Encumbrance"** means, in relation to any property, includes any pledge, security cession, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over or in respect of that property or class of property (or any part or proceeds thereof), or any lending of that property, and, the words **"Encumber"**, **"Encumbered"** and **"Encumbering"** shall have corresponding meanings;
- 1.3.134. **"Fees Letter"** means the fees letter entered into or to be entered into between the BFC2 Preference Shareholders, the Company, the Preference Share Agent and MTN pursuant to which the Company and MTN agree to pay the Transaction Fees, all on the terms and conditions contained therein;

- 1.3.135. **"Final Capital Structure"** means final capital structure applicable to the Transaction calculated in accordance with the provisions of the Implementation Agreement;
- 1.3.136. **"Final Capital Structure Documents"** means the Final Capital Structure and the corresponding funds flow statement generated in accordance with the capital structure model relating to the Transaction;
- 1.3.137. **"Finance Documents"** means -
- 1.3.137.1. the BIC2 Preference Share Subscription Agreement;
 - 1.3.137.2. the BFC2 Preference Share Subscription Agreement;
 - 1.3.137.3. the First Ranking Guarantee;
 - 1.3.137.4. the MTN Limited Recourse Guarantee;
 - 1.3.137.5. the MTN Account Cession;
 - 1.3.137.6. the BIC2 Pledge and Cession;
 - 1.3.137.7. the BIC2 Account Cession;
 - 1.3.137.8. the BIC2 Loan Account Cession;
 - 1.3.137.9. the MTN Subordination and Undertaking Agreement;
 - 1.3.137.10. the Account Bank and Agency Agreement;
 - 1.3.137.11. the Interfunder Agreement;
 - 1.3.137.12. the Call Option Agreement;
 - 1.3.137.13. the constitutional documents of each of the Company and BFC2;
 - 1.3.137.14. the deed of trust constituting the BFC2 Owner Trust;
 - 1.3.137.15. the Fees Letter;
 - 1.3.137.16. the Nedbank Agency Fees Letter;
 - 1.3.137.17. the Preference Share Custody Agreement;
 - 1.3.137.18. the Subject Shares Custody Agreement; and

1.3.137.19. any other written agreement or document which the Company, BIC2, MTN and the Preference Share Agent may agree in writing is a Finance Document from time to time,

and "**Finance Document**" means any one of them, as the context requires;

1.3.138. "**Financial Covenant**" means Consolidated Total Net Borrowings to Adjusted Consolidated EBITDA at the end of any Measurement Period, on the basis that -

1.3.138.1. an accounting term used in the calculation of the Financial Covenant is to be construed in accordance with the principles applied in connection with the financial statements dated 31 December 2015;

1.3.138.2. any amount in a currency other than Rand is to be taken into account as its Rand equivalent calculated on the basis of:

1.3.138.2.1. the Preference Share Agent's spot rate of exchange for the purchase of the relevant currency in the Johannesburg foreign exchange market Rand at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or

1.3.138.2.2. if the amount is to be calculated on the last day of a financial period of MTN, the relevant rates of exchange used by MTN in, or in connection with, its financial statements for that period;

1.3.138.2.3. companies which are not members of the MTN Group, but which are proportionately consolidated in the consolidated financial statements of MTN, will be included as members of the MTN Group, on a proportionate basis to the same extent as such proportionate consolidation, in the calculation of Adjusted Consolidated EBITDA, Consolidated EBITDA and Consolidated Total Borrowings; and

1.3.138.2.4. no item must be credited or deducted more than once in any calculation in respect of the Financial Covenant;

1.3.139. "**Financial Indebtedness**" means any indebtedness for or in respect of -

- 1.3.139.1. moneys borrowed;
- 1.3.139.2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- 1.3.139.3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- 1.3.139.4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
- 1.3.139.5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.3.139.6. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- 1.3.139.7. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- 1.3.139.8. any amount raised by the issue of shares which are redeemable;
- 1.3.139.9. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- 1.3.139.10. deferred payment for goods and/or services for a period exceeding 90 (ninety) days; and
- 1.3.139.11. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 1.3.139.1 to 1.3.139.10;
- 1.3.140. **"Financial Indebtedness (MTN)"** means, without double counting, any indebtedness for or in respect of –
 - 1.3.140.1. moneys borrowed;

- 1.3.140.2. any acceptance credit (including any dematerialised equivalent);
- 1.3.140.3. any bond , note, debenture, loan stock or other similar instrument;
- 1.3.140.4. any redeemable preference share;
- 1.3.140.5. any agreement treated as a finance or capital lease in accordance with IFRS;
- 1.3.140.6. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.3.140.7. any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- 1.3.140.8. any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
- 1.3.140.9. any amount raised by the issue of shares which are redeemable;
- 1.3.140.10. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
- 1.3.140.11. any guarantee or indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs,

but excludes any Financial Indebtedness (MTN) owed by any one member of the MTN Group to another member of the MTN Group;

- 1.3.141. **"Financial Markets Act"** means the Financial Markets Act, No. 19 of 2012 as amended, or any legislation which replaces it.
- 1.3.142. **"Financial Year"** means each financial year of the Company, ending on the last day of December of each year;
- 1.3.143. **"First Ranking Guarantee"** means the first ranking guarantee entered into or to be entered into between the Company (as guarantor) and the BFC2 Preference Shareholders, pursuant to which the Company unconditionally and irrevocably guarantees the payment of all amounts required and/or scheduled or intended to be paid by BFC2 under the Finance Documents to the BFC2 Preference Shareholders, all on the terms and conditions

contained therein and as amended, supplemented, varied or novated from time to time;

- 1.3.144. **"Five Day VWAP"** means, in respect of any Shares in the issued ordinary share capital of any company listed on the JSE, the volume weighted average price of such Shares calculated over a period of 5 (five) consecutive Trading Days immediately preceding the date on which such volume weighted average price is calculated, as determined by the Calculation Agent in accordance with the Account Bank and Agency Agreement;
- 1.3.145. **"Holders"** means registered holders of Securities;
- 1.3.146. **"IFRS"** means International Financial Reporting Standards, issued by the Board of the International Accounting Standards Committee from time to time;
- 1.3.147. **"Implementation Agreement"** means the implementation agreement entered into or to be entered into between, amongst others, the BFC2 Investors, the Preference Share Agent, BFC2, the Company, the Security Custodian, the Calculation Agent, the Preference Share Custodian, the Account Bank and MTN pursuant to which the implementation of the Transaction is regulated, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.148. **"Inception Total Share Cover Ratio"** means, on the Determination Date, the ratio of A:B, where:
- 1.3.148.1. A is the number of Subscription Shares to be subscribed for by the Company in accordance with the Implementation Agreement on the New Empowerment Transaction Closing Date, multiplied by (i) the One Day VWAP of the MTN Shares; or (ii) the Five Day VWAP of the MTN Shares, whichever is the lower, on the Business Day immediately prior to the Determination Date; and
- 1.3.148.2. B is the aggregate BIC2 Issue Price of the BIC2 Preference Shares to be issued to BFC2 in accordance with the provisions of the BIC2 Preference Share Subscription Agreement, as set out in the Final Capital Structure, less an amount equal to the Permanent Initial Subordinated Loan (if any);
- 1.3.149. **"Income Tax Act"** means the Income Tax Act, No 58 1962 as amended;
- 1.3.150. **"Increase Notice"** shall bear the meaning ascribed thereto in clause 2.1.6.1;
- 1.3.151. **"Increased Costs"** means, in relation to the BIC2 -

1.3.151.1. a reduction in the BIC2 Preference Shareholder's return on overall capital (including, without limitation, as a result of any reduction in the BIC2 Preference Shareholder's return on capital brought about by more capital being required to be allocated by the BIC2 Preference Shareholder, or the BIC2 Preference Shareholder being required to comply with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement));

1.3.151.2. an additional or increased cost, liability or expense; or

1.3.151.3. a reduction of any amount payable under the BIC2 Preference Shares (including the after-tax BIC2 Preference Dividend receipt by the BIC2 Preference Shareholder in respect of the BIC2 Preference Shares),

which is incurred or suffered by the BIC2 Preference Shareholder as a consequence of, or attributable to, the BIC2 Preference Shareholder having subscribed (or having committed to subscribe) for, or holding and/or funding, any of the BIC2 Preference Shares or to the BIC2 Preference Shareholder having any rights or obligations, or exercising any rights or performing any obligations, under any Finance Document;

1.3.152. **"Indemnified Amount"** means the amount which the Company is required to indemnify any BFC2 Preference Shareholder in accordance with the provisions of clause 14 of the BIC2 Preference Share Subscription Agreement, if the effect of any BFC2 Adjustment Event only becomes apparent, or a BFC2 Preference Shareholder only becomes aware of the effects of a BFC2 Adjustment Event, during the Indemnity Period;

1.3.153. **"Indemnity Period"** means the period commencing on the date on which the last of the BFC2 Preference Shares is redeemed in full and ending on the 5th (fifth) anniversary of such date or such shorter period as may be agreed to in writing by the Preference Share Agent;

1.3.154. **"Initial Administration Contingency Amount"** means an amount equal to the aggregate of the Public Offer Interest Amount and all other amounts transferred to the BIC2 Provisions Account in accordance with the provisions of the Implementation Agreement which are not required for payment or provision for payment in accordance with the provisions of the Implementation Agreement and in relation to the transactions set out in the Implementation Agreement, or such lesser amount determined in the discretion of the board of directors of MTN and included in the documents governing the Final Capital Structure;

- 1.3.155. **"Initial Period"** means, in respect of the BIC2 Preference Shares, the period commencing on the Issue Date and ending on the date which is 3 (three) years and 1 (one) day calculated from the Issue Date;
- 1.3.156. **"Initial Subordinated Loan"** means a subordinated loan or loans, if any, to be advanced by MTN (or an MTN Acceded Nominee) to the Company pursuant to the provisions of clause 9.3.5.2 and/or clause 9.3.7.2.2(a) of the Implementation Agreement, and in accordance with clause 4.1 of the MTN Subordination and Undertaking Agreement;
- 1.3.157. **"Insolvency Event"** means, in relation to each of the Company, BFC2 and MTN, any of the following events or circumstances -
- 1.3.157.1. an order or declaration is made or a meeting of the Directors or Shareholders or trustees of such person is convened to consider the passing of, or a resolution is passed for the custodianship, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings (and whether provisional or final) of it or its estate (and if any of the parties to the Transaction Documents is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction); or
 - 1.3.157.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or
 - 1.3.157.3. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; or
 - 1.3.157.4. any receiver, judicial receiver, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it or any material part of its assets or it requests any such appointment (and if any of the parties to the Transaction Documents is subject to the law of any other jurisdiction, be construed as including any

equivalent or analogous proceedings under the law of such other jurisdiction); or

1.3.157.5. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act, No 24 of 1936 as amended, or any equivalent legislation in any jurisdiction to which such person is subject; or

1.3.157.6. such person has any Judgment (which, if such person is MTN, is a Judgment which requires the payment of, or other application or commitment of resources (within the 12 months following the date of such Judgment) with a value of US\$50 000 000 or more (or an equivalent in any other currency)) made against it and it fails to –

1.3.157.6.1. appeal against such Judgment (if such Judgment is appealable) or to apply for the rescission thereof (if such Judgment is a default judgment) within the prescribed time limits or thereafter fails to prosecute such appeal or application expeditiously and diligently or ultimately fails in such appeal or application; or

1.3.157.6.2. satisfy such Judgment, or, if it lodges an appeal or application referred to in clause 1.3.157.6.1 and such appeal or application ultimately fails, it fails to satisfy such Judgment within 1 (one) Business Day of such appeal or application failing;

1.3.157.7. such entity is "financially distressed" as contemplated section 128(1) of the Companies Act; or

1.3.157.8. such entity is "financially distressed" as contemplated section 128(1) of the Companies Act and an application is made by any affected person for an order placing such entity under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act;

1.3.158. **"Interfunder Agreement"** means the interfunder agreement entered into or to be entered into between the BFC2 Preference Shareholders and the Preference Share Agent pursuant to which, *inter alia*, the BFC2 Preference Shareholders regulate their relationship as the holders of the BFC2

Preference Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;

- 1.3.159. **"Issue Date"** means the date on which the BIC2 Preference Shares are actually issued to the BIC2 Preference Shareholder;
- 1.3.160. **"JSE"** means JSE Limited (Registration No. 2005/022939/06), a limited liability company duly registered and incorporated in South Africa being licensed in terms of the Financial Markets Act;
- 1.3.161. **"JSE Listings Requirements"** means the Listings Requirements of the JSE as amended from time to time;
- 1.3.162. **"JSE Losses"** means all and any losses, damages, liabilities, claims, penalties, fines, charges, judgments, costs and expenses incurred or sustained by the Company, during the BEE Listing Period, as a result of or arising from or pursuant to the establishment, operation and/or maintenance of the JSE Trading Platform;
- 1.3.163. **"JSE Trading Platform"** means the trading platform established, operated and maintained by the Company in respect of the BIC2 Ordinary Shares, pursuant to which the BIC2 Ordinary Shares will be listed on, and traded, on the JSE during the BEE Listing Period;
- 1.3.164. **"JSE Trading Platform Agreements"** means:
 - 1.3.164.1. any agreements entered into between the Company and third party service providers in relation to the provision of:
 - 1.3.164.1.1. legal services;
 - 1.3.164.1.2. accounting and auditing services;
 - 1.3.164.1.3. project management services;
 - 1.3.164.1.4. services related to education sessions to be provided to the Ordinary Shareholders;
 - 1.3.164.1.5. system verification testing services; and
 - 1.3.164.1.6. services related to the usage of software materials, software documentation and any other intellectual property;
 - 1.3.164.1.7. services related to the development, maintenance, hosting and overall management

of the JSE Trading Platform (including websites), a call centre and a walk in client centre;

1.3.164.1.8. public relations, marketing and communications services;

1.3.164.1.9. live and/or delayed share data services in relation BIC2 Ordinary Shares traded on the JSE,

for the purposes of, in connection with, or in relation to, the establishment, operation and maintenance of the JSE Trading Platform;

1.3.164.2. any agreements entered into between one or more of the Company, MTN, MTN Holdings, the JSE, any member of the JSE and any person directly or indirectly providing custodial services to any Ordinary Shareholder in respect of such BIC2 Ordinary Shares;

1.3.164.3. any agreements entered into between BIC2 and the CSD;

1.3.164.4. the termination and reinstatement agreements in relation to any of the agreements referred to in clauses 1.3.164.1 to 1.3.164.3 above;

1.3.164.5. insurance contracts in relation to the JSE Trading Platform, if any; and

1.3.164.6. any agreements incidental or ancillary to any of the agreements referred to in this clause 1.3.164 to the extent required for the establishment, operation and maintenance of the JSE Trading Platform;

1.3.165. **"JSE Trading Platform Expenses"** means fees, costs and expenses (plus VAT thereon) contracted to be payable by the Company to any JSE Trading Platform Service Providers under the JSE Trading Platform Agreements, in accordance with their terms, in consideration for the services to be rendered to the Company thereunder, provided that the aggregate of such JSE Trading Platform Expenses, when taken with the aggregate Professional Advisor Expenses and Unwinding Services Expenses, do not from time to time or at any time exceed the amounts set out in clause 3.1.2 below (or such other amount/s as the Preference Share Agent may agree in writing);

- 1.3.166. **"JSE Trading Platform Service Providers"** means those JSE Trading Platform Third Parties with whom the Company enters into JSE Trading Platform Agreements for the purposes of such JSE Trading Platform Third Parties rendering services to the Company in connection with the establishment, operation and/or maintenance of the JSE Trading Platform;
- 1.3.167. **"JSE Trading Platform Third Parties"** means:
- 1.3.167.1. the counterparties to the JSE Trading Platform Agreements, other than the Company;
 - 1.3.167.2. the Ordinary Shareholders that trade their BIC2 Ordinary Shares on the JSE Trading Platform;
 - 1.3.167.3. all and any regulatory authorities having jurisdiction in respect of the JSE Trading Platform;
 - 1.3.167.4. any insurers or reinsurers in respect of whom insurance or reinsurance is taken out by the Company and/or the other counterparties to the JSE Trading Platform Agreements in relation to the JSE Trading Platform; and/or
 - 1.3.167.5. any other third parties who have or may have claims against the Company arising from or in connection with the establishment, operation or maintenance of the JSE Trading Platform,
- and each a **"JSE Trading Platform Third Party"**, as the context may require;
- 1.3.168. **"Judgment"** means any judgment of any competent court or similar award (including any arbitral award);
- 1.3.169. **"Key Material Agreements"** means –
- 1.3.169.1. any BIC2 Subordinated Loan Agreement;
 - 1.3.169.2. any BFC2 Subordinated Loan Agreement;
 - 1.3.169.3. the BIC2 Reversionary Pledge and Cession;
 - 1.3.169.4. the BIC2 Reversionary Account Cession;
 - 1.3.169.5. the MTN Tranche 1 Subscription and Call Option Agreement;
 - 1.3.169.6. the MTN Tranche 2 Subscription Agreement;
 - 1.3.169.7. the MTN Tranche 3 Subscription Agreement;

1.3.169.8. the MTN Loan Transfer and Cession Agreement;

1.3.169.9. the Relationship Agreement;

1.3.169.10. the Public Offer and Reinvestment Documents;

1.3.169.11. the Repurchase Agreement;

1.3.169.12. the Implementation Agreement; and

1.3.169.13. the BIC2 Ords Subscription Agreement,

and "**Key Material Agreement**" means, as the context requires, any one of them;

1.3.170. "**Key Transaction Documents**" means the Finance Documents and the Key Material Agreements and "**Key Transaction Document**" means, as the context requires, any one of them;

1.3.171. "**Letters of Allocation**" means, at any relevant time from the Issue Date until the BIC2 Discharge Date, letters of allocation (howsoever named) issued to the shareholders of any company in which the Company holds any shares at such time in respect of such shareholders' shares in such company pursuant to a rights offer by such company and in terms of which such shareholders are entitled to subscribe for securities or acquire any other asset of such company;

1.3.172. "**Losses**" includes all losses, payments, damages, liabilities, claims, proceedings, actions, penalties, breakage costs, charges, demands or other sanctions of a monetary nature, fees, Taxes, costs and expenses (including legal fees on the de facto scale between attorney and own client) (provided that any such charges, fees, costs and expenses incurred prior to any default, breach or other act or omission giving rise to an obligation to indemnify or make good any Losses shall be costs reasonably incurred) and the term "**Loss**" shall bear a corresponding meaning;

1.3.173. "**Material Adverse Event**" means the occurrence of any event, circumstance or matter or combination of events, circumstances or matters which has or is reasonably likely to have a material adverse effect on:

1.3.173.1. the financial condition (including assets, revenues and liabilities), business, operations or affairs of the Company, BFC2, any MTN Acceded Nominee, or the MTN Group taken as a whole; and/or

1.3.173.2. the ability of the Company and/or BFC2 to perform in a timely manner any or all of its obligations under and in terms of any of

the Key Transaction Documents to which it is a party and/or the ability of MTN to perform in a timely manner any or all of its material obligations under and in terms of any of the Transaction Documents to which it is a party; and/or

1.3.173.3. the ability of the Company and/or BFC to perform in a timely manner any or all of its payment obligations under and in terms of any of the Service Provider Agreements; and/or

1.3.173.4. the validity and/or enforceability of any of the Key Transaction Documents;

1.3.174. **"Material Agreements"** means –

1.3.174.1. each Key Material Agreement;

1.3.174.2. each Service Provider Agreement; and

1.3.174.3. any other written agreement or document which the Company, MTN and the Preference Share Agent may agree in writing is a Material Agreement from time to time,

and **"Material Agreement"** means any one of them as the context may require;

1.3.175. **"Material Subsidiary"** means, at any time, an Operating Subsidiary of MTN if the gross assets, pre-tax profits or turnover of that Operating Subsidiary then equals or exceeds 10% (ten per cent) of either the gross assets, pre-tax profits or turnover of the MTN Group and for this purpose -

1.3.175.1. subject to clause 1.3.175.2 below:

1.3.175.1.1. the contribution of an Operating Subsidiary of MTN will be determined from its financial statements which were consolidated into the latest audited consolidated financial statements of the MTN; and

1.3.175.1.2. the gross assets, pre-tax profits or turnover of the MTN Group will be determined from the latest audited consolidated financial statements of MTN;

1.3.175.2. if an Operating Subsidiary of MTN becomes a member of the MTN Group after the date on which the latest audited consolidated financial statements of MTN were prepared -

- 1.3.175.2.1. the contribution of the Operating Subsidiary will be determined from its latest financial statements; and
- 1.3.175.2.2. the gross assets, pre-tax profits or turnover of the MTN Group will be determined from the latest audited consolidated financial statements of MTN but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that Operating Subsidiary);
- 1.3.175.3. the contribution of an Operating Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
- 1.3.175.4. if a Material Subsidiary disposes of all or substantially all of its assets to another member of the MTN Group, it will immediately cease to be a Material Subsidiary and the other member of the MTN Group (if it is not MTN or already a Material Subsidiary) will immediately become a Material Subsidiary;
- 1.3.175.5. an Operating Subsidiary of MTN (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-MTN Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-MTN Group transfer or reorganisation occurred on the date of the latest audited consolidated financial statements of MTN;
- 1.3.175.6. except as specifically mentioned in clause 1.3.175.4, a member of the MTN Group will remain a Material Subsidiary until the next audited consolidated financial statements of MTN show otherwise under clause 1.3.175.1; and
- 1.3.175.7. if there is a dispute as to whether or not a member of the MTN Group is a Material Subsidiary, a certificate of the auditors of MTN will be, in the absence of manifest error, conclusive;
- 1.3.176. **"Measurement Period"** means a period of 12 (twelve) months ending on the last day of a financial year and financial half year of MTN;
- 1.3.177. **"MOI"** means this Memorandum of Incorporation, as amended or replaced from time to time;

- 1.3.178. **"MTN"** means MTN Group Limited (Registration No. 1994/009584/06), a public company incorporated in accordance with the laws of the Republic of South Africa, the ordinary shares of which are listed on the main board of the stock exchange maintained by the JSE;
- 1.3.179. **"MTN Acceded Nominee"** means, at any relevant time (i) MTN Holdings; and (ii) each MTN Nominee that has acceded to the provisions of the MTN Subordination and Undertaking Agreement in the manner provided for therein and **"MTN Acceded Nominees"** shall mean all of them;
- 1.3.180. **"MTN Account Cession"** means the account cession entered into or to be entered into between the Preference Share Agent (as preference share agent), the BFC2 Preference Shareholders (as security cessionaries) and MTN (as cedent) pursuant to which MTN cedes, *in securitatem debiti*, to the BFC2 Preference Shareholders, all of its right, title and interest in and to the MTN Implementation Account, all as security for its obligations under the MTN Limited Recourse Guarantee, and all on the terms and conditions contained therein;
- 1.3.181. **"MTN Group"** means MTN and its Subsidiaries;
- 1.3.182. **"MTN Holdings"** means Mobile Telephone Networks Holdings Limited (Registration No. 1993/001411/07/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.3.183. **"MTN Implementation Account"** means the account opened by MTN with Nedbank and designated the *"MTN Implementation Account"* in the Implementation Agreement;
- 1.3.184. **"MTN International"** means MTN International Proprietary Limited (Registration No. 1998/002351/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.3.185. **"MTN Limited Recourse Guarantee"** means the limited recourse guarantee entered into or to be entered into between MTN (as guarantor) and the BFC2 Preference Shareholders, pursuant to which MTN unconditionally and irrevocably guarantees, on a limited recourse basis, the payment of all amounts required and/or scheduled or intended to be paid by BFC2 under the Finance Documents to the BFC2 Preference Shareholders, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.186. **"MTN Loan Account"** means the claim on loan account initially held by MTN Zakhele against MTN (arising pursuant to the provisions of the Repurchase

Agreement) and transferred to the Company pursuant to the MTN Loan Transfer and Cession Agreement;

1.3.187. **"MTN Loan Transfer and Cession Agreement"** means the agreement entered into or to be entered into between MTN Zakhele, MTN and the Company pursuant to which MTN Zakhele cedes and transfers on an out and out basis all of its rights title and interest in and to the MTN Loan Account to the Company, in consideration for the BIC2 Consideration Shares;

1.3.188. **"MTN Nominee"** means, at any time at which a Call Option may be exercised by MTN or a MTN Acceded Nominee in terms of the MTN Subordination and Undertaking Agreement:

1.3.188.1. any Material Subsidiary which is duly registered and incorporated in accordance with the laws of South Africa;

1.3.188.2. MTN Holdings;

1.3.188.3. MTN International; and

1.3.188.4. any other entity approved by the Preference Share Agent in writing,

provided that such entity is a Subsidiary of MTN at such time and provided further that such entity is not a Sanctioned Entity;

1.3.189. **"MTN Related Entity"** means any Subsidiary, joint venture of MTN, associate of MTN or trust in which MTN has an interest;

1.3.190. **"MTN Shares"** means the ordinary shares with a par value of R0.0001 each in the issued share capital of MTN. For the avoidance of doubt, references to the MTN Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;

1.3.191. **"MTN Subordination and Undertaking Agreement"** means the subordination and undertaking agreement entered into or to be entered into between MTN, MTN Holdings, the BFC2 Preference Shareholders, the Preference Share Agent, BIC2 and the Company pursuant to which, *inter alia*, MTN or a MTN Acceded Nominee, as the case may be, subordinates all claims against the Company and BIC2 in favour of the BIC2 Preference Shareholders and the BFC2 Preference Shareholders and gives certain

warranties and undertakings, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;

- 1.3.192. **"MTN Tranche 1 Additional Subscription Shares"** means the MTN Shares acquired and/or subscribed for and issued to, the Company from time to time after the Issue Date in terms of the MTN Tranche 1 Subscription and Call Option Agreement;
- 1.3.193. **"MTN Tranche 1 Initial Subscription Shares"** means the MTN Shares to be subscribed for, and issued to, the Company on the Issue Date in terms of the MTN Tranche 1 Subscription and Call Option Agreement;
- 1.3.194. **"MTN Tranche 1 Subscription and Call Option Agreement"** means the MTN tranche 1 subscription and call option agreement entered into or to be entered into between BIC2 and MTN, pursuant to which BIC2 subscribes for the MTN Tranche 1 Initial Subscription Shares and the MTN Tranche 1 Additional Subscription Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.195. **"MTN Tranche 2 Subscription Agreement"** means the MTN tranche 2 subscription agreement entered into or to be entered into between the Company and MTN, pursuant to which BIC2 agrees to subscribe for the MTN Tranche 2 Subscription Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.196. **"MTN Tranche 2 Subscription Shares"** means the MTN Shares subscribed for, and issued to, the Company, on the Issue Date in terms of the MTN Tranche 2 Subscription Agreement;
- 1.3.197. **"MTN Tranche 3 Subscription Agreement"** means the MTN tranche 3 subscription agreement entered into or to be entered into between the Company and MTN, pursuant to which BIC2 agrees to subscribe for the MTN Tranche 3 Subscription Shares, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;
- 1.3.198. **"MTN Tranche 3 Subscription Shares"** means the MTN Shares subscribed for, and issued to, the Company, on the New Empowerment Transaction Closing Date in terms of the MTN Tranche 3 Subscription Agreement;
- 1.3.199. **"MTN Zakhele"** means MTN Zakhele (RF) Limited (Registration No. 2010/004693/06), a public limited liability company duly registered and incorporated in accordance with the laws of South Africa;

- 1.3.200. **"MTN Zakhele Reinvestment Offer"** means one of three options available to ordinary shareholders in MTN Zakhele under the MTN Zakhele Unwinding Scheme, pursuant to which qualifying ordinary shareholders in MTN Zakhele will, subject to the relevant terms and conditions, be offered an election to receive certain BIC2 Consideration Shares, thus allowing them an opportunity to reinvest all or a portion of their investment in MTN Zakhele into BIC2.
- 1.3.201. **"MTN Zakhele Unwinding Scheme"** means the scheme of arrangement pursuant to section 114 of the Companies Act proposed or to be proposed by the board of directors of MTN Zakhele as between MTN Zakhele and the ordinary shareholders of MTN Zakhele, for the purpose of MTN Zakhele buying back and cancelling all of the ordinary shares in the issued share capital of MTN Zakhele from the ordinary shareholders of MTN Zakhele (other than such share held by MTN Holdings), pursuant to which scheme and subject to the relevant terms and conditions, *inter alia*, each ordinary shareholder of MTN Zakhele will be entitled to elect to receive one or more of: (i) ordinary shares in the ordinary issued share capital of MTN; (ii) cash consideration; (iii) BIC2 Consideration Shares; or (iv) a combination of the items listed in points (i), (ii) and/or (iii) of this clause 1.3.201;
- 1.3.202. **"Naira"** and **"NGN"** means the lawful currency of Nigeria;
- 1.3.203. **"Nedbank"** means Nedbank Limited (Registration No. 1951/000009/06) (acting through its Corporate and Investment Banking division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.3.204. **"Nedbank Agency Fees Letter"** means the fees letter by *inter alia* Nedbank addressed to the Company and MTN and counter-signed by MTN, setting out the fees payable by the Company for the various functions to be performed by Nedbank and NIS in terms of the Account Bank and Agency Agreement, the Implementation Agreement, the BIC2 Preference Share Subscription Agreement, the BFC2 Preference Share Subscription Agreement, the Preference Shares Custody Agreement, the Subject Shares Custody Agreement and the Interfunder Agreement (it being recorded that if there is any conflict between the provisions of the Nedbank Agency Fees Letter and the Account Bank and Agency Agreement, the provisions of the Account Bank and Agency Agreement shall prevail);
- 1.3.205. **"New Empowerment Transaction Closing Date"** means each of the applicable dates contemplated in the Implementation Agreement upon which the steps to the Transaction are to be completed;

- 1.3.206. **"NIS"** means Nedbank Limited (Registration No 1951/000009/06) (acting through its Nedbank Investor Services division), a limited liability company duly registered and incorporated in accordance with the laws of South Africa;
- 1.3.207. **"One Day VWAP"** means, in respect of any Shares in the issued ordinary share capital of any company listed on the JSE, the volume weighted average price of such Shares calculated on the Trading Day immediately preceding the date on which such volume weighted average price is calculated, as determined by the Calculation Agent in accordance with the Account Bank and Agency Agreement;
- 1.3.208. **"Operating Subsidiary"** means any Subsidiary of MTN which generates its revenue directly from telecommunication services, including offering cellular network and access and business solutions;
- 1.3.209. **"Ordinary Shareholders"** means the legal and beneficial owners of the BIC2 Ordinary Shares, from time to time;
- 1.3.210. **"Permanent Initial Subordinated Loan"** means an Initial Subordinated Loan (if any, as determined in accordance with the Final Capital Structure Documents) advanced or to be advanced by MTN (or an MTN Acceded Nominee) to the Company, in accordance with the provisions of clause 4.1.1.1 of the MTN Subordination and Undertaking Agreement, for the purpose of ensuring that the Inception Total Share Cover Ratio will be at least equal to 4:1 (four to one) on the Determination Date, which such loan shall (a) not be permitted to be repaid by the Company to MTN (or the applicable MTN Acceded Nominee); and (b) remain in the BIC2 Top-Up Loan Account until such time as (i) all of the BIC2 Preference Shares are redeemed in full; and (ii) the BIC2 Discharge Date has occurred;
- 1.3.211. **"Permitted Action"** means –
- 1.3.211.1. *pro rata* share buy-backs by MTN, by way of:
- 1.3.211.1.1. a scheme of arrangement offered to all shareholders of MTN (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes); or
- 1.3.211.1.2. a repurchase programme offered to all shareholders of MTN (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes) of MTN;

1.3.211.1.3. share buy-backs on the open market pursuant to which MTN acquires MTN Shares from its shareholders (other than, at MTN's election, shareholders designated as such in terms of any employee share option schemes);

1.3.211.2. any:

1.3.211.2.1. scheme of arrangement proposed between MTN and its shareholders or between an issuer of any Additional Shares, and its shareholders; or

1.3.211.2.2. any other corporate action in respect of the MTN Shares or in respect of the ordinary shares issued by an issuer of any Additional Shares,

(in each case other than an Asset Unbundling Transaction) pursuant to which:

1.3.211.2.3. the Company is entitled to receive cash in exchange for all or a portion of the Target Shares or all or a portion of the Additional Shares, as the case may be, and in respect of an offer for all of the Target Shares or Additional Shares, such cash is at least equal to the aggregate of the BIC2 Redemption Amount and in respect of an offer for a portion of the Additional Shares or Target Shares, the Preference Share Agent is satisfied that (i) the Total Share Cover Ratio or the applicable Revised Total Share Cover Ratio, as the case may be; and (ii) the Volatility Protection Share Cover Ratio or the Revised Volatility Protection Share Cover Ratio, as the case may be, will be maintained immediately after the implementation of such scheme of arrangement or such other corporate action; or

1.3.211.2.4. the Company is entitled to receive assets other than cash in exchange for the Target Shares or the Additional Shares (an "**Acquisition Event**"), as the case may be, provided that the Preference Share Agent has consented thereto in advance and in writing provided that (a) any

amendments required to be made to (i) the Total Share Cover Ratio as a result of any Acquisition Event, as the case may be, are effected to the written satisfaction of the Preference Share Agent (the "**Acquisition Revised Total Share Cover Ratio**"); and (ii) the Volatility Protection Share Cover Ratio as a result of any Acquisition Event, as the case may be, are effected to the written satisfaction of the Preference Share Agent (the "**Acquisition Revised Volatility Protection Share Cover Ratio**"), and any additional security which is required in writing by the Preference Share Agent as a result of any Acquisition Event is provided by the Company to the satisfaction of the Preference Share Agent; and (b) any other amendments to the Key Transaction Documents that may be necessary as a result of any Acquisition Event are effected to the written satisfaction of the Preference Share Agent; or

1.3.211.2.5. the Company is entitled to receive a combination of cash and assets in exchange for the Target Shares or Additional Shares, as the case may be, and the cash portion is at least equal to the aggregate of the BIC2 Redemption Amount;

1.3.211.3. any Asset Unbundling Transaction by MTN or any other issuer of Subject Shares pursuant to which the Company is entitled to receive any shares as part of such Asset Unbundling Transaction (the "**Unbundled Shares**") provided that -

1.3.211.3.1. the Preference Share Agent has confirmed in writing that it is satisfied with the aggregate value of the Unbundled Shares (as determined by a firm of corporate advisors acceptable to the Preference Share Agent) (the "**Unbundled Agreed Value**");

1.3.211.3.2. any amendments required to be made to (i) the Total Share Cover Ratio as a result of such Asset Unbundling Transaction are effected to

the written satisfaction of the Preference Share Agent (the "**Asset Revised Total Share Cover Ratio**"); and (ii) the Volatility Protection Share Cover Ratio as a result of such Asset Unbundling Transaction are effected to the written satisfaction of the Preference Share Agent (the "**Asset Revised Volatility Protection Share Cover Ratio**"), and any additional security which is required in writing by the Preference Share Agent as a result of the Asset Unbundling Transaction is provided by the Company;

1.3.211.3.3. any other amendments to the Key Transaction Documents required to be made by the Preference Share Agent that may be necessary as a result of such Asset Unbundling Transaction are effected to the written satisfaction of the Preference Share Agent;

1.3.211.3.4. by no later than the Business Day on which the conditions contemplated in clauses 1.3.211.3.1, 1.3.211.3.2 and 1.3.211.3.3 are fulfilled, the Calculation Agent confirms in writing that there is no, and there will not be, a breach of (i) the Asset Revised Total Share Cover Ratio; and (ii) the Asset Revised Volatility Protection Share Cover Ratio (provided that for the purposes of this clause 1.3.211.3 in determining the (i) Asset Revised Total Share Cover Ratio; and (ii) the Asset Revised Volatility Protection Share Cover Ratio, the Calculation Agent shall include an amount equal to the number of Unbundled Shares multiplied by the Unbundled Agreed Value) as a result of the Asset Unbundling Transaction; and

1.3.211.3.5. the Preference Share Agent confirms in advance and in writing that such Asset Unbundling Transaction will not in any way materially adversely affect the rights or interests of the BIC2 Preference Shareholders in respect of the BIC2 Preference Shares and/or the rights

or interests of the BFC2 Preference Shareholders in respect of the BFC2 Preference Shares; or

1.3.211.4. any consolidation or sub-division of any of the Subject Shares; or

1.3.211.5. any other corporate action in relation to any of the Subject Shares which is taken with the prior written consent of the Preference Share Agent;

1.3.212. **"Permitted Disposal"** means –

1.3.212.1. any Disposal of any of the Subject Shares made pursuant to a Permitted Action;

1.3.212.2. the Disposal of the MTN Loan Account pursuant to the issue of the MTN Tranche 3 Subscription Shares;

1.3.212.3. subject to the applicable Priority of Payments, any Disposal of the Target Shares in accordance with the terms of the MTN Tranche 1 Subscription and Call Option Agreement;

1.3.212.4. any Disposal of any of the Subject Shares made by the Company with the prior written consent of the Preference Share Agent;

1.3.212.5. any expenditure of cash which is made in accordance with the applicable Priority of Payments;

1.3.212.6. any Disposal of any Designated Additional Shares; or

1.3.212.7. any other Disposal made by the Company with the prior written consent of the Preference Share Agent;

1.3.213. **"Preference Share Agent"** means the entity appointed as such from time to time pursuant to the terms of the Interfunder Agreement, initially being Nedbank;

1.3.214. **"Preference Share Custodian"** means the entity appointed as such from time to time pursuant to the provisions of the Account Bank and Agency Agreement, initially being Nedbank;

1.3.215. **"Preference Shares Custody Agreement"** means the agreement entered into or to be entered into between the Preference Share Agent, the Company and the Preference Share Custodian pursuant to which, *inter alia*, the Preference Share Custodian agrees to hold the BIC2 Preference Shares

and the BFC2 Preference Shares, all on the terms and conditions contained therein (it being recorded that if there is any conflict between the provisions of the Preference Shares Custody Agreement and the Account Bank and Agency Agreement the provisions of the Account Bank and Agency Agreement shall prevail) and as amended, supplemented, varied or novated from time to time;

- 1.3.216. **"Prime Rate"** means the quoted prime lending rate (per cent, per annum, compounded monthly in arrear and calculated on a 365 (three hundred and sixty five) day year) from time to time of the Preference Share Agent (or, if the Preference Share Agent is not Absa Bank Limited, FirstRand Bank Limited, The Standard Bank of South Africa Limited or Nedbank, or any division of any of them, then the quoted prime lending rate from time to time of Nedbank), as certified (save for manifest error) by any manager of the Preference Share Agent or Nedbank, as applicable, whose appointment, designation or authority need not be proved;
- 1.3.217. **"Priority of Payments"** means each of the priority of payments contemplated in clause 3;
- 1.3.218. **"Priority of Payments Date"** means any date on which funds are to be applied in accordance with the Priority of Payments set out in clause 3.1 (being the **"Pre BIC2 Trigger Event Priority of Payments"**) or a date which is a Special Priority of Payments Date;
- 1.3.219. **"Professional Advisors"** means the professional advisors appointed by the Company, the BFC2 Investors and/or the BFC2 Preference Shareholders from time to time, including their respective auditors, legal advisors, corporate advisors, Tax advisors, directors, public officers, company secretaries, the BIC2 Administrator, the BFC2 Administrator and the various agents appointed under in terms of the Account Bank and Agency Agreement;
- 1.3.220. **"Professional Advisor Agreements"** means any and all agreements entered into between the Company and any Professional Advisors in relation to the provision of services by such Professional Advisors to the Company for the purposes of advising on, administering and implementing the transaction/s contemplated by the Transaction Documents;
- 1.3.221. **"Professional Advisor Expenses"** means fees, costs and expenses (plus VAT thereon) contracted to be payable by the Company to any Professional Advisor under the Professional Advisor Agreements, in accordance with their terms, in consideration for the services to be rendered to the Company thereunder, provided that the aggregate of such Professional Advisor

Expenses, when taken with the aggregate JSE Trading Platform Expenses and Unwinding Services Expenses, do not from time to time or at any time exceed the amounts set out in clause 3.1.2 below (or such other amount/s as the Preference Share Agent may agree in writing);

- 1.3.222. **"Public Offer"** means the public offering in terms of which, subject to certain qualification criteria (i) Black Participants are invited to subscribe for and beneficially own BIC2 Ordinary Shares; and (ii) reinvesting ordinary shareholders of MTN Zakhele may elect to receive, and MTN Zakhele will receive and distribute, BIC2 Consideration Shares;
- 1.3.223. **"Public Offer and Reinvestment Documents"** means all documents and agreements required to be executed in connection with the MTN Zakhele Reinvestment Offer and/or the Public Offer, including, without limitation, the prospectus issued by BIC2 and MTN Zakhele in respect of the MTN Zakhele Reinvestment Offer and the Public Offer;
- 1.3.224. **"Public Offer Interest Amount"** means the amount of all interest earned on the portion of the amount standing to the credit of the BIC2 Public Offer Account from time to time that constitutes the BIC2 Public Offer Amount, as transferred by the Account Bank into the BIC2 Subscriptions Account in accordance with provisions of the Implementation Agreement;
- 1.3.225. **"Rand"**, **"R"** or **"ZAR"** means the South African Rand;
- 1.3.226. **"Received Amounts"** has the meaning specified in clause 3.1;
- 1.3.227. **"Received Distribution Amounts"** has the meaning specified in clause 3.1;
- 1.3.228. **"Received Interest Amounts"** has the meaning specified in clause 3.1;
- 1.3.229. **"Refinancing"** means any arrangement pursuant to which the Company will redeem all of the BIC2 Preference Shares and pay the BIC2 Redemption Amount per BIC2 Preference Share out of the proceeds of new Financial Indebtedness that the Company may incur;
- 1.3.230. **"Relationship Agreement"** means the relationship agreement entered into or to be entered into between MTN and the Company and thereafter the Ordinary Shareholders pursuant to which MTN and the Company regulate their relationship in respect of the Company's shareholding in MTN and the Company's undertakings in relation to the Transaction, all on the terms and conditions contained therein and as amended, supplemented, varied or novated from time to time;

- 1.3.231. **"Repurchase Agreement"** means the repurchase of shares agreement entered into or to be entered into between MTN and MTN Zakhele pursuant to which, *inter alia*, MTN shall repurchase a certain number of MTN ordinary shares held by MTN Zakhele and the obligation of MTN to discharge the purchase price therefor shall (i) partially be discharged by the payment of cash by MTN to MTN Zakhele; and (ii) to extent not discharged by the payment of cash by MTN to MTN Zakhele, remain outstanding on loan account;
- 1.3.232. **"Restricted Cash"** means *"Restricted Cash"* as defined in the most recent audited consolidated financial statements of MTN;
- 1.3.233. **"Return"** means, in relation to the BIC2 Preference Shareholder the overall return on investment to be achieved by the BIC2 Preference Shareholder in respect of, or in connection with, the subscription for, holding or funding of the BIC2 Preference Shares, and includes the BIC2 Preference Shareholder's –
- 1.3.233.1. financial return, net of charges, costs, imposts, capital adequacy or liquidity requirements or any other costs, charges, levies or imposts in respect of which a BIC2 Adjustment Event may apply; and/or
- 1.3.233.2. after-Tax return, net of all taxes payable in respect of, or in connection with, or as a result of the subscription for, holding and/or funding of the BIC2 Preference Shares;
- 1.3.234. **"Reversionary Rights"** means the reversionary rights of BIC2 to the assets granted as security under the BIC2 Pledge and Cession and the BIC2 Account Cession after full and irrevocable satisfaction of all its obligations under the First Ranking Guarantee, the BIC2 Pledge and Cession and the BIC2 Account Cession;
- 1.3.235. **"Revised Total Share Cover Ratios"** the Acquisition Revised Total Share Cover Ratio and the Asset Revised Total Share Cover Ratio and **"Revised Total Share Cover Ratio"** means any one of them, as the context may require;
- 1.3.236. **"Revised Volatility Protection Share Cover Ratios"** the Acquisition Revised Volatility Protection Share Cover Ratio and the Asset Revised Volatility Protection Share Cover Ratio and **"Revised Volatility Protection Share Cover Ratio"** means any one of them, as the context may require;
- 1.3.237. **"Sanctioned Entity"** means –

1.3.237.1. a person, country or territory which is listed on a Sanctions List or is subject to Sanctions; and/or

1.3.237.2. a natural person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions;

1.3.238. "**Sanctions**" means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;

1.3.239. "**Sanctions Authority**" means –

1.3.239.1. the United Nations;

1.3.239.2. the European Union;

1.3.239.3. the Council of Europe (founded under the Treaty of London, 1946);

1.3.239.4. the government of the United States of America;

1.3.239.5. the government of the Republic of France; ~~and~~

1.3.239.6. the government of the United Kingdom; and

~~1.3.239.6.~~ 1.3.239.7. the government of Switzerland;

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury ("**OFAC**"), the US Department of Commerce, the US State Department or the US Department of the Treasury and Her Majesty's Treasury ("**HMT**");

1.3.240. "**Sanctions List**" means –

1.3.240.1. the Specially Designated Nationals and Blocked Persons List maintained by OFAC;

1.3.240.2. the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;

1.3.241. "**SARS**" means the South African Revenue Services;

- 1.3.242. **"SARS Amount"** means any amount which is or may be required in terms of Applicable Laws to be paid to SARS which has not been paid in connection with the Disposal of any of the Target Shares or the Distribution of the Target Shares, as the case may be;
- 1.3.243. **"Securities Transfer Tax"** means securities transfer tax (as contemplated by the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007));
- 1.3.244. **"Security Custodian"** means the entity appointed as such from time to time pursuant to the terms of the Account Bank and Agency Agreement, initially being NIS;
- 1.3.245. **"Service Providers"** means –
- 1.3.245.1. the JSE Trading Platform Service Providers;
 - 1.3.245.2. the Professional Advisors; and
 - 1.3.245.3. the counterparties to the Unwinding Service Agreements;
- 1.3.246. **"Service Provider Agreements"** means –
- 1.3.246.1. the JSE Trading Platform Agreements;
 - 1.3.246.2. the Professional Advisor Agreements; and
 - 1.3.246.3. the Unwinding Service Agreements,
- and **"Service Provider Agreement"** means, as the context requires, any one of them;
- 1.3.247. **"Service Provider Expenses"** means the aggregate of –
- 1.3.247.1. the JSE Trading Platform Expenses;
 - 1.3.247.2. the Professional Advisor Expenses; and
 - 1.3.247.3. the Unwinding Services Expenses;
- 1.3.248. **"Share Capital"** means the share capital of the Company from time to time (including, where applicable, any share premium);
- 1.3.249. **"Signature Date"** means the date on which the BIC2 Preference Share Subscription Agreement is signed by the last party thereto;
- 1.3.250. **"South Africa"** means the Republic of South Africa;
- 1.3.251. **"Special BIC2 Offer"** has the meaning specified in clause 3.2.4;

- 1.3.252. **"Special Distribution"** means the Distribution of any amount, right or benefit by MTN to the holders of MTN Shares, including payment of any cash or other dividend, the distribution of any dividend in specie, the payment (or repayment) of any amount on loan account and the issue of any capitalisation or bonus Shares, including any Distribution described by MTN when made as a special dividend, but excluding the declaration and payment of an ordinary annual cash dividend by MTN to the holders of MTN Shares and shall include any similar Distribution made by the issuer of any Additional Shares;
- 1.3.253. **"Special Priority of Payments Date"** means any date on which funds are to be applied in accordance with the Priority of Payments set out in clause 3.2 (being the **"Special Priority of Payments"**);
- 1.3.254. **"Specified Funding Conditions Precedent"** means the conditions precedent contained in clauses 3.1.10, 3.1.11, 3.1.21, 3.1.28, 3.1.29, 3.1.30, 3.1.31, 3.1.32, 3.1.33, 3.1.35, 3.1.36, 3.1.37, 3.1.39, 3.1.40 and 3.1.41 of the BIC2 Preference Share Subscription Agreement;
- 1.3.255. **"Subject Shares"** means collectively the Target Shares and the Additional Shares as such shares may be consolidated or subdivided pursuant to a Permitted Action;
- 1.3.256. **"Subject Shares Custody Agreement"** means the custody agreement entered into or to be entered into between the Security Custodian and the Company pursuant to which, *inter alia*, the Security Custodian agrees to hold the Subject Shares and manage the Subject Share Securities Account, all on the terms and conditions contained therein (it being recorded that if there is any conflict between the provisions of the Subject Shares Custody Agreement and the Account Bank and Agency Agreement the provisions of the Account Bank and Agency Agreement shall prevail) and as amended, supplemented, varied or novated from time to time;
- 1.3.257. **"Subject Share Securities Account"** means the securities account maintained by the Company with the Security Custodian in which all Subject Shares will be reflected;
- 1.3.258. **"Subscription Shares"** means the MTN Tranche 1 Initial Subscription Shares, the MTN Tranche 2 Subscription Shares and the MTN Tranche 3 Subscription Shares;
- 1.3.259. **"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% (fifty per cent) of the voting capital or similar right of ownership and control for this purpose means the

power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;

1.3.260. **"Target Shares"** means –

1.3.260.1. the Subscription Shares;

1.3.260.2. the MTN Tranche 1 Additional Subscription Shares acquired and/or subscribed for and legally and beneficially owned by the Company from time to time pursuant to the MTN Tranche 1 Subscription and Call Option Agreement in accordance with the applicable Priority of Payments; and

1.3.260.3. any other MTN Shares legally and beneficially owned by the Company as a result of the Company being the legal and beneficial owner of the Sale Shares, the Subscription Shares and/or the MTN Tranche 1 Additional Subscription Shares;

1.3.261. **"Tax"** includes, without limitation, any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including, without limitation, Securities Transfer Tax, stamp duty, documentary, registration or other like duty, all income tax, capital gains tax, secondary tax on companies, dividend tax and value added tax), together with any penalties, fines or interest imposed thereon, imposed, levied, collected, withheld or assessed by any person on any person in any jurisdiction and with respect to any thing, and the terms **"Taxes"** and **"Taxation"** and other cognate terms shall bear corresponding meanings;

1.3.262. **"Term"** means the period commencing on the Issue Date and ending on the date on which the last of the BIC2 Preference Shares is fully, finally and irrevocably redeemed;

1.3.263. **"Total Share Cover Ratio"** means, as at any date, the ratio of A:B, where:

1.3.263.1. A is the number of MTN Shares reflected in the Subject Share Securities Account as at that date multiplied by the Five Day VWAP of the MTN Shares; and

1.3.263.2. B is (a) the aggregate BIC2 Redemption Amount (excluding any BIC2 Margin Dividend) of the BIC2 Unredeemed Preference Shares as at that date calculated on the basis that the BIC2 Unredeemed Preference Shares were to be redeemed on that date (calculated, for these purposes, in accordance with the Account Bank and Agency Agreement); minus (b) the aggregate of all amounts standing to the credit of the BFC2 Collection

Account, the BIC2 Collection Account, the BIC2 Security Account, the BFC2 Top-Up Loan Account and the BIC2 Top-Up Loan Account on that date;

- 1.3.264. **"Trading Day"** means any day that is a trading day on the JSE and does not include a day on which trading on the JSE is scheduled to close prior to its regular weekday closing time;
- 1.3.265. **"Transaction"** means each of the transactions contemplated by the Transaction Documents, pursuant to which, *inter alia*:
- 1.3.265.1. the Company shall make the Public Offer;
- 1.3.265.2. the Company will issue the BIC2 Preference Shares to BIC2 Investor;
- 1.3.265.3. BFC2 shall issue the BFC2 Preference Shares to the BFC2 Investors;
- 1.3.265.4. the Company will acquire the MTN Loan Account from MTN Zakhele in consideration for the issue of the BIC2 Consideration Shares to MTN Zakhele; and
- 1.3.265.5. the Company will subscribe for the Subscription Shares,
- all on the terms and conditions contained therein;
- 1.3.266. **"Transaction Documents"** means collectively the Finance Documents and the Material Agreements and **"Transaction Document"** means, as the context requires, any one of them;
- 1.3.267. **"Transaction Fees"** means the amount of the legal costs and expenses and all other legal and other professional advisory fees agreed to in writing by MTN, plus VAT thereon, payable in connection with the negotiation, preparation and implementation of the Transaction Documents;
- 1.3.268. **"Trickle Dividend Amount"** means, on each date on which amounts are to be applied in accordance with the Pre BIC2 Trigger Event Priority of Payments, an amount calculated as follows:

$$TD = 20\%(A) - B$$

Where

TD = the Trickle Dividend Amount which may be declared and paid in accordance with clause 3.1.6 of the Pre BIC2 Trigger Event Priority of Payments;

A = the Received Amounts;

B = the aggregate of amounts of Taxes and Administration Costs payable by BIC2 in accordance with the provisions of clauses 3.1.1 and 3.1.2 of the Pre BIC2 Trigger Event Priority of Payments;

1.3.269. **"Trigger Event Call Option"** means the irrevocable call option which MTN or the applicable MTN Acceded Nominee is granted by the BFC2 Preference Shareholders entitling MTN or the applicable MTN Acceded Nominee to purchase all of the BFC2 Unredeemed Preference Shares from the BFC2 Preference Shareholders on the terms and conditions of the Call Option Agreement;

1.3.270. **"Trigger Event Call Option Period"** means –

1.3.270.1. in respect of the occurrence of any of the BFC2 Potential Trigger Events contemplated in:

1.3.270.1.1. clause 33.2.3.1.14 (*Acceleration of Financial Indebtedness (MTN)*);

1.3.270.1.2. clause 33.2.3.1.15 (*Breach of Total Share Cover Ratio or Revised Total Share Cover Ratio*);

1.3.270.1.3. clause 33.2.3.1.19 (*Cancellation of Key Material Agreements*);

1.3.270.1.4. clause 33.2.3.1.27 (*Publication of notice of intention to suspend MTN Shares*);

1.3.270.1.5. clause 33.2.3.1.28 (*Suspension of Trading in MTN Shares*);

1.3.270.1.6. clause 33.2.3.1.33 (*One Day VWAP of the MTN Shares is R50,00 (fifty Rand) or less*); and/or

1.3.270.1.7. clause 33.2.3.1.38 (*Breach of Volatility Protection Share Cover Ratio or Revised Volatility Protection Share Cover Ratio*),

of the BFC2 MOI, the period from the date of the applicable Call Option Notice to the earlier of:

- 1.3.270.1.8. 1 (one) Business Day from the date of such Call Option Notice;
- 1.3.270.1.9. the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
- 1.3.270.1.10. the date and time on which and at which the BFC2 Potential Trigger Event is remedied;
- 1.3.270.2. in respect of the occurrence of any of the BFC2 Potential Trigger Events contemplated in:
 - 1.3.270.2.1. clauses 33.2.3.1.1 and 33.2.3.1.4 (*Non Payment*);
 - 1.3.270.2.2. clause 33.2.3.1.6 (*Material Adverse Effect*);
 - 1.3.270.2.3. clause 33.2.3.1.10 (*Invalidity of Finance Documents*);
 - 1.3.270.2.4. clause 33.2.3.1.13 (*Breach of Financial Indebtedness*);
 - 1.3.270.2.5. clause 33.2.3.1.20 (*Distributions*);
 - 1.3.270.2.6. clause 33.2.3.1.21 (*Delivery of Share Certificates*);
 - 1.3.270.2.7. clause 33.2.3.1.24 (*Asset Unbundling Transaction*);
 - 1.3.270.2.8. clause 33.2.3.1.25 (*Insolvency*); and/or
 - 1.3.270.2.9. clause 33.2.3.1.29 (*Attachment of Assets*);
- of the BFC2 MOI, the period from the date of the applicable Call Option Notice to the earlier of:
 - 1.3.270.2.10. 2 (two) Business Days from the date of such Call Option Notice;
 - 1.3.270.2.11. the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and

- 1.3.270.2.12. the date and time on which and at which the Potential Trigger Event is remedied;
- 1.3.270.3. in respect of the occurrence of any other BFC2 Potential Trigger Event (save for any BFC2 Potential Trigger Event contemplated in clauses 33.2.3.1.35 (*MTN Tranche 1 Subscription Shares*), 33.2.3.1.36 (*MTN Tranche 2 Subscription Shares*), 33.2.3.1.37 (*MTN Tranche 3 Subscription Shares*), 33.2.3.1.38 (*Breach of the Repurchase Agreement*) and/or 33.2.3.1.26 (*Failure to Redeem the Class A Shares*) of the BFC2 MOI, the period from date of the applicable Call Option Notice to the earlier of:
 - 1.3.270.3.1. the later to occur of (i) 3 (three) Business Days from the date of the applicable Call Option Notice; and (ii) the expiry of the grace period, if any, in respect of such BFC2 Potential Trigger Event;
 - 1.3.270.3.2. the date and time on which and at which the BFC2 Potential Trigger Event is waived in writing by the Preference Share Agent; and
 - 1.3.270.3.3. the date and time on which and at which the BFC2 Potential Trigger Event is remedied;
- 1.3.271. **"Unbundled Agreed Value"** shall bear the meaning ascribed thereto in clause 1.3.211.3.1 hereof;
- 1.3.272. **"Unwinding Service Agreements"** means agreements to be entered into between the Company and various third party service providers in relation to the provision of, amongst others, the following services:
 - 1.3.272.1. legal services;
 - 1.3.272.2. accounting services;
 - 1.3.272.3. project management services;
 - 1.3.272.4. services related to education sessions to be provided to the holders of ordinary shares in MTN Zakhele;
 - 1.3.272.5. public relations, marketing and communication services,

for the purpose of, in connection with or in relation to the facilitation of the unwinding of the Company to occur on or after the date on which the BIC2

Preference Shares are redeemed in full and any agreements incidental or ancillary to any of the above agreements, to the extent required therefor;

- 1.3.273. **"Unwinding Services Expenses"** means fees, costs and expenses (plus VAT thereon) contracted to be payable by the Company to any counterparty under the Unwinding Service Agreements, in accordance with their terms, in consideration for the services to be rendered to the Company thereunder, provided that the aggregate of Unwinding Services Expenses, when taken with the aggregate JSE Trading Platform Expenses and Professional Advisor Expenses, do not from time to time or at any time exceed the amounts set out in clause 3.1.2 below (or such other amount/s as the Preference Share Agent may agree in writing);
- 1.3.274. **"Value Added Tax"** or **"VAT"** means value-added tax leviable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- 1.3.275. **"Volatility Protection Share Cover Ratio"** means, as at any date, the ratio of A:B, where:
- 1.3.275.1. A is the number of MTN Shares reflected in the Subject Share Securities Account as at that date multiplied by the One Day VWAP of the MTN Shares; and
- 1.3.275.2. B is (a) the aggregate BIC2 Redemption Amount (excluding any BIC2 Margin Dividend) of the BIC2 Unredeemed Preference Shares as at that date calculated on the basis that the BIC2 Unredeemed Preference Shares were to be redeemed on that date (calculated, for these purposes, in accordance with the Account Bank and Agency Agreement); minus (b) the aggregate of all amounts standing to the credit of the BFC2 Collection Account, the BIC2 Collection Account, the BIC2 Security Account, the BFC2 Top-Up Loan Account and the BIC2 Top-Up Loan Account on that date;
- 1.3.276. **"Writing"** or **"Written"** includes Electronic Communication but, as regards any Holder, only to the extent that such Holder has notified the Company of an Electronic Address.

2. **BIC2 PREFERENCE SHARES**

2.1. **BIC2 Preference Dividends**

2.1.1. **BIC2 Scheduled Preference Dividends**

2.1.1.1. Subject to the provisions of clause 2.1.1.3, each BIC2 Preference Shareholder registered as such on each BIC2 Scheduled Preference Dividend Date shall have the right to receive and be paid on each BIC2 Scheduled Preference Dividend Date, in priority to the Holders of any other class of Shares in the capital of the Company and in respect of each BIC2 Preference Share held by it, a BIC2 Scheduled Preference Dividend for the BIC2 Dividend Period preceding such BIC2 Scheduled Preference Dividend Date determined as the aggregate of the amounts obtained, on each day in the BIC2 Dividend Period for which the BIC2 Preference Dividend is payable, by multiplying the sum of:

2.1.1.1.1 the BIC2 Issue Price of each BIC2 Unredeemed Preference Share; plus

2.1.1.1.2 any BIC2 Arrear Dividends; plus

2.1.1.1.3 any BIC2 Unpaid Dividends,

by the BIC2 Dividend Rate on each such day during such BIC2 Dividend Period.

2.1.1.2. Each such BIC2 Preference Shareholder shall also have the right to receive and be paid on each BIC2 Scheduled Preference Dividend Date, in priority to the Holders of any other class of Shares in the capital of the Company:

2.1.1.2.1. any BIC2 Arrear Dividends and BIC2 Unpaid Dividends; plus

2.1.1.2.2. any BIC2 Additional Dividends required to be declared and paid on the relevant BIC2 Scheduled Preference Dividend Date.

2.1.1.3. Each BIC2 Preference Dividend shall in respect of each BIC2 Preference Share –

2.1.1.3.1. subject to the Companies Act and to the extent the Company has cash available to pay such dividend, be declared and be payable on the applicable BIC2 Dividend Date; and

2.1.1.3.2. be payable in cash.

2.1.2. **Payment of BIC2 Preference Dividends and Accumulations**

- 2.1.2.1. The Company shall be obliged to declare and pay all accrued but unpaid BIC2 Preference Dividends in respect of each BIC2 Preference Share on each applicable BIC2 Dividend Date, and prior to the redemption of such BIC2 Preference Share.
- 2.1.2.2. If any BIC2 Preference Dividend is not declared and/or paid on any applicable BIC2 Dividend Date then, notwithstanding anything to the contrary in this MOI, the amount of the undeclared and/or unpaid BIC2 Preference Dividend shall be accumulated until declared and paid in full or until the BIC2 Redemption Date of the last BIC2 Preference Share, whichever is the earlier.

2.1.3. **BIC2 Margin Dividend**

If the Company at any time within the Initial Period redeems all of the BIC2 Preference Shares and pays the BIC2 Redemption Amount per BIC2 Preference Share with funding raised pursuant to (a) a Refinancing other than a Refinancing used to redeem all of the BIC2 Preference Shares pursuant to clause 2.2.4 and/or (b) a Disposal by the Company of any of its assets other than a Permitted Disposal, then the Company shall declare and, on the BIC2 Margin Dividend Date, pay to the BIC2 Preference Shareholder a further BIC2 Preference Dividend (a "**BIC2 Margin Dividend**") calculated by the Preference Share Agent (and the Preference Share Agent shall deliver a Written statement of its calculation to the Company) in accordance with the following formula:

$$MD = A \times B$$

Where

MD = the BIC2 Margin Dividend to be declared and paid in respect of each BIC2 Preference Share which is redeemed and to which this clause 2.1.3 applies;

A = if the Refinancing or Disposal contemplated in this clause 2.1.3 occurs (i) during the first year of the Initial Period, 3% (three per cent); (ii) during the second year of the Initial Period, 2% (two per cent); or (iii) during the third year of the Initial Period, 1% (per cent);

B = the BIC2 Redemption Amount (excluding any BIC2 Margin Dividend).

2.1.4. **Taxes**

If at any time any Tax is or becomes payable on any BIC2 Preference Dividend or other amount received in respect of the BIC2 Preference Shares by a BIC2 Preference Shareholder, such BIC2 Preference Dividend or other amount shall be increased by an amount calculated in accordance with the following formula (such that the BIC2 Preference Shareholder receives the same financial return and/or net after Tax return as it would have had had such Tax not been payable or withheld) –

$$A = (B \div T) - B$$

where -

A = the additional amount of the BIC2 Preference Dividend to be paid;

B = the actual amount of the BIC2 Preference Dividend or other amount received;

T = 1 (one) minus the then prevailing Corporate Tax Rate or, if such Tax is payable at any other rate, such rate, as applicable.

2.1.5. **BIC2 Preference Dividend Rate Adjustments**

Notwithstanding anything to the contrary in this MOI, subject to clause 2.1.1.3, and in addition to any other remedy specified in this MOI, if:

- 2.1.5.1. any BIC2 Preference Dividend is not declared on the applicable BIC2 Dividend Date; or
- 2.1.5.2. any BIC2 Preference Dividend is declared but not paid in full on the applicable BIC2 Dividend Date; or
- 2.1.5.3. any BIC2 Preference Share is not redeemed and the BIC2 Redemption Amount thereof is not paid in full on the BIC2 Scheduled Redemption Date or on the date on which such BIC2 Preference Share is to be redeemed following a BIC2 Voluntary Redemption made pursuant to clause 2.2.2 and which has not been revoked or on the date on which such BIC2 Preference Share is to be redeemed following a mandatory redemption pursuant to clause 2.2.3,

then, for so long as such BIC2 Preference Dividend remains a BIC2 Unpaid Dividend or BIC2 Arrear Dividend (as the case may be) or such BIC2 Preference Share is not redeemed and the BIC2 Redemption Amount thereof not paid in full, the BIC2 Dividend Rate shall be increased to the

BIC2 Default Rate with effect from (and including) the applicable BIC2 Dividend Date or the date on which such BIC2 Preference Share was required or scheduled to be redeemed (as the case may be) until (but excluding) the date of actual payment of such BIC2 Preference Dividend or until the BIC2 Redemption Date (and payment of the BIC2 Redemption Amount in respect thereof in full) of all such BIC2 Preference Shares, and on such date the BIC2 Dividend Rate shall again be the BIC2 Dividend Rate.

2.1.6. **BIC2 Adjustment Events and BIC2 Additional Dividends**

2.1.6.1. **Consequences of the occurrence of a BIC2 Adjustment Event**

If, in relation to the BIC2 Preference Shareholder at any time after the Signature Date, any event described as an adjustment event in clause 2.1.6.2 (each, a "**BIC2 Adjustment Event**") occurs that results in an Increased Cost or a reduction in the Return for the BIC2 Preference Shareholder (other than as a result of the gross negligence or wilful misconduct on the part of such BIC2 Preference Shareholder) which would not have resulted but for the occurrence of that BIC2 Adjustment Event, then the BIC2 Preference Shareholder shall, notwithstanding anything to the contrary contained herein or in any other Transaction Document, be entitled to give written notice thereof to the Preference Share Agent, requiring the Preference Share Agent to carry out the necessary calculations and if, after such calculation, the Preference Share Agent finds that such BIC2 Adjustment Event has the effect that (a) the BIC2 Preference Shareholder would be in a worse position than it would have been if that BIC2 Adjustment Event had not occurred, (b) the Losses suffered by the BIC2 Preference Shareholder are as a result of the occurrence of the BIC2 Adjustment Event and (c) that the Losses were actually suffered by the BIC2 Preference Shareholder, then the Preference Share Agent shall, on written notice to the Company, ("**Increase Notice**") require the Company (in which event the Company shall be obliged) to -

2.1.6.1.1. declare and pay an additional BIC2 Preference Dividend in such amount as may be specified by the BIC2 Preference Shareholder in the Increase Notice (a "**BIC2 Additional Dividend**"), which BIC2 Additional Preference Dividend shall be paid on the 1st (first) Priority of

Payments Date following the date of such Increase Notice, provided that, if prior to such date, the Company receives any Disposal Payment Amounts pursuant to the occurrence of a Special Priority of Payments Date, then the amount of the BIC2 Additional Dividend shall be recalculated by the Preference Share Agent and shall be payable by the Company on the date on which the Company receives any Disposal Payment Amounts pursuant to the occurrence of a Special Priority of Payments Date; and/or

2.1.6.1.2. increase the BIC2 Dividend Rate Percentage, with effect from the date specified in the Increase Notice (which may be a date earlier than the date of the Increase Notice), by such a margin specified by the BIC2 Preference Shareholder in the Increase Notice,

either –

2.1.6.1.3. in the case of the BIC2 Adjustment Events referred to in clauses 2.1.6.2.1, 2.1.6.2.3 and/or 2.1.6.2.6, as may be necessary to compensate the BIC2 Preference Shareholder for the occurrence of that Increased Cost or reduction in Return and to place the BIC2 Preference Shareholder in the same after-Tax position in respect of the BIC2 Preference Shares to which the Increase Notice applies and/or ensure that the BIC2 Preference Shareholder will receive the same Return, in either case as if the relevant BIC2 Adjustment Event had not occurred; and

2.1.6.1.4. in the case of the BIC2 Adjustment Events referred to in clauses 2.1.6.2.2, 2.1.6.2.4 and 2.1.6.2.5, as determined in accordance with clause 2.1.6.3.

2.1.6.2. **BIC2 Adjustment Events**

A BIC2 Adjustment Event shall occur if -

- 2.1.6.2.1. there is any change in law or in the interpretation or general application thereof, or the introduction of any new law;
- 2.1.6.2.2. the BIC2 Preference Shareholder ceases to be exempt from Dividends Tax;
- 2.1.6.2.3. for so long as the BIC2 Preference Shareholder has the BFC2 Funding Position, there is any -
 - 2.1.6.2.3.1. proposal or measure implemented pursuant to any version of the International Convergence of Capital Measurement and Capital Standards (Basel Accord) on a basis different to that which is in force as at the Signature Date;
 - 2.1.6.2.3.2. new directive of any central bank or any other fiscal, monetary, regulatory or other Authority in South Africa having jurisdiction in respect of the BIC2 Preference Shares;
 - 2.1.6.2.3.3. change in practice as it affects or is applied (i) generally by banks in South Africa; and/or (ii) by the BIC2 Preference Shareholder;
 - 2.1.6.2.3.4. requirement or request by any central bank or statutory or monetary Authority with which the BIC2 Preference Shareholder would generally comply, to pay any amounts or maintain any special deposits or reserve assets in addition to those paid or maintained or reserved by the BIC2 Preference Shareholder, as at the Signature Date; or

2.1.6.2.3.5. compliance by the BIC2 Preference Shareholder with any reserve, cash ratio, special deposit, capital adequacy or liquidity requirement (or any other similar requirement) whether or not having the force of law, in respect of the BIC2 Preference Shares with which the BIC2 Preference Shareholder would generally comply in addition to those applicable as at the Signature Date,

which is applicable to the BIC2 Preference Shareholder as a result of the BIC2 Funding Position;

2.1.6.2.4. any Tax becomes payable, by the BIC2 Preference Shareholder or for which the BIC2 Preference Shareholder is or becomes liable on, or in respect of, the BIC2 Preference Shares (including as a result of the subscription for, the holding of and/or the funding of the BIC2 Preference Shares), any BIC2 Preference Dividend or any amount payable on the redemption of any BIC2 Preference Share, whether before or after redemption of the BIC2 Preference Shares;

2.1.6.2.5. there is any increase or decrease in the Corporate Tax Rate; and/or

2.1.6.2.6. there is any BFC2 Adjustment Event (without double counting in relation to any BIC2 Adjustment Event contemplated above).

2.1.6.3. Specific provisions applicable to certain BIC2 Adjustment Events

2.1.6.3.1. The Company agrees that the provisions of this clause 2.1.6.3 will apply in respect of the BIC2 Adjustment Events referred to in clauses

2.1.6.2.2, 2.1.6.2.4 and 2.1.6.2.5, notwithstanding anything to the contrary contained in this clause 2.1.6.3.

2.1.6.3.2. If any BIC2 Adjustment Event described in clauses 2.1.6.2.2, or 2.1.6.2.4 occurs, the BIC2 Additional Dividend payable by the Company as a consequence of the occurrence of that BIC2 Adjustment Event shall be determined as an amount which is equal to the Tax contemplated by clauses 2.1.6.2.2, or 2.1.6.2.4, as applicable, which will be incurred or payable by, or withheld in respect of, the BIC2 Preference Shareholder such that the BIC2 Preference Shareholder, after taking account of its liability for any such Tax, will receive a net after-Tax amount equal to the amount which would otherwise have been receivable by the BIC2 Preference Shareholder in the absence of the occurrence of any such BIC2 Adjustment Event.

2.1.6.3.3. If any BIC2 Adjustment Event described in clause 2.1.6.2.5 occurs which requires that the BIC2 Dividend Rate be increased, the BIC2 Dividend Rate will be recalculated in accordance with the following formula -

$$NDR = ODR \times \frac{(1 - NCTR)}{(1 - OCTR)}$$

Where -

NDR = the new BIC2 Dividend Rate to be determined, expressed as a percentage;

ODRP = the BIC2 Dividend Rate applicable immediately prior to the occurrence of such BIC2 Adjustment Event, expressed as a percentage;

NCTR = the new Corporate Tax Rate applicable pursuant to such BIC2 Adjustment Event; and

OCTR = the Corporate Tax Rate applicable immediately prior to the occurrence of such BIC2 Adjustment Event.

The new BIC2 Dividend Rate determined by applying the BIC2 Dividend Rate Percentage calculated in accordance with this clause 2.1.6.3.3 shall be applied retrospectively in re-calculating, *mutatis mutandis* in accordance with clause 2.1.2, all accumulated BIC2 Preference Dividends.

2.1.6.3.4. Without double counting, if any amount payable pursuant to the provisions of clauses 2.1.6.1.3, 2.1.6.3.2 or 2.1.6.3.3 is subject to Tax, then the Company shall pay such additional amounts to the BIC2 Preference Shareholder or its holding company, as the case may be, so as to place the BIC2 Preference Shareholder in a position as if no such Tax was payable.

2.1.6.4. After the Company has declared and paid the BIC2 Additional Dividend in respect of the applicable BIC2 Preference Shares, the Company shall be entitled to redeem all the BIC2 Preference Shares then in issue in accordance with the provisions of clause 2.2.

2.1.6.5. **Reciprocity**

If the BIC2 Dividend Rate Percentage in relation to the BIC2 Preference Shareholder is increased by the BIC2 Preference Shareholder in accordance with the foregoing provisions of this clause 2.1.6 and following such increase in the BIC2 Dividend Rate Percentage any BIC2 Adjustment Event occurs and the occurrence of any such event/s results in the Increased Cost or lower Return that gave rise to the increase in the BIC2 Dividend Rate being wholly or partially reduced or eliminated, the Company shall be entitled to give written notice to the Preference Share Agent, and upon receipt of such notice, the

Preference Share Agent shall, if its calculations confirm that as a result of the occurrence of any such BIC2 Adjustment Event/s, such Increased Cost or lower Return that gave rise to the increase in the BIC2 Dividend Rate Percentage has been wholly or partially reduced or eliminated by the occurrence of any such BIC2 Adjustment Event/s, decrease the BIC2 Dividend Rate Percentage so that the BIC2 Preference Shareholder, is placed in the same after-Tax position that it would have been in had the BIC2 Adjustment Event/s giving rise to the increase in the BIC2 Dividend Rate Percentage not occurred, provided that

- 2.1.6.5.1. the BIC2 Dividend Rate Percentage shall not be decreased to a rate less than the BIC2 Dividend Rate Percentage applicable as at the Issue Date;
- 2.1.6.5.2. the Company shall not be entitled to give notice pursuant to this clause 2.1.6.5 if a BIC2 Trigger Event has occurred or for so long as a BIC2 Potential Trigger Event has occurred which is continuing;
- 2.1.6.5.3. no BIC2 Preference Shareholder shall be under any obligation to disclose any information and/or documentation relating to its affairs (Tax or otherwise); and
- 2.1.6.5.4. no BIC2 Preference Shareholder nor the Preference Share Agent shall be under any obligation to provide the Company with any notice of the occurrence of any such event.

2.1.6.6. **Disputes**

If the Company disputes the correctness of any calculation in an Increase Notice or the calculation by the BIC2 Preference Shareholder or the Preference Share Agent in terms of this clause 2.1.6, a certificate by the auditors of the BIC2 Preference Shareholder shall, in the absence of manifest error, be *prima facie* proof of the correctness of such calculation.

2.1.6.7. **Post-Redemption Payment**

If the effect of a BIC2 Adjustment Event only becomes apparent or the BIC2 Preference Shareholder only becomes aware of the

effects of such BIC2 Adjustment Event after all of the BIC2 Preference Shares held by the BIC2 Preference Shareholder have been redeemed, the Company shall and hereby does indemnify and hold the BIC2 Preference Shareholder harmless against the effect of such BIC2 Adjustment Event and, accordingly, shall pay to the BIC2 Preference Shareholder, on demand, such amount as may be required to result in the BIC2 Preference Shareholder achieving the same Return as it would have achieved had the relevant Adjustment Event not occurred. The provisions of this clause 2.1.6.7 shall survive the redemption of all the BIC2 Preference Shares and shall remain enforceable against the Company by the BIC2 Preference Shareholder until the date of expiry of a period of 5 (five) years after the date of redemption in full of the last of the BIC2 Preference Shares (or such shorter period as the Preference Share Agent may agree in writing). Notwithstanding the foregoing, any claim which a BIC2 Preference Shareholder has against the Company arising prior to such period of 5 (five) years shall survive for as long as may be necessary to permit the final resolution of such matter.

2.1.7. Capital Reduction

- 2.1.7.1. Notwithstanding anything else which may be contained in this MOI but subject to clause 2.1.7.2, the Company shall be entitled to effect a capital reduction in respect of the BIC2 Preference Shares by making a payment to the BIC2 Preference Shareholders in terms of section 46 of the Companies Act on the basis that such payment shall not be deemed to be a redemption of the BIC2 Preference Shares or any of them, but merely a reduction of the original BIC2 Issue Price paid pursuant to the subscription for each of the BIC2 Preference Shares.
- 2.1.7.2. Any capital reduction contemplated in clause 2.1.7.1 shall only take place with the prior Written consent of the Preference Share Agent and on the basis that –
 - 2.1.7.2.1. all BIC2 Preference Shares shall be treated proportionately and the BIC2 Preference Shareholder of each BIC2 Preference Share shall be paid the same amount in respect of each BIC2 Preference Share;

- 2.1.7.2.2. the capital reduction shall not result in a redemption of the BIC2 Preference Shares or any of them;
 - 2.1.7.2.3. the Company shall only be entitled to implement a capital reduction on a BIC2 Scheduled Preference Dividend Date or such other date as may be agreed to by the Preference Share Agent;
 - 2.1.7.2.4. the capital reduction takes place voluntarily in the entire discretion of the Company irrespective of whether there may be any BIC2 Arrear Dividend or BIC2 Unpaid Dividend outstanding at that point in time;
 - 2.1.7.2.5. the capital reduction may take place irrespective of whether there is any BIC2 Arrear Dividend or BIC2 Unpaid Dividend or other accumulated BIC2 Preference Dividends in respect of the BIC2 Preference Shares;
 - 2.1.7.2.6. the capital reduction will not result in any BIC2 Arrear Dividend or BIC2 Unpaid Dividend being affected, and the BIC2 Preference Shares shall continue to accrue BIC2 Preference Dividends at the BIC2 Dividend Rate or BIC2 Default Rate, as applicable;
 - 2.1.7.2.7. the capital reduction shall not prejudice any BIC2 Preference Shareholder's rights under any of the Finance Documents;
 - 2.1.7.2.8. the Company shall give notice to the Preference Share Agent and MTN of any capital reduction that may have been implemented forthwith after it has taken place and the details thereof.
- 2.1.7.3. After implementation of any capital reduction, BIC2 Scheduled Preference Dividends shall continue to accrue on the BIC2 Preference Shares calculated in terms of clause 2.1.1 on the basis that BIC2 Scheduled Preference Dividends shall be calculated as if variable D is reduced by the amount of the capital reduction per BIC2 Preference Share.

2.2. Redemption

2.2.1. General

- 2.2.1.1. Whenever a BIC2 Preference Share is redeemed in terms of this clause 2 –
 - 2.2.1.1.1. the Company shall redeem the BIC2 Preference Share by paying the BIC2 Redemption Amount to the BIC2 Preference Shareholder against the surrender to the Company of the share certificate in respect of that BIC2 Preference Share (or, if such certificate has been lost or destroyed, such proof of loss or destruction and such indemnity as the Company would be entitled to require in terms of clause 2.7.3);
 - 2.2.1.1.2. unless all of the BIC2 Unredeemed Preference Shares are to be redeemed, whenever BIC2 Preference Shares are redeemed the Company shall issue share certificates to the BIC2 Preference Shareholder in respect of the BIC2 Preference Shares held by the BIC2 Preference Shareholder which are not redeemed.
- 2.2.1.2. If any BIC2 Redemption Amount (excluding any BIC2 Preference Dividend payable on such BIC2 Redemption Date) is not paid in full on the applicable BIC2 Redemption Date, the unpaid BIC2 Redemption Amount shall continue to accrue BIC2 Preference Dividends at the BIC2 Default Rate from (and including) such BIC2 Redemption Date up to (but excluding) the date of actual payment of that BIC2 Redemption Amount in full.
- 2.2.1.3. In the event of a winding up of the Company, the BIC2 Preference Shareholder shall be paid out of the assets of the Company and in priority to the holders of all other classes of Shares in the capital of the Company, the full BIC2 Redemption Amount calculated as if the BIC2 Preference Shares were all being redeemed on the day immediately preceding the date of winding-up.
- 2.2.1.4. Save as set out in clause 2.1 and this clause 2.2, the BIC2 Preference Shareholder shall not be entitled to any participation

in the profits or assets of the Company in respect of the BIC2 Preference Shares.

- 2.2.1.5. Where the Company is entitled or obliged to redeem the BIC2 Preference Shares in terms of this clause 2, the Company shall be entitled to redeem the BIC2 Preference Shares in any manner permissible at law.
- 2.2.1.6. The Company shall be liable for any Securities Transfer Tax and/or any other Tax (without double counting), which may be or become payable on the redemption of any BIC2 Preference Share for any reason. To the extent that any BIC2 Preference Shareholder pays or becomes liable to pay such Securities Transfer Tax or any such other Tax, the Company shall pay to the relevant BIC2 Preference Shareholder an amount equal to the amount so paid by that BIC2 Preference Shareholder.

2.2.2. **Voluntary Redemption**

The Company shall be entitled, at any time and from time to time during the Initial Period, to voluntarily redeem at the BIC2 Redemption Amount per BIC2 Preference Share all or a portion of the BIC2 Preference Shares (a "**BIC2 Voluntary Redemption**") with funds standing to the credit of the BIC2 Security Account on the following terms and conditions:

- 2.2.2.1. the Company shall give Written notice (a "**BIC2 Voluntary Redemption Notice**") to the BIC2 Preference Shareholder (the date on which such notice is given, the "**BIC2 Voluntary Redemption Notice Date**") stipulating the number of BIC2 Preference Shares to be redeemed (provided that such BIC2 Voluntary Redemption Notice shall be capable of being revoked at any time prior to the BIC2 Voluntary Redemption Date;
- 2.2.2.2. the Company shall be obliged, prior to the voluntary redemption of the applicable BIC2 Preference Shares to declare and pay any and all accrued and/or accumulated BIC2 Preference Dividends on all of the BIC2 Unredeemed Preference Shares;
- 2.2.2.3. if applicable, the BIC2 Preference Shares to be redeemed pursuant to a BIC2 Voluntary Redemption shall consist of a *pro rata* portion of the BIC2 Preference Shares held by each BIC2 Preference Shareholder;
- 2.2.2.4. subject to clause 2.2.2.3, the aggregate BIC2 Issue Price of all the BIC2 Preference Shares redeemed pursuant to any BIC2

Voluntary Redemption shall be equal to or exceed the amount standing to the credit of the BIC2 Security Account on the Voluntary Redemption Notice Date or such other amount as the Preference Share Agent may agree in Writing;

2.2.2.5. the BIC2 Preference Shares to be redeemed pursuant to a BIC2 Voluntary Redemption Notice shall be redeemed 5 (five) Business Days following the BIC2 Voluntary Redemption Notice Date (the "**BIC2 Voluntary Redemption Date**") or such other date as the Preference Share Agent may agree in Writing;

2.2.2.6. if the Company revokes a BIC2 Voluntary Redemption Notice given at any time within the Initial Period it shall indemnify each of the BIC2 Preference Shareholders against all Losses of whatsoever nature that a BIC2 Preference Shareholder may incur as a result of such revocation;

2.2.2.7. if a:

2.2.2.7.1. BIC2 Potential Trigger Event has occurred or would occur as a result of any redemption, the Company shall not have the right to redeem the BIC2 Preference Shares in terms of this clause 2.2.2 without the prior written consent of the Preference Share Agent; or

2.2.2.7.2. BIC2 Trigger Event has occurred or would occur as a result of any redemption, the Company shall not have the right to redeem the BIC2 Preference Shares in terms of this clause 2.2.2; and

2.2.2.8. the Company shall only be entitled to voluntarily redeem the BIC2 Preference Shares in accordance with clause 2.1.6.4 if the BIC2 Preference Shares are redeemed by no later than the date which is 6 (six) months calculated from the date of the Increase Notice.

Nothing in this clause 2.2.2 shall limit the obligations of the Company under clause 2.2.3 or the rights of the BIC2 Preference Shareholders if a Potential Trigger Event or Trigger Event occurs between the BIC2 Voluntary Redemption Notice Date and the BIC2 Voluntary Redemption Date.

2.2.3. **Mandatory Redemption**

2.2.3.1. The Company shall be obliged to redeem all the BIC2 Preference Shares not previously redeemed:

2.2.3.1.1. on the BIC2 Scheduled Redemption Date;
and/or

2.2.3.1.2. upon the giving of a BIC2 Early Redemption Notice.

2.2.3.2. On the first Business Day following the expiry of the Initial Period and on each and every day thereafter on which there are any amounts standing to the credit of the BIC2 Security Account, the Company shall be obliged to apply all amounts standing to the credit of the BIC2 Security Account towards the redemption of as many BIC2 Unredeemed Preference Shares as can be redeemed in full with such amounts unless otherwise agreed by the Preference Share Agent and MTN.

2.2.4. **Refinancing Redemption**

If MTN has consented thereto in Writing, nothing in this MOI shall be construed as preventing the redemption by the Company, at the BIC2 Redemption Amount per BIC2 Preference Share, at any time of all (but not less than all) of the BIC2 Preference Shares with funding raised pursuant to a Refinancing, provided that the Company shall be obliged, on the relevant BIC2 Redemption Date, and where applicable pursuant to clause 2.1.3, to declare and pay a BIC2 Margin Dividend.

2.3. **BIC2 Trigger Events**

2.3.1. Each of the events set out in this clause 2.3.1 is a BIC2 Trigger Event (each, a "**BIC2 Trigger Event**"), whether or not caused by or for any reason whatsoever outside the control of the Company, namely –

2.3.1.1. the failure of the Company to declare and pay all or any BIC2 Preference Dividends and such failure has not been remedied within 2 (two) Business Days after receipt by the Company of Written notice from the Preference Share Agent requiring it to declare and/or pay such BIC2 Preference Dividends; or

2.3.1.2. the failure by the Company to redeem all of the BIC2 Preference Shares in full on or prior to the BIC2 Scheduled Redemption Date or to mandatorily redeem any BIC2 Preference Share as contemplated in clause 2.2.3 or to redeem any BIC2 Preference Share on the BIC2 Voluntary Redemption Date thereof if a BIC2

Voluntary Redemption Notice has been given in relation thereto (and such BIC2 Voluntary Redemption Notice has not, if it is revocable in accordance with this MOI, been revoked) and such redemption has not occurred within 2 (two) Business Days after receipt by the Company of Written notice from the Preference Share Agent demanding such redemption; or

- 2.3.1.3. the occurrence of any BFC2 Trigger Event; or
- 2.3.1.4. the failure by the Company for any reason whatsoever to pay the BIC2 Redemption Amount per BIC2 Preference Share in full on the date on which Company is obliged or otherwise required or scheduled to make such payment and such failure is not remedied within 2 (two) Business Days following receipt of Written notice from the Preference Share Agent calling upon the Company to remedy such failure to pay; or
- 2.3.1.5. the Company ceases to be either a Black Entity or a Black Company as a result of any event or circumstance (other than the acquisition or holding by MTN or any MTN Acceded Nominee (or any MTN Related Entity that has acceded to the MTN Subordination and Undertaking Agreement in accordance with its terms) of any ordinary Shares in the Company at any time and from time to time) without the prior Written approval of the Preference Share Agent and such circumstance is not remedied, after consultation with MTN, the Company and the Preference Share Agent, within a period of 180 (one hundred and eighty) Business Days of receipt of Written notice from the Preference Share Agent calling upon the Company to remedy such circumstance; or
- 2.3.1.6. there is a Material Adverse Event in relation to the Company, BFC2 or MTN which remains 2 (two) Business Days after the Preference Share Agent has provided Written notice thereof to the relevant entity; or
- 2.3.1.7. there is a breach by the Company, BFC2 and/or MTN of any term, condition, representation, warranty or undertaking given in or under any Finance Document to which it is a party (other than any such breach contemplated elsewhere in this clause 2.3.1, and save for any breach of any provisions of the Constitutional Documents of the Company where (i) such provisions are substantially the same as the provisions of the Relationship Agreement and have been inserted into the Constitutional

Documents of the Company in compliance with the Relationship Agreement and (ii) provided that any such breach would not also constitute a breach of any other provision of the Constitutional Documents of the Company, whether inserted pursuant to the other Finance Documents or otherwise), which breach has not been remedied or waived by the Preference Share Agent in Writing:

2.3.1.7.1. in the case of any such breach by the Company or BFC2, within 5 (five) Business Days of receipt of Written notice from the Preference Share Agent requiring such breach to be remedied; or

2.3.1.7.2. in the case of a breach by MTN of:

2.3.1.7.2.1. any representation, warranty or undertaking given by MTN in any Finance Document, any provision of a Finance Document requiring MTN to make any payment, and/or clause 5 (*BIC2 Subordination*) of the MTN Subordination and Undertaking Agreement (or any other provision of such agreement dealing with the subordination of the claims of MTN against the Company), within 5 (five) Business Days of receipt of Written notice from the Preference Share Agent requiring such breach to be remedied; or

2.3.1.7.2.2. any other term or condition of any Finance Document, within 10 (ten) Business Days of receipt of Written notice from the Preference Share Agent requiring such breach to be remedied;

2.3.1.8. there is a breach by the Company or BFC2 of any term of any agreement of whatsoever nature to which it is party (other than

any such breach contemplated elsewhere in this clause 2.3.1), which breach has not been remedied within 5 (five) Business Days of receipt of Written notice from the Preference Share Agent, given after the expiry of any originally applicable remedy period in such agreement ("**Remedy Period**"), requiring such breach to be remedied, and provided that where:

- 2.3.1.8.1. such breach is (a) a breach of a Material Agreement and (b) is not a failure to pay any amount when due and payable; and
- 2.3.1.8.2. in relation to the Key Material Agreements only, MTN has, prior to the expiry of any Remedy Period, given notice to the Preference Share Agent that MTN will or may, if upon the expiry of the Remedy Period the breach remains unremedied, take any BIC2 Permitted Enforcement Action against the Company or BFC2 Permitted Enforcement Action against BFC2 (as applicable) as a consequence of such breach,

the Preference Share Agent shall not provide any Written notice requiring such breach to be remedied until 5 (five) Business Days after the expiry of the Remedy Period or, if the Preference Share Agent is of the view, in its discretion, that such breach is not adverse to the rights or interests of the Preference Shareholders, such longer period as the Preference Share Agent may deem appropriate; or

- 2.3.1.9. any Encumbrance created under or evidenced by any Finance Document in favour of the BIC2 Preference Shareholder or the BFC2 Preference Shareholders is or becomes unlawful or is not, or ceases to provide security rights of the ranking that it purports to provide or to be legal, valid, binding and enforceable (in each case a "**Voidable Encumbrance Event**") and such Voidable Encumbrance Event is not remedied within 5 (five) Business Days of receipt of Written notice from the Preference Share Agent requiring that same be remedied; or
- 2.3.1.10. any of the Finance Documents (other than the Interfunder Agreement and the Preference Share Custody Agreement) ceases to be valid, binding and enforceable against the parties thereto or, in respect of any Finance Document to which the

Company, BFC2 or MTN is a party is alleged by the Company, BFC2 or MTN (as applicable and in relation to such Finance Document to which it is a party) in Writing to be invalid, not binding and/or unenforceable for any reason, and such validity, binding nature or enforceability is not restored or such allegation revoked within 2 (two) Business Days after receipt by the Company, BFC2 and MTN of notice from the Preference Share Agent requiring that same be restored; or

2.3.1.11. it is or becomes unlawful for the Company, BFC2 and/or MTN to perform any of its obligations under any Key Transaction Documents to which they are party, and such unlawfulness is not remedied within a period of 2 (two) Business Days of receipt of Written notice from the Preference Share Agent to the Company, BFC2 and MTN calling upon the Company to remedy such unlawfulness; or

2.3.1.12. save as otherwise expressly provided in this clause 2.3.1, there is a failure by the Company, BFC2 and/or MTN to fully and timeously perform or comply with any obligation which is expressed to be assumed by it under any Material Agreement to which it is a party, which failure has not been remedied within 5 (five) Business Days (in the case of the Company or BFC2) or 10 (ten) Business Days (in the case of MTN) of receipt of Written notice from the Preference Share Agent, given after the expiry of any originally applicable remedy period in such agreement ("**Remedy Period**"), requiring such failure to be remedied, and provided that, in relation to any such failure by the Company and/or BFC2, where:

2.3.1.12.1. such failure is not a failure to pay any amount when due and payable; and

2.3.1.12.2. in relation to the Key Material Agreements only, MTN has, prior to the expiry of any Remedy Period, given notice to the Preference Share Agent that MTN will or may, if upon the expiry of the Remedy Period the breach remains unremedied, take any BIC2 Permitted Enforcement Action against the Company or BFC2 Permitted Enforcement Action against BFC2 (as applicable) as a consequence of such breach,

the Preference Share Agent shall not provide any Written notice requiring such breach to be remedied until 5 (five) Business Days after the expiry of the Remedy Period or, if the Preference Share Agent is of the view, in its discretion, that such breach is not adverse to the rights or interests of the BIC2 Preference Shareholders, such longer period as the Preference Share Agent may deem appropriate; or

2.3.1.13. the Company and/or BFC2 is in breach or default of any obligation in respect of any Financial Indebtedness and such breach or default, as the case may be, is not remedied within 2 (two) Business Days following receipt of Written notice by the Company from the Preference Share Agent requiring such breach or default to be remedied; or

2.3.1.14. any Financial Indebtedness (MTN) of MTN or any Material Subsidiary in an aggregate outstanding amount of US\$50 000 000,00 (fifty million US Dollars) or more (or an equivalent in any other currency):

2.3.1.14.1. is not paid when due (after the expiry of any applicable grace period);

2.3.1.14.2. becomes prematurely due and payable;

2.3.1.14.3. is placed on demand; or

2.3.1.14.4. is capable of being declared by or on behalf of a creditor to be prematurely due and payable or of being placed on demand,

in each case, as a result of an event of default or any provisions having a similar effect and in each case, any step is taken by the relevant creditor for the acceleration of payment and/or enforcement of payment of the relevant Financial Indebtedness (MTN), or any enforcement action is taken in respect of any security in relation thereto, and such Financial Indebtedness (MTN) is not irrevocably and unconditionally repaid in full within 1 (one) Business Day after receipt of Written notice from the Preference Share Agent requiring such event to be remedied; or

2.3.1.15. the Calculation Agent notifies the Preference Share Agent in Writing that on any day the Total Share Cover Ratio is less than 2 (two) (if the Financial Covenant was below 2 (two) when most recently measured) or less than 2.2 (two point two) (if the

Financial Covenant was at or above 2 (two) when most recently measured), or the Revised Total Share Cover Ratio is breached, and such Total Share Cover Ratio is not restored to 2.9 (two point nine) (if the Financial Covenant was below 2 (two) when most recently measured) or 3.2 (three point two) (if the Financial Covenant was at or above 2 (two) when most recently measured) or more in each case within 1 (one) Business Day after receipt of Written notice from the Preference Share Agent requiring such restoration, or if applicable the Revised Total Share Cover Ratio is not restored to a level which is, in each case, 145% (one hundred and forty five per cent) of the trigger level below which it is breached or more in each case within 1 (one) Business Day after receipt of Written notice from the Preference Share Agent requiring such restoration, and in either case such restoration may take place by the provision by MTN or an MTN Acceded Nominee of:

2.3.1.15.1. a BIC2 Loan Undertaking or a BFC2 Loan Undertaking (with the prior Written consent of the Preference Share Agent); and

2.3.1.15.2. if such BIC2 Loan Undertaking or BFC2 Loan Undertaking (with the prior Written consent of the Preference Share Agent) is provided in a timely manner by MTN or an MTN Acceded Nominee, a BIC2 Subordinated Loan or a BFC2 Subordinated Loan, as the case may be,

in each case within a period of 5 (five) Business Days of such Written Notice from the Preference Share Agent, and strictly in accordance with the provisions of the MTN Subordination and Undertaking Agreement;

2.3.1.16. the Financial Covenant is greater than 2.5:1 (two point five to one) at the end of any Measurement Period and such circumstance is not remedied within 3 (three) Business Days of receipt of Written notice from the Preference Share Agent requiring such circumstance to be remedied;

2.3.1.17. any licence, permit, authorisation, approval or consent required under any Applicable Law necessary for the conduct of the business of the Company or BFC2 is not obtained, expires, or is withdrawn, cancelled, revoked or not renewed and such circumstance is not remedied within 5 (five) Business Days after

receipt by the Company of Written notice from the Preference Share Agent requiring such circumstance to be remedied; or

- 2.3.1.18. the Company, BFC2 and/or MTN cancels or terminates any Finance Document to which it is a party (other than in circumstances in which it is legally entitled to do so as a result of a material breach thereof by the BIC2 Preference Shareholders going to the root of the relevant Finance Document which is not remedied within 15 (fifteen) Business Days of notice from the relevant entity to the Preference Share Agent requiring such remedy) or repudiates any Finance Document to which it is a party and any such cancellation, termination or repudiation or evidence of repudiation is not unconditionally withdrawn 5 (five) Business Days after the Preference Share Agent has provided Written notice thereof to the Company, BFC2 and/or MTN, as applicable; or
- 2.3.1.19. the Company, BFC2, MTN and/or any other party to a Key Material Agreement cancels or terminates any Key Material Agreement to which it is a party prior to the date on which the Transaction (which for the avoidance of doubt shall be the "New Empowerment Transaction" as contemplated in the Implementation Agreement) is fully and finally implemented in accordance with the provisions of the Implementation Agreement; or
- 2.3.1.20. any cash Distribution or other payment of whatsoever nature, including without limitation any Disposal Proceeds, received by the Company is not immediately paid directly into the BIC2 Collection Account via the CSD and the Security Custodian or otherwise applied strictly in accordance with the Account Bank and Agency Agreement and such failure is not remedied within 2 (two) Business Days after receipt by the Company of Written notice from the Preference Share Agent requiring that such amount be paid into the BIC2 Collection Account or such other account as is specified in the Account Bank and Agency Agreement; or
- 2.3.1.21. unless the Preference Share Agent provides the Company with advance Written instructions to the contrary, any Subject Shares received by the Company are not immediately reflected in the Subject Share Securities Account (or, if any Subject Shares are materialised, the share certificates representing any such

materialised Subject Shares, together with undated, duly executed share transfer declarations in respect of such Subject Shares which are blank as to transferee, are not immediately delivered to the Security Custodian) and such failure is not remedied within 2 (two) Business Days after receipt by the Company of Written notice from the Preference Share Agent requiring that such Subject Shares be reflected in the Subject Share Securities Account; or

- 2.3.1.22. save as a result of any Permitted Action or otherwise with the prior Written consent of the Preference Share Agent, the Company is entitled to acquire or acquires shares in any entity in exchange for the Target Shares or any Additional Shares (to the extent that, at the relevant time, the value of such Additional Shares is included in the calculation of the numerator of each of the Revised Total Share Cover Ratio and the Revised Volatility Protection Share Cover Ratio) and such circumstance is not remedied within 3 (three) Business Days of receipt by the Company of Written notice from the Preference Share Agent requiring such circumstance to be remedied; or
- 2.3.1.23. save for any Permitted Action, the ordinary shareholders of MTN approve any Asset Unbundling Transaction as a result of which the Company would be entitled to acquire shares in any company other than MTN and such approval is not revoked within 2 (two) Business Day following receipt by the Company from the Preference Share Agent requiring such approval to be revoked; or
- 2.3.1.24. any Insolvency Event occurs (unless such Insolvency Event is of the type contemplated in clause 1.3.157.1 or clause 1.3.157.4, the occurrence of any of which shall constitute a BIC2 Trigger Event) and such Insolvency Event is not remedied within 2 (two) Business Days of receipt by the Company of Written notice from the Preference Share Agent requiring such event to be remedied; or
- 2.3.1.25. MTN, the listings committee of the JSE or any other regulatory Authority publishes any notice of its intention to suspend or discontinue the listing of MTN Shares which are of the same class as the Target Shares by the JSE and such decision or step remains un-reversed for a period of 1 (one) Trading Day after

receipt by the Company of Written notice from the Preference Share Agent demanding its reversal; or

- 2.3.1.26. trading in the MTN Shares listed on the JSE which are of the same class as the Target Shares is suspended for any reason (other than a general suspension of trading on the JSE) and trading remains suspended for 1 (one) Trading Day after receipt by the Company of Written notice from the Preference Share Agent demanding that such trading resume; or
- 2.3.1.27. any asset of the Company or BFC2 is attached under a writ of execution issued out of any court, and the Company fails, within a period of 2 (two) Business Days of receipt by the Company of Written notice from the Preference Share Agent demanding that such attachment be set aside, to take the necessary steps to have such attachment set aside or thereafter fails to pursue such steps expeditiously and diligently; or
- 2.3.1.28. there is any revocation, amendment, variation or modification of any of the Finance Documents by the Company, BFC2 or MTN without the prior Written consent of the Preference Share Agent and where such revocation, amendment, variation or modification is capable of remedy, the Company, BFC2 or MTN, as applicable, fails to remedy such revocation, amendment, variation or modification within a period of 5 (five) Business Days of Written notice from the Preference Share Agent calling on the Company, BFC2 or MTN, as applicable, to remedy such amendment, variation, modification, cancellation or revocation; or
- 2.3.1.29. the auditors of the Company or BFC2 qualify their report on any audited financial statements of the Company or BFC2 in any respect, or insert an adverse qualifying note in the supporting documents to such financial statements, and such qualification is not unconditionally withdrawn within a period of 5 (five) Business Days of receipt by the Company of Written notice from the Preference Share Agent requiring such qualification to be withdrawn; or
- 2.3.1.30. the auditors of MTN qualify their report on any audited financial statements of MTN in any material respect, or insert a material adverse qualifying note in the supporting documents to such financial statements, in any case:

- 2.3.1.30.1. on the grounds that the information supplied to them or to which they had access was inadequate or unreliable;
- 2.3.1.30.2. on the grounds that they are unable to prepare such financial statements on a going concern basis; or
- 2.3.1.30.3. otherwise in terms or as to issues which in the opinion of the Preference Share Agent (acting reasonably) are material in the context of the Finance Documents and the transactions contemplated by them,

and such qualification is not unconditionally withdrawn within a period of 5 (five) Business Days of receipt by MTN of Written notice from the Preference Share Agent requiring such qualification to be withdrawn; or

- 2.3.1.31. on any Trading Day, the One Day VWAP of the MTN Shares is an amount of R50,00 (fifty Rand) or less and the One Day VWAP of the MTN Shares is not restored to above R50,00 (fifty Rand) within a period of 1 (one) Business Day following Written notice from the Preference Share Agent to the Company requiring the One Day VWAP of the MTN Shares to be above R60,00 (sixty Rand); or
- 2.3.1.32. the MTN Initial Tranche 1 Subscription Shares are not duly allotted and issued to the Company on the Issue Date; or
- 2.3.1.33. the MTN Tranche 2 Subscription Shares are not duly allotted and issued to the Company on the Issue Date; or
- 2.3.1.34. if any MTN Tranche 3 Subscription Shares are required to be issued in terms of the Final Capital Structure Documents, any of such MTN Tranche 3 Subscription Shares are not duly allotted and issued to the Company on the 1st (first) Business Day following the Issue Date or such later date as the Preference Share Agent may agree to in writing on or prior to date which is the 1st (first) Business Day following the Issue Date; or
- 2.3.1.35. the Repurchase Agreement has not been implemented in accordance with its terms on the date which is 1 (one) Business Day following the Issue Date; or

2.3.1.36. not all of the class "A" cumulative redeemable non-participating preference shares in the issued preference share capital of MTN Zakhele are irrevocably redeemed in full in accordance with the provisions of the memorandum of incorporation of MTN Zakhele on the date which is 1 (one) Business Day following the Issue Date; or

2.3.1.37. the:

2.3.1.37.1. Volatility Protection Share Cover Ratio is less than:

2.3.1.37.1.1. if the Financial Covenant is below 2x (two times), 2.3x (two point three times); or

2.3.1.37.1.2. if the Financial Covenant is at or above 2x (two times), 2.6x (two point six times),

in each case, for a period exceeding 10 (ten) consecutive Trading Days and MTN has not restored the Volatility Protection Share Cover Ratio to not less than:

2.3.1.37.1.3. if the Financial Covenant is below 2x (two times), 2.6x (two point six times);

2.3.1.37.1.4. if the Financial Covenant is above 2x (two times), 2.9x (two point nine times); or

2.3.1.37.2. the Revised Volatility Protection Share Cover Ratio is breached and is not restored to a level which is 130% (one hundred and thirty per cent) of the trigger level below which it is breached or more,

in each case within 1 (one) Business Day following receipt of Written Notice from the Preference Share Agent requiring the Volatility Protection Share Cover Ratio to be restored and in either case such restoration may take place by the provision by MTN or an MTN Acceded Nominee of:

2.3.1.37.3. a BIC2 Loan Undertaking or a BFC2 Loan Undertaking (with the prior Written consent of the Preference Share Agent); and

2.3.1.37.4. if such BIC2 Loan Undertaking or BFC2 Loan Undertaking (with the prior Written consent of the Preference Share Agent) is provided in a timely manner by MTN or an MTN Acceded Nominee, a BIC2 Subordinated Loan or a BFC2 Subordinated Loan, as the case may be,

in each case within a period of 10 (ten) Business Days of such Written Notice from the Preference Share Agent, and strictly in accordance with the provisions of the MTN Subordination and Undertaking Agreement,

it being recorded that in each case:

2.3.1.38. the period for remedy of any BIC2 Potential Trigger Event (if any) may be extended if, prior to the expiry thereof, the Written agreement of the Preference Share Agent to such extended remedy period is provided; and

2.3.1.39. if MTN or an MTN Acceded Nominee has delivered a Call Option Exercise Notice during the relevant Trigger Event Call Option Period in accordance with the provisions of the Call Option Agreement, the period for remedy of any BIC2 Potential Trigger Event shall automatically be extended until the applicable Call Option Closing Date and, provided that the relevant Call Option Strike Price is paid in full on or before the Call Option Closing Date, shall be extended by a period of 15 (fifteen) Business Days after the Call Option Closing Date.

2.3.2. The Preference Share Agent shall, upon the occurrence of a BIC2 Trigger Event and at any time while it is Continuing, be entitled to require the Company to redeem all the BIC2 Unredeemed Preference Shares by Written notice to the Company (a "**BIC2 Early Redemption Notice**"), and the Company shall be obliged to redeem all the BIC2 Unredeemed Preference Shares on the 1st (first) Business Day following the date of the BIC2 Early Redemption Notice, provided that no BIC2 Early Redemption notice may be given unless –

2.3.2.1. the Preference Share Agent has given notice to MTN that a BFC2 Potential Trigger Event has occurred in accordance with the Call Option Agreement; and

2.3.2.2. MTN or an MTN Acceded Nominee has either (i) notified the Preference Share Agent in Writing that neither MTN nor any MTN Acceded Nominee will deliver a Call Option Exercise Notice, or (ii) not delivered a Call Option Exercise Notice during the relevant Trigger Event Call Option Period in accordance with the provisions of the Call Option Agreement.

2.4. **Discussion Event**

Should the Preference Share Agent notify the Company in Writing that a Material Adverse Event in respect of the Company, BFC2 and/or MTN has occurred or is likely to occur, then the Company, the Preference Share Agent and MTN shall meet to discuss the manner in which the situation may be improved.

2.5. **BIC2 Illegality Event**

Upon the occurrence of a BIC2 Illegality Event, the Preference Share Agent shall give a notice to the Company specifying:

2.5.1. the BIC2 Illegality Event; and

2.5.2. that the applicable unlawfulness or illegality has already occurred, in which event the BIC2 Preference Shares held by any BIC2 Preference Shareholder shall become immediately redeemable at the BIC2 Redemption Amount per BIC2 Preference Share; or

2.5.3. that the applicable unlawfulness or illegality will occur in future (including the date on which it will occur, if known to the Preference Share Agent), in which event the BIC2 Preference Shares held by any BIC2 Preference Shareholder shall become redeemable at the BIC2 Redemption Amount per BIC2 Preference Share on the Business Day immediately preceding the date on which the applicable unlawfulness or illegality will occur.

2.6. **Meetings And Voting**

2.6.1. The BIC2 Preference Shareholder and the Preference Share Agent shall be entitled to receive notice of, and to be present at, and the Company shall be obliged to give notice to the BIC2 Preference Shareholder and the Preference Share Agent of, any general meeting of the Company but the BIC2 Preference Shareholder shall not (in its capacity as BIC2 Preference Shareholder) be entitled to vote, either in person, by representation or by

proxy, at any such meeting unless any one or more of the following circumstances prevails –

- 2.6.1.1. the Company proposes or purports to dispose of the whole or substantially the whole of the undertaking of the Company or the whole or the greater part of the assets of the Company (save where this is pursuant to a Permitted Disposal or Permitted Action);
- 2.6.1.2. any BIC2 Potential Trigger Event or BIC2 Trigger Event or BIC2 Illegality Event has occurred and is Continuing;
- 2.6.1.3. there are any BIC2 Unpaid Dividends or BIC2 Arrear Dividends;
- 2.6.1.4. any BIC2 Redemption Amount remains in arrear and unpaid;
- 2.6.1.5. a Special Resolution of the Company is proposed (save where this is pursuant to a Permitted Disposal or Permitted Action or for the approval of the remuneration of the directors of the Company pursuant to section 66(9) of the Companies Act); or
- 2.6.1.6. a resolution of the Company is proposed –
 - 2.6.1.6.1. which affects the rights attached to the BIC2 Preference Shares or the interests of the BIC2 Preference Shareholder;
 - 2.6.1.6.2. for the winding-up of the Company;
 - 2.6.1.6.3. for any acquisition by the Company of its Shares in terms of section 48 of the Companies Act or for any acquisition of the Company's Shares by a subsidiary of the Company in terms of section 48 of the Companies Act;
 - 2.6.1.6.4. that would change the Financial Year.

2.6.2. At every general meeting of the Company at which the BIC2 Preference Shareholder is entitled to vote in terms of clause 2.6.1 –

- 2.6.2.1. the provisions of this MOI relating to general meetings of the Ordinary Shareholders shall apply, *mutatis mutandis*, to the BIC2 Preference Shareholder;
- 2.6.2.2. all resolutions put to the meeting shall be voted on by way of a poll;

2.6.2.3. subject to the provisions of sections 63(5) and (6) of the Companies Act, the BIC2 Preference Shares in aggregate shall carry that number of votes which would entitle the BIC2 Preference Shareholder to exercise, in aggregate, 95% (ninety five per cent) of the total votes exercisable at a general meeting of the Company so that each BIC2 Preference Share shall carry that number of votes equal to 95% (ninety five per cent) of the total votes exercisable at a general meeting divided by the number of BIC2 Preference Shares in issue, provided that, if a Special Resolution of the Company is proposed as contemplated in clause 2.6.1.5 and none of the other circumstances contemplated in clause 2.6.1 also exist, then in relation to each such Special Resolution only (and not, for the avoidance of doubt, in relation to any other resolution), the BIC2 Preference Shares in aggregate shall carry that number of votes which would entitle the BIC2 Preference Shareholder to exercise, in aggregate, 95% (ninety five per cent) of the total votes exercisable at a general meeting of the Company so that each BIC2 Preference Share shall carry that number of votes equal to 95% (ninety five per cent) of the total votes exercisable at a general meeting divided by the number of BIC2 Preference Shares in issue;

2.6.2.4. the BIC2 Preference Shareholder shall not exercise any voting rights attaching to the BIC2 Preference Shares without the prior Written consent of the Preference Share Agent.

2.6.3. While any of the circumstances set out in clause 2.6.1 prevail –

2.6.3.1. the Preference Share Agent shall be entitled to appoint and remove Directors of the Company; and

2.6.3.2. the Preference Share Agent shall be entitled (but not obliged) to –

2.6.3.2.1. convene a meeting of the Shareholders of the Company; and/or

2.6.3.2.2. appoint the chairman of a general meeting of the Shareholders of the Company.

2.7. General

2.7.1. The Ordinary Shareholders shall pass all such resolutions, and approve all such actions of the Board of Directors of the Company, as may be

necessary to allow for the declaration and payment of the BIC2 Preference Dividends and any BIC2 Redemption Amount.

2.7.2. The entries made in the accounts maintained by the BIC2 Preference Shareholder in connection with its BIC2 Preference Shares and/or any certificate issued, and signed by any manager or Director or authorised signatory (whose appointment, designation and authority as such it shall not be necessary to prove) of the BIC2 Preference Shareholder with respect to –

2.7.2.1. the existence and amount of any indebtedness of the Company to the BIC2 Preference Shareholder at any time;

2.7.2.2. the fact that such amount is due and payable;

2.7.2.3. the BIC2 Dividend Rate applicable to such amount;

shall be, save for manifest error –

2.7.2.4. *prima facie* proof of its contents and of their correctness for all purposes;

2.7.2.5. insofar as the related obligation is a debt obligation, valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by the BIC2 Preference Shareholder against the Company; and

2.7.2.6. deemed to be sufficiently particular for the purposes of pleading or trial in any action or other proceedings instituted by the BIC2 Preference Shareholder against the Company.

2.7.3. If any certificate issued in respect of a BIC2 Preference Share is defaced, lost or destroyed, it shall be replaced by the Company upon receipt by the Company of either the defaced certificate or an affidavit by a Director of the Preference Share Agent to the effect that such certificate has been lost or destroyed together with a Written undertaking indemnifying the Company against any loss, liability, damage, cost or expense which the Company may suffer as a result of issuing such replacement certificate.

2.8. **No Double Counting**

All payments which become due and payable pursuant to the provisions of the BIC2 Preference Share Subscription Agreement and this MOI shall be paid without double counting.

2.9. **No Prejudice**

Should the BIC2 Preference Shareholder have the benefit of an assessed loss or a Dividends Tax Credit, if any, other than in respect of the BIC2 Preference Shares, such circumstances shall not operate to deprive such BIC2 Preference Shareholder of the benefit of any claim or right it would otherwise have against the Company under this clause 2.

2.10. **No Conflict**

Save as otherwise provided for in the Companies Act, unless otherwise agreed to in Writing by the Preference Share Agent, if there is any conflict or inconsistency between this clause 2 and any other provision of this MOI, the provisions of this clause 2 shall prevail.

2.11. **Stipulatio alteri**

To the extent that any provisions of this MOI purport to confer benefits on MTN (including all provisions providing that MTN's consent is required for any act or omission), such provisions constitute *stipulatio alteri* in favour of MTN, the benefit of which may be accepted by MTN at any time and in any manner, provided that in each provision requiring the consent of both MTN and the Preference Share Agent, the consent of MTN shall not be unreasonably withheld or delayed if the Preference Share Agent has provided its consent.

3. **PRIORITY OF PAYMENTS**

Each of the following Priority of Payments is applicable to the BIC2 Preference Shares and notwithstanding any provision to the contrary in this MOI or any other Transaction Document, shall be applied in accordance with this clause 3, unless otherwise agreed to in Writing by the Company, the Preference Share Agent and MTN. Without limiting the general nature and effect of the foregoing, such agreement may include (but shall not be limited to) the addition or removal of items (in whole or in part) and/or a variation to the sequence and/or amounts set out below. Capitalised terms used but not defined herein shall bear the meanings ascribed thereto in clause 1.3 of this MOI.

3.1. **Pre BIC2 Trigger Event Priority of Payments**

Notwithstanding anything to the contrary in this MOI, until the BIC2 Discharge Date, the Company shall, prior to the occurrence of a BIC2 Trigger Event, apply (i) all ordinary cash Distributions received by it in relation to the Subject Shares (the "**Received Distribution Amounts**"); (ii) all interest income received by it (the "**Received Interest Amounts**"); (iii) all the amounts standing to the credit of the BIC2 Collection Account (the "**BIC2 Collection Amounts**"); and (iv) any cash Special Distribution which is received by it in relation to the Subject Shares, which Special Distribution (a) is declared and paid to it on the same day on which any ordinary annual cash Distribution is declared and paid to it in relation to such Subject Shares and; (b) does not arise from or relate to the Disposal of

any assets by the issuer of the Subject Shares, but which represents cash arising from the normal business operations of the issuer of such Subject Shares (the "**Same Day Special Distribution**" and, together with the Received Distribution Amounts, the Received Interest Amounts, the BIC2 Collection Amounts and the Same Day Special Distribution hereinafter referred to as the "**Received Amounts**"), on each BIC2 Dividend Date and on each BIC2 Redemption Date (whether as a result of a scheduled redemption, voluntary redemption or mandatory redemption of any or all of the BIC2 Preference Shares, as the case may be), in accordance with the following Priority of Payments on the basis that each level of priority is to be paid or fully provided for before any payment of or provision for the following level of priority is paid or provided for :

- 3.1.1. first, to the payment of or provision for (by payment into the BIC2 Tax Provisions Account) any Tax that may be owed by the Company and any Tax that may be owed by BFC2 in relation to any Transaction Document;
- 3.1.2. second to the payment of or provision for (by payment into the BIC2 Provisions Account) Administration Costs of the Company and BFC2 (including all fees and expenses, including Preference Share Agent, Security Custodian, the Calculation Agent and Account Bank fees and expenses and all Service Provider Expenses payable by the Company under the Transaction Documents) not exceeding an aggregate amount of (i) prior to the commencement of the BEE Listing Period, R15 000 000,00 (fifteen million Rand per annum); and (ii) for the duration of the BEE Listing Period, R30 000 000,00 (thirty million Rand per annum), and, as a once-off amount, in respect of the BEE Listing, an aggregate amount not exceeding R40 000 000,00 (forty million Rand), adjusted on 1 January of each year during the Term (provided that the first such date shall be 1 January 2017) at the higher of (a) year-on-year changes in the CPI; and (b) 10% (ten per cent) per annum (or such higher amount or higher escalation as may be approved in Writing by the Preference Share Agent and MTN, which consent shall not be unreasonably withheld by MTN); plus the Administration Contingency Amount (as such term is defined in the Account Bank and Agency Agreement), plus an amount not exceeding R5 000 000,00 (five million Rand) in the aggregate over the term of the Transaction, but limited to R2 000 000,00 (two million Rand) per annum, in respect of the fees, costs and disbursements (plus VAT thereon) of any professional advisers as may be reasonably and properly incurred by the Company or BFC2 as a result of any change or proposed change in, or any change or proposed change in the application or interpretation of, any Applicable Laws or in relation to the implementation of the Transaction Documents (or such higher amounts as may be approved in Writing by the Preference Share Agent and MTN);
- 3.1.3. third, to pay, from the balance of the Received Amounts, any amounts

required to be paid by the Company in terms of clauses 13 and 14 of the BIC2 Preference Share Subscription Agreement (other than the Indemnified Amount and the SARS Amount);

- 3.1.4. fourth, to the payment of any BIC2 Preference Dividends which are, as at the relevant date on which Received Amounts are being applied, scheduled, accumulated, due or otherwise required to be declared and/or paid in accordance with the BIC2 Preference Share Terms;
- 3.1.5. fifth, to offer to the Preference Share Agent to place an amount equal to the lesser of (a) the balance, if any, of the Received Amounts and (b) an amount which, after taking into account all amounts standing to the credit of the BIC2 Security Account, would allow the Company to pay on each BIC2 Scheduled Preference Dividend Date, an aggregate amount equal to the BIC2 Agreed Amount, toward the voluntary redemption of the BIC2 Preference Shares (or the aggregate of the BIC2 Redemption Amount if less than such amount) (the lesser of (a) and (b) being the "**BIC2 Deposit Amount**") on deposit in the BIC2 Security Account (the "**BIC2 Offer**") and, if the BIC2 Offer is accepted by the Preference Share Agent in accordance with the provisions of the Account Bank and Agency Agreement, then the Company shall deposit, the BIC2 Deposit Amount in the BIC2 Security Account;
- 3.1.6. sixth, only (i) after the expiry of the Initial Period; (ii) provided that (unless otherwise consented to by the Preference Share Agent in writing) no BIC2 Potential Trigger Event has occurred and is Continuing as at the relevant Priority of Payments Date; and (iii) at the Company's election and in its discretion but provided that ~~MTN has provided its prior written consent~~ (a) the Dividend Payment Share Cover Ratio is greater than 1.5 : 1 times (or such lesser ratio as MTN and BIC2 may agree in Writing from time to time at any time for the purposes of this level of priority) and (b) MTN has not notified the Company and the Preference Share Agent in Writing that a BIC2 Potential Trigger Event or a BIC2 Trigger Event has occurred or is reasonably expected to occur, to apply an amount which does not exceed an amount equal to the applicable Trickle Dividend Amount, towards the payment of a Distribution to the Ordinary Shareholders;
- 3.1.7. seventh, to offer to the Preference Share Agent to place an amount equal to the lesser of (i) the balance, if any, of the aggregate of the Received Amounts plus any and all amounts standing to the credit of the BIC2 Security Account, if any; and (ii) such amount as would enable the Company to redeem the BIC2 Preference Shares in full, and if such offer is accepted by the Preference Share Agent in accordance with the provisions of the Account Bank and Agency Agreement, then the Company shall

deposit such amount in the BIC2 Security Account;

3.1.8. eighth:

3.1.8.1. at MTN's Written election (or deemed election having regard to the terms of the MTN Tranche 1 Subscription and Call Option Agreement) to apply the balance of the Received Amounts (or such lesser amount as MTN may agree to in Writing) to acquire and/or subscribe for such number of MTN Shares (or such lesser number of MTN Shares as agreed to by MTN) at no more than the prevailing market value per MTN Share (the "**MTN Tranche 1 Additional Subscription Shares**"), provided that MTN or an MTN Acceded Nominee contemporaneously acquires the same number of MTN Shares from the Company at the nominal value per MTN Share, all in accordance with the MTN Tranche 1 Subscription and Call Option Agreement, and if such offer is accepted in Writing by MTN (or deemed to be accepted) in accordance with the provisions of the Account Bank and Agency Agreement, the Company shall acquire and/or subscribe for the MTN Tranche 1 Additional Subscription Shares; and/or

3.1.8.2. to offer, at MTN's Written election, to pay or repay all or part of any BIC2 Subordinated Loan, whether in respect of principal, interest or otherwise, in an amount equal to the lesser of (a) the balance, if any, of the Received Amounts; or (b) an amount equal to the amount of principal, interest or otherwise owing in respect of such BIC2 Subordinated Loan (or such lesser amount as agreed to in Writing by MTN) and, if such offer is accepted by MTN within a period of 2 (two) Business Days from the date of such offer, the Company shall pay or repay such amount of the BIC2 Subordinated Loan to MTN or the applicable MTN Acceded Nominee;

3.1.9. ninth, and at the Company's election and in its discretion but provided that ~~MTN has provided its prior written consent~~ (i) the Dividend Payment Share Cover Ratio is greater than 1.5 : 1 times (or such lesser ratio as MTN and BIC2 may agree in Writing from time to time at any time for the purposes of this level of priority) and (ii) MTN has not notified the Company and the Preference Share Agent in Writing that a BIC2 Potential Trigger Event or a BIC2 Trigger Event has occurred or is reasonably expected to occur, to apply the balance of the Received Amounts, if any, or any part thereof, towards the payment of a Distribution to the Ordinary Shareholders; and

3.1.10. tenth, to pay the balance remaining of the Received Amounts, if any, into the

BIC2 Security Account.

3.2. **Special Priority of Payments**

Notwithstanding anything to the contrary in this MOI, until the BIC2 Discharge Date, the Company shall, prior to the occurrence of a BIC2 Trigger Event, apply (a) the amounts received by it in connection with the Disposal of any of its assets (other than as a result of the Disposal of the MTN Loan Account), any capital reductions made by MTN and/or the cash proceeds of any Special Distributions (other than any Same Day Special Distribution); and (b) the amount standing to the credit of the BIC2 Top-Up Loan Account which is equal to the amount of the applicable BIC2 Proposed Payment in the circumstances contemplated in clauses 4.2.2.2 and 4.3.2.2 of the MTN Subordination and Undertaking Agreement (collectively, the "**Disposal Payment Amounts**"), in the case of (a), on each and every date on which such Disposal Payment Amounts are received by the Company, in the case of (b), on the date referred to in clauses 4.2.2.2 and 4.3.2.2 of the MTN Subordination and Undertaking Agreement and in either case, on the date on which the Indemnified Amount and/or the SARS Amount are required to be deposited by the Company into the BIC2 Security Account in accordance with clause 14.11 of the BIC2 Preference Share Subscription Agreement, in accordance with the following Priority of Payments on the basis that each level of priority is to be paid or fully provided for before any payment of or provision for the following level of priority is paid or provided for accordance with the following Priority of Payments:

- 3.2.1. first, to the payment of or provision for (by payment into the BIC2 Tax Provisions Account) any Tax that may be owed by the Company and any Tax that may be owed by BFC2 in relation to any Transaction Document;
- 3.2.2. second, if so required under and in terms of clause 14.11 of the BIC2 Preference Share Subscription Agreement, to pay, from the balance of the Disposal Payment Amounts, if any, the Indemnified Amount into the BIC2 Security Account and/or an amount equal to the SARS Amount into the BIC2 Security Account;
- 3.2.3. third, to offer to the Preference Share Agent to declare and pay the BIC2 Preference Dividends which are, as at the relevant date on which Disposal Payment Amounts are being applied, scheduled, accumulated, due or otherwise required to be declared and/or paid in accordance with the BIC2 Preference Share Terms and if such offer is accepted by the Preference Share Agent in accordance with the provisions of the Account Bank and Agency Agreement, then the Company shall declare and pay such BIC2 Preference Dividends;
- 3.2.4. fourth, to offer to the Preference Share Agent to place an amount equal to the lesser of (a) the balance, if any, of the Disposal Payment Amounts; and

(b) an amount equal to the (i) aggregate of the BIC2 Redemption Amount; and (ii) the Indemnified Amount, less the amount standing to the credit of the BIC2 Security Account (or such lesser amount as agreed to in Writing by the Preference Share Agent) (the lesser of (a) and (b) being the "**BIC2 Disposal Amount**") on deposit in the BIC2 Security Account (the "**Special BIC2 Offer**") and, if the Special BIC2 Offer is accepted in accordance with the provisions of the Account Bank and Agency Agreement, then the Company shall deposit the BIC2 Disposal Amount in the BIC2 Security Account;

3.2.5. fifth, ~~at MTN's Written election:~~

3.2.5.1. to offer to apply the balance of the Disposal Payment Amounts (or such lesser amount as MTN may agree to in Writing) to acquire and/or subscribe for the MTN Tranche 1 Additional Subscription Shares, provided that MTN or an MTN Acceded Nominee contemporaneously acquires the same number of MTN Shares from the Company at the nominal value per MTN Share, all in accordance with the MTN Tranche 1 Subscription and Call Option Agreement, and ~~if~~ unless such offer is ~~accepted-rejected~~ in Writing by MTN at its election and in accordance with the provisions of the Account Bank and Agency Agreement, the Company shall acquire and/or subscribe for the MTN Tranche 1 Additional Subscription Shares; and/or

3.2.5.2. to offer, at MTN's Written election, to pay or repay all or part of any BIC2 Subordinated Loan, whether in respect of principal, interest or otherwise, in an amount equal to the lesser of (a) the balance, if any, of the Disposal Payment Amounts; or (b) an amount equal to the amount of principal, interest or otherwise owing in respect of such BIC2 Subordinated Loan (or such lesser amount as agreed to in Writing by MTN) and, if such offer is accepted by MTN within a period of 2 (two) Business Days from the date of such offer, the Company shall pay or repay such amount of the BIC2 Subordinated Loan to MTN or the applicable MTN Acceded Nominee;

3.2.6. sixth, at the Company's election and in its sole discretion, to apply the balance of the Disposal Payment Amounts, if any, or any part thereof, towards the payment of a Distribution to the Ordinary Shareholders;

3.2.7. seventh, to pay the balance remaining of the Disposal Payment Amounts, if any, into the BIC2 Security Account.

3.3. Post Trigger Event Priority of Payments

Notwithstanding anything to the contrary in this MOI, following the occurrence of a BIC2 Trigger Event –

- 3.3.1. all Received Amounts, Disposal Payment Amounts, amounts standing to the credit of the BIC2 Collection Account, the BIC2 Security Account, the BIC2 Provisions Account, the BIC2 Tax Provisions Account, the BIC2 Top-Up Loan Account as well as the proceeds (net of costs) arising from the Disposal of any of the Subject Shares (the "**BIC2 Total Proceeds**") shall be applied, on each and every date on which such BIC2 Total Proceeds are received, to the mandatory redemption of the BIC2 Unredeemed Preference Shares on a *pro rata* and *pari passu* basis, until the BIC2 Preference Shares have been redeemed in full;
- 3.3.2. thereafter, the balance remaining, if any, of the BIC2 Total Proceeds shall be applied to the payment of the Indemnified Amount and/or the SARS Amount into the BIC2 Security Account in accordance with clause 14.11 of the BIC2 Preference Share Subscription Agreement;
- 3.3.3. thereafter, the balance remaining, if any, of the BIC2 Total Proceeds shall be applied to the payment of any amount due and payable in accordance with clause 14.11 of the BIC2 Preference Share Subscription Agreement;
- 3.3.4. thereafter, the balance remaining, if any, of the BIC2 Total Proceeds shall be applied to the repayment of the BIC2 Subordinated Loans, if any, in full, whether in respect of principal, interest or otherwise; and
- 3.3.5. after satisfaction of any BIC2 Subordinated Loans in full, the balance remaining, if any, of the BIC2 Total Proceeds shall be applied to meet the Company's obligations in terms of the MTN Tranche 1 Subscription and Call Option Agreement and the Company's obligation to pay all other amounts owing to MTN under the Transaction Documents to which MTN and the Company are a party.

Annexe B

DEFINITIONS IN THE COMPANIES ACT

| Definitions | |
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| "accounting records" | means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements; ¹ |
| "alternate director" | means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company; |
| "amalgamation or merger" | means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in – (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamation or merging companies; or (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement; |
| "annual general meeting" | means the meeting of a public company required by section 61(7); |
| "audit" | has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb); |
| "Auditing Profession Act" | means the Auditing Profession Act, 2005 (Act No. 26 of 2005); |
| "auditor" | has the meaning set out in the Auditing Act; |

¹ Regulation 25(3) contains requirements as to what the accounting records must include.

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| "Banks Act" | means the Banks Act, 1990 (Act No. 94 of 1990); |
| "beneficial interest" | <p>when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to –</p> <ul style="list-style-type: none"> (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, <p>but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);</p> |
| "board" | means the board of directors of a company; |
| "business days" | has the meaning determined in accordance with section 5(3); |
| "central securities depository" | has the meaning set out in section 1 of the Financial Markets Act, 2012; |
| "Commission" | means the Companies and Intellectual Property Commission established by section 185; |
| "Commissioner" | means the person appointed to or acting in the office of that name, as contemplated in section 189; |
| "company" | <p>means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date –</p> <ul style="list-style-type: none"> (a) was registered in terms of the – <ul style="list-style-type: none"> (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule 2; (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act; |

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| "Competition Act" | means the Competition Act, 1998 (Act No. 89 of 1998); |
| "consideration" | <p>means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including –</p> <ul style="list-style-type: none"> (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket; (b) any labour, barter or similar exchange of one thing for another; or (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly; |
| "convertible" | <p>when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including –</p> <ul style="list-style-type: none"> (a) any non-voting securities issued by the company and which will become voting securities – <ul style="list-style-type: none"> (i) on the happening of a designated event; or (ii) if the holder of those securities so elects at some time after acquiring them; and (b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a); |
| "director" | means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated; |
| "distribution" | <p>means a direct or indirect –</p> <ul style="list-style-type: none"> (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether – <ul style="list-style-type: none"> (i) in the form of a dividend; (ii) as a payment in lieu of a capitalisation share, as contemplated in section 47; (iii) as consideration for the acquisition – |

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| | <p>(aa) by the company of any of its shares, as contemplated in section 48; or</p> <p>(bb) by any company within the same group of companies, of any shares of a company within that group of companies; or</p> <p>(iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);</p> <p>(b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or</p> <p>(c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,</p> <p>but does not include any such action taken upon the final liquidation of the company;</p> |
| "effective date", | with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225; |
| "electronic communication" | has the meaning set out in section 1 of the Electronic Communications and Transactions Act; |
| "Electronic Communications and Transactions Act" | means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); |
| "employee share scheme" | has the meaning set out in section 95(1)(c); |
| "exchange" | when used as a noun, has the meaning set out in section 1 of the Financial Markets Act, 2012; |
| "exercise" | when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity; |
| "ex officio director" | means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation; |
| "external company" | means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2); |

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| "financial statement" | includes – (a) annual financial statements and provisional annual financial statements; (b) interim or preliminary reports; (c) group and consolidated financial statements in the case of a group of companies; and (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on; |
| "group of companies" | means a holding company and all of its subsidiaries; |
| "holding company" | in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a); |
| "incorporator" | when used – (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company; |
| "individual" | means a natural person; |
| "inter-related" | when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series; |
| "juristic person" | includes – (a) a foreign company; and (b) a trust, irrespective of whether or not it was established within or outside the Republic; |
| "knowing", "knowingly" or "knows" | when used with respect to a person, and in relation to a particular matter, means that the person either – (a) had actual knowledge of the matter; or (b) was in a position in which the person reasonably ought to have – |

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| | <ul style="list-style-type: none"> (i) had actual knowledge; (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter; |
| "material" | <p>when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is –</p> <ul style="list-style-type: none"> (a) of consequence in determining the matter; or (b) might reasonably affect a person's judgement or decision-making in the matter; |
| "nominee" | means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons; |
| "ordinary resolution" | <p>means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) –</p> <ul style="list-style-type: none"> (a) at a shareholders meeting; or (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; |
| "person" | includes a juristic person; |
| "personal financial interest" | <p>when used with respect to any person –</p> <ul style="list-style-type: none"> (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment; |
| "prescribed officer" | means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10); |
| "present at a meeting" | means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic |

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| | communication; |
| "private company" | means a profit company that – (a) is not a public, personal liability or state-owned company; and (b) satisfies the criteria set out in section 8(2)(b); |
| "profit company" | means a company incorporated for the purpose of financial gain for its shareholders; |
| "public company" | means a profit company that is not a state-owned company, a private company or a personal liability company; |
| "record date" | means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act; |
| "registered auditor" | has the meaning set out in the Auditing Profession Act; |
| "registered office" | means the office of a company, or of an external company, that is registered as required by section 23; |
| "related" | when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c); |
| "rules" and "rules of a company" | means any rules made by a company as contemplated in section 15(3) to (5); |
| "securities" | means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company; |
| "securities register" | means the register required to be established by a profit company in terms of section 50(1); |
| "share" | means one of the units into which the proprietary interest in a profit company is divided; |
| "shareholder" | subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be; |
| "shareholders meeting" | with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to exercise voting rights in relation to that matter; |
| "solvency and liquidity test" | means the test set out in section 4 (1); |
| "special resolution" | (a) in the case of a company, a resolution adopted |

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| | <p>with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) –</p> <ul style="list-style-type: none"> (i) at a shareholders meeting; or (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or <p>(b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;</p> |
| "subsidiary" | has the meaning determined in accordance with section 3; |
| "voting power" | with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights; |
| "voting rights" | <p>with respect to any matter to be decided by a company, means –</p> <ul style="list-style-type: none"> (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company; |
| "voting securities" | <p>with respect to any particular matter, means securities that –</p> <ul style="list-style-type: none"> (a) carry voting rights with respect to that matter; or (b) are presently convertible to securities that carry voting rights with respect to that matter; |
| "wholly-owned subsidiary" | has the meaning determined in accordance with section 3(1)(b). |

Annexe C**INELIGIBLE / DISQUALIFIED IN TERMS OF SECTION 69(7) AND (8) OF THE COMPANIES ACT READ WITH REGULATION 39(3) AND (4)**

1. A Person is ineligible to be a Director if the Person:
 - 1.1 is a Juristic Person;
 - 1.2 is an unemancipated minor, or is under a similar legal disability; or
 - 1.3 does not satisfy any qualification set out in this MOI.
2. A Person is disqualified to be a Director if:
 - 2.1 a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - 2.2 the Person:
 - 2.2.1 is an unrehabilitated insolvent;
 - 2.2.2 is prohibited in terms of any public regulation to be a Director;
 - 2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - 2.2.4 has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence:
 - 2.2.4.1 involving fraud, misrepresentation or dishonesty;
 - 2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
 - 2.2.4.3 under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the

Financial Markets Act, 2012 or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

Annexe D**PRESCRIBED METHODS OF DELIVERY IN THE REGULATIONS**

| Person to whom the document is to be delivered | Method of delivery | Date and Time of Deemed delivery |
|---|---|---|
| Any Person | By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number; | On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time. |
| | By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address; | On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time. |
| | By sending the notice or a certified copy of the document by registered post to the Person's last known address; | On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day. |
| | By any other means authorised by the High Court; or | In accordance with the order of the High Court. |
| | By any other method allowed for that Person in terms of the following rows of this Table. | As provided for that method of delivery. |
| Any natural Person | By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person; | On the date and at the time recorded on a receipt for the delivery. |
| | By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time; | On the date and at the time recorded on a receipt for the delivery. |

| Person to whom the document is to be delivered | Method of delivery | Date and Time of Deemed delivery |
|---|--|---|
| | By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority. | On the date and at the time recorded on a receipt for the delivery. |
| A company or similar body corporate | By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa; | On the date and at the time recorded on a receipt for the delivery. |
| | If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business. | On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time. |
| The state or a province | By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney. | On the date and at the time recorded on a receipt for the delivery. |
| A municipality | By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person. | On the date and at the time recorded on a receipt for the delivery. |
| A trade union | By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees, in terms of the Regulations at that office. | On the date and at the time recorded on a receipt for the delivery. |
| | If there is no Person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office. | On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different |

| Person to whom the document is to be delivered | Method of delivery | Date and Time of Deemed delivery |
|---|--|---|
| | | date or at a different time. |
| Employees of the Company | By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees. | On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time. |
| A partnership, firm or association | <p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p> | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> |

Annexe E

RELATIONSHIP AGREEMENT

RELATIONSHIP AGREEMENT

between

MTN GROUP LIMITED

and

MTN ZAKHELE FUTHI (RF) LIMITED

and

THE BIC2 SHAREHOLDERS WHO ARE BOUND THEREBY

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PART 1: PRELIMINARY PROVISIONS**1. Definitions and interpretation**

- 1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 1.1.1 **"30-Day VWAP"** – as at a date ("**Determination Date**"), the volume weighted average price of the relevant share for the 30 Trading Days immediately preceding the Determination Date, such volume weighted average price to be calculated and rounded to the fifth decimal place (ie the sixth decimal place rounded up if greater than or equal to five and rounded down if less than five), and as further determined and adjusted, if applicable, as set out in clause 12.4;
- 1.1.2 **"the/this Agreement"** – this relationship agreement, together with any annexes or schedules hereto;
- 1.1.3 **"Approved Nominee"** – the Custodian and/or any Nominee Holder who is permitted to hold BIC2 Ordinary Shares on behalf of a Beneficial Holder thereof pursuant to the BEE Listing Terms and Conditions;
- 1.1.4 **"Authority"** – any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions and/or which is responsible for applying national security, foreign investment, exchange control, telecommunications, merger control or other competition or antitrust legislation or regulations, in South Africa, including without limitation ICASA;
- 1.1.5 **"BBBEE Act"** – the Broad-Based Black Economic Empowerment Act, 53 of 2003, and any regulations and codes of good practice published thereunder (including the Codes);
- 1.1.6 **"BEE"** – black economic empowerment;
- 1.1.7 **"BEE Legislation"** – each and all of (i) the BBBEE Act; (ii) any codes of good practice and/or any transformation charters issued under sections 9 and/or 12 of the BBBEE Act applicable to the MTN SA Group or a material member thereof; (iii) any communications sector legislation (including the EC Act) and any regulations published under such legislation and any Licence conditions made pursuant to such legislation from time to time, as applicable to the MTN SA Group or a material member thereof; and (iv) any other charter, law, condition of a material Licence, regulation or (mandatory or voluntary) practice pursuant to which ownership and/or control by black people in the MTN SA Group (or a material member thereof) is measured or a requirement relating thereto is imposed on it, or its rights, interests and/or obligations are affected thereby whether directly or through its customers;
- 1.1.8 **"BEE Listing"** – the admission to listing of the BIC2 Ordinary Shares as BEE Securities on the BEE Segment of the main board of the exchange operated by the JSE (or such other licensed exchange as MTN may approve of in its sole and absolute discretion);
- 1.1.9 **"BEE Listing Period"** – the period commencing on the date upon which the BEE Listing takes place (if applicable) and ending on the earlier of (a) the last day of the BIC2 Empowerment Compliance Period; and (b) the date on which the BEE Listing terminates for any reason;

- 1.1.10 "BEE Listing Terms and Conditions" – the terms and conditions applicable to the holding and/or transfer of BIC2 Ordinary Shares (and beneficial interests therein) pursuant to the BEE Listing, as are or are to be set out in the BIC2 Constitutional Documents and this Agreement read with the BEE Market Notice (if any) and any other terms and conditions notified to a Person by or on behalf of MTN and/or BIC2 from time to time;
- 1.1.11 "BEE Market Notice" – a market notice published by the JSE in respect of the BEE Listing, as amended from time to time, which sets out particulars in respect of the restrictions, limitations and requirements applicable to the listing and transfer of the BIC2 Ordinary Shares (and/or beneficial interests therein) as BEE Securities, including as regards the various mandates and other contractual arrangements which a Verified BIC2 Shareholder is required to conclude with persons acceptable to MTN in its sole and absolute discretion;
- 1.1.12 "BEE Ownership Certificate of Compliance" – is as defined and determined under clause 7.2.3;
- 1.1.13 "BEE Securities" – has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.1.14 "BEE Segment" – has the meaning given to such term in the JSE Listings Requirements from time to time;
- 1.1.15 "BEE Status" – in relation to a Black Group, the Black Group's percentage ownership and percentage economic interest by Black People (by shareholding, membership, beneficiary interest and/or other comparable interest, as the case may be having regard to the juristic nature of the relevant Black Group) and the Black Group's percentage representation by Black People at board or trustee or other similar governing body, as measured under the BEE Legislation and, in relation to a natural person, whether or not that person qualifies as a Black Person;
- 1.1.16 "BEE Transaction Documents" – the BIC2 Transaction Documents, and such further agreements and documents which MTN and BIC2 may agree in writing to designate as BEE Transaction Documents from time to time;
- 1.1.17 "BEE Verification" – the verification of a Person by the BIC2 Verification Agent, which verification must conclude, *inter alia*, that:
- 1.1.17.1 the Person is an Eligible BIC2 Shareholder;
- 1.1.17.2 such Eligible BIC2 Shareholder has been notified of the necessary restrictions, limitations and requirements applicable to the BIC2 Ordinary Shares from time to time as set out in the BIC2 Constitutional Documents and this Agreement (read with the BEE Market Notice, if any), and has agreed to be bound by the provisions of the BIC2 Constitutional Documents and this Agreement by executing a Deed of Adherence hereto (or otherwise is bound in a form and on terms to the reasonable satisfaction of MTN); and
- 1.1.17.3 such Eligible BIC2 Shareholder has accepted the Verification Terms and Conditions and has signed all documents and contracts required in terms of the Verification Terms and Conditions;
- 1.1.18 "Beneficial Holder" – in relation to any Uncertificated BIC2 Ordinary Shares, the Person who from time to time holds a beneficial interest in such Uncertificated BIC2 Ordinary Shares, regardless of whether they are registered in the uncertificated securities register

of BIC2 in the name of such Person directly by way of "own name" registration or in the name of a Nominee Holder;

- 1.1.19 **"beneficial interest"** – has the meaning given to this term in the Companies Act;
- 1.1.20 **"BIC2"** or **"MTN Zakhele"** – MTN Zakhel Futhi Limited (formerly BIC B Limited, and to be named "MTN Zakhele Futhi (RF) Limited on or following the Effective Date"), registration number 2016/268837/06, a public company incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.21 **"BIC2 Board"** – the board of directors of BIC2, as constituted from time to time;
- 1.1.22 **"BIC2 Consideration Shares"** – the BIC2 Ordinary Shares which MTN Zakhele Shareholders may elect to receive in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme;
- 1.1.23 **"BIC2 Constitutional Documents"** – the memorandum of incorporation of BIC2 contemplated under the Companies Act;
- 1.1.24 **"BIC2 Empowerment Compliance Period"** or **"Empowerment Period"** – a period of eight years commencing on the Effective Date and ending on the Termination Date;
- 1.1.25 **"BIC2 Ordinary Shares"** – ordinary shares of no par value in the issued share capital of BIC2. For the avoidance of doubt, references to the BIC2 Ordinary Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 1.1.26 **"BIC2 Ownership Certificate of Compliance"** – is as defined and determined under clause 19.1.2;
- 1.1.27 **"BIC2 Pref Shares"** – the cumulative redeemable non-participating preference shares in the issued share capital of BIC2;
- 1.1.28 **"BIC2 Pref Subscription Agreement"** – the preference share subscription agreement entitled "BIC2 Preference Share Subscription Agreement" concluded or to be concluded between, *inter alia*, BIC2 and BFC2 in terms of which, *inter alia*, BFC2 will subscribe for, and BIC2 will allot and issue to BFC2, the BIC2 Pref Shares;
- 1.1.29 **"BIC2 Public Offer"** – the public offering in terms of which Black Participants are invited to subscribe for and beneficially own BIC2 Ordinary Shares, subject to the qualification criteria of such offer as set out in the prospectus published in respect of the offer;
- 1.1.30 **"BIC2 Shareholder"** – means:
- 1.1.30.1 in the case of Certificated BIC2 Ordinary Shares, the Person who is the registered holder of such BIC2 Ordinary Shares from time to time; and
- 1.1.30.2 in the case of Uncertificated BIC2 Ordinary Shares, the Person who is the Beneficial Holder of such Uncertificated BIC2 Ordinary Shares from time to time and includes, where applicable and as the context requires, the Nominee Holder thereof;
- 1.1.31 **"BIC2 Shareholder Minimum Investment Period"** or **"Minimum Investment Period"** – a period of three years commencing on the Effective Date and ending on the third anniversary of the Effective Date;



- 1.1.32 **"BIC2 Transaction Documents"** – the 'Transaction Documents' as defined in the BIC2 Pref Subscription Agreement;
- 1.1.33 **"BIC2 Verification Agent"** – during the BEE Listing Period, a person appointed from time to time by MTN and/or BIC2 (with the consent of MTN), to fulfil the functions assigned to it under this Agreement in respect of performing BEE Verification;
- 1.1.34 **"BFC2"** – means Jabisan 04 Proprietary Limited, registration number 2014/021122/07, a private company incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.35 **"Black Company"** – a company incorporated in accordance with the laws of the Republic of South Africa, and which is both a Black Majority Owned Company and a Black Majority Controlled Company, and a reference to "company" in this definition shall include a reference to a close corporation;
- 1.1.36 **"Black Entity"** – (i) a vesting trust, (ii) a broad based ownership scheme, and (iii) an unincorporated entity or association, including a partnership, joint venture, syndicate or Stokvel, in each case under (i) to (iii) as may be determined from time to time (generally or in relation to any particular Black Entity or category of Black Entities) by MTN in its sole discretion as an entity or association which qualifies under the BEE Legislation (and the Codes in particular) for recognition and measurement of ownership, economic interest and control by Black People such that the MTN SA Group may claim recognition of such ownership, economic interest and control under the BEE Legislation as all being held by a majority of Black People;
- 1.1.37 **"Black Group"** – a Black Company or Black Entity;
- 1.1.38 **"Black Majority Controlled Company"** – a "B-BBEE Controlled Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at the Signature Date is as follows: *"means juristic person, having shareholding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is at least 51% of the total such rights measured using the Flow Through Principle"*; provided that where the BEE Legislation contains more than one definition of a "Black Majority Controlled Company" and such definitions are not the same, then the term "Black Majority Controlled Company" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 1.1.39 **"Black Majority Owned Company"** – a "B-BBEE Owned Company" (or comparable term) as defined from time to time under the BEE Legislation, which definition as at the Signature Date is as follows: *"means juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a right to Economic Interest that is at least 51% of the total such rights measured using the Flow Through Principle"*; provided that where the BEE Legislation contains more than one definition of a "Black Majority Owned Company" and such definitions are not the same, then the term "Black Majority Owned Company" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 1.1.40 **"Black Participants"** – individually and collectively (as the context may dictate), Black People, Black Companies and Black Entities (i) who are eligible to subscribe for and beneficially own BIC2 Ordinary Shares pursuant to the BIC2 Public Offer; (ii) who are MTN Zakhele Shareholders and who are eligible to elect BIC2 Consideration Shares pursuant to the MTN Zakhele Unwinding Scheme; or (iii) who are otherwise permitted to own BIC2 Ordinary Shares in terms of the provisions of this Agreement (as read with the BIC2 Constitutional Documents);

- 1.1.41 **"Black People"** – "black people" (or comparable term) as defined from time to time under the BEE Legislation; provided that where the BEE Legislation contains more than one definition of "black people" (or comparable term) and such definitions are not the same, then the term "Black People" shall mean (and be restricted to) the class of persons who satisfy the relevant criteria in every such definition;
- 1.1.42 **"Business Day"** – any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.1.43 **"Call Event"** – is as defined and determined under clause 11.1;
- 1.1.44 **"Call Option Notice"** – is as defined and determined under clause 11.2;
- 1.1.45 **"Call Reference Price"** – is as defined and determined under clause 12.1;
- 1.1.46 **"Call Shares"** – is as defined and determined under clause 11.2;
- 1.1.47 **"Call Trigger Date"** – is as defined and determined under clause 11.3.1;
- 1.1.48 **"Central Securities Depository"** – a person who is licensed as a central securities depository under section 29 of the Financial Markets Act;
- 1.1.49 **"Certificated BIC2 Ordinary Share"** – a BIC2 Ordinary Share which is evidenced by way of a certificate, and which is recorded as such in BIC2's securities register (maintained by BIC2, or by the Transfer Secretaries on behalf of BIC2, from time to time);
- 1.1.50 **"Codes"** – the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Minister of Trade and Industry on 2 October 2013 in terms of Section 9 of the BBBEE Act;
- 1.1.51 **"Companies Act"** – the Companies Act, No 71 of 2008;
- 1.1.52 **"Composition"** – in relation to a person, refers to each and all of the corporate, commercial, personal and other attributes and characteristics of such person and of its Effective Participants, and includes (i) the identities of its/their Effective Participants; (ii) the personal characteristics of its/their Effective Participants (eg whether they are Black Persons, female, or "new entrants"); and (iii) the extent of or terms relating to the direct or indirect ownership, control or economic interest of such Effective Participants in the person (including, as governed by, any applicable trust deeds, constitutional documents, call options, shareholders and voting pool agreements);
- 1.1.53 **"CSDP"** – a person that holds in custody and administers securities or an interest in securities, and that has been accepted in terms of section 31 of the Financial Markets Act by a Central Securities Depository as a participant in that Central Securities Depository;
- 1.1.54 **"Custodian"** – a person identified and appointed under clause 8.1.1.2 from time to time by MTN and/or BIC2 to fulfil the functions assigned to it under this Agreement;
- 1.1.55 **"Deed of Adherence"** – a deed of adherence, which is to be completed and executed by each person who acquires any BIC2 Ordinary Shares, whereby such person undertakes to be bound by the provisions of this Agreement materially in the form or on the terms set out in Schedule 2 hereto (or such other form and terms as MTN may permit from time to time, including through the BEE Listing Terms and Conditions and associated BEE Market Notice);



- 1.1.56 **"Dispose"** – sell, alienate, donate, exchange, distribute, transfer or in any manner whatsoever dispose of, whether voluntarily or involuntarily, or enter into any arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned sale, alienation, donation, exchange, distribution, transfer or disposal (including but not limited to any transaction, or series of arrangements or transactions, or the cession of any rights or the granting of any option or any similar transaction/s which would have the same economic effect), or realise any value in respect of, and **"Disposal"** shall be construed accordingly;
- 1.1.57 **"EC Act"** – Electronic Communications Act, No 36 of 2005;
- 1.1.58 **"Effective Date"** the earlier of the date on which (i) BIC2 Ordinary Shares are allotted and issued to or on behalf of Black Participants under the BIC2 Public Offer or (ii) BIC2 Ordinary Shares are issued to MTN Zakhele pursuant to the New Empowerment Transaction;
- 1.1.59 **"Effective Interest"** – any one or more of a direct or indirect ownership, economic or control interest, measured on a fully diluted basis and without any deeming rule or deeming provision being applied;
- 1.1.60 **"Effective Participants"** – in relation to an entity, means each and every person who directly or indirectly has an Effective Interest in such entity;
- 1.1.61 **"Eligible BIC2 Shareholder"** – (a) any Black Participant who is accepted to become a BIC2 Shareholder (whether pursuant to the BIC2 Public Offer, the MTN Zakhele Unwinding Scheme or otherwise) (i) in MTN's (or its nominee's, delegatee's or agent's) sole discretion, such acceptance to be recorded in writing; or (ii) pursuant to any decision made by the ESTC (or its nominee, delegatee or agent) as contemplated in clause 8.3.3.1 (unless MTN determines otherwise on written notice to the ESTC in respect of such decision), such acceptance by the ESTC to be recorded in writing, (and in the case of either (i) or (ii), including, if applicable, through the BEE Listing and its related processes, for example BEE Verification); and (b) such other persons as are permitted from time to time (and for the period so permitted) under clauses 9, 10, 11, 13 and 14 of this Agreement to hold, or have beneficial interests in, BIC2 Ordinary Shares, including the Warehousing BIC2 Shareholders;
- 1.1.62 **"Empowerment Requirements"** – in relation to a person, the requirements, obligations, commitments and/or measurement methodologies applicable from time to time to such person or its business or assets, relating to ownership of (and/or economic interest in) and control by Black Persons of the person or its business or assets under the BEE Legislation, and including any requirements, obligations, commitments and/or measurement methodologies which apply (i) pursuant to any Licenses held by the person; and/or (ii) in respect of the present or future grant, extension, renewal, conversion or the like in respect of any Licenses issued or applied for by the person;
- 1.1.63 **"Encumbrance"** – in relation to any property, includes any pledge, security cession, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over or in respect of that property or class of property (or any part or proceeds thereof), or any lending of that property, and the words **"Encumber"**, **"Encumbered"** and **"Encumbering"** shall have corresponding meanings;
- 1.1.64 **"ESTC"** or **"Empowerment Share Transfer Committee"** – MTN or such committee/s or third party/ies or third party agent/s as MTN may nominate from time to time to fulfil the functions assigned to the ESTC under this Agreement;

- 1.1.65 **"Finance Documents"** – the documents defined as such under the BIC2 Pref Subscription Agreement;
- 1.1.66 **"Financial Markets Act"** – the Financial Markets Act, No 19 of 2012;
- 1.1.67 **"ICASA"** – the Independent Communications Authority of South Africa, a regulatory body established in terms of section 3 of the Independent Communications Authority of South Africa Act, No 13 of 2000;
- 1.1.68 **"JSE"** – JSE Limited, registration number 2005/022939/06, a limited liability company duly registered and incorporated in South Africa being licensed in terms of section 9 of the Financial Markets Act;
- 1.1.69 **"JSE Listings Requirements"** – the Listings Requirements of the JSE as amended from time to time;
- 1.1.70 **"Licenses"** – any license or other form of regulatory right or permission issued or granted by or under any Authority, including telecommunications licenses issued pursuant to the EC Act;
- 1.1.71 **"MTN"** – MTN Group Limited, registration number 1994/009584/06, a public company incorporated in accordance with the laws of the Republic of South Africa, the ordinary shares of which are listed on the main board of the stock exchange maintained by the JSE;
- 1.1.72 **"MTN BIC2 Board Directors"** – is as defined and determined under clause 15.1;
- 1.1.73 **"MTN Consideration Shares"** – the MTN Shares which MTN Zakhele Shareholders may elect to receive in accordance with and subject to the terms of the MTN Zakhele Unwinding Scheme;
- 1.1.74 **"MTN Shares"** – ordinary shares with a par value of R0.0001 each in the issued share capital of MTN;
- 1.1.75 **"MTN SA Group"** – Mobile Telephone Networks Proprietary Limited, and its South African subsidiaries from time to time, and any other South African operating subsidiary of any of MTN, Mobile Telephone Networks Holdings Proprietary Limited and/or MTN International Proprietary Limited designated in writing by MTN to BIC2 from time to time;
- 1.1.76 **"MTN Zakhele"** – MTN Zakhele (RF) Limited, registration number 2010/004693/06, a public company incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.77 **"MTN Zakhele Board"** – the board of directors of MTN Zakhele, as constituted from time to time;
- 1.1.78 **"MTN Zakhele Ordinary Shares"** – ordinary shares having a par value of R0.01 in the issued share capital of MTN Zakhele;
- 1.1.79 **"MTN Zakhele Scheme Circular"** – the circular to be sent to MTN Zakhele Shareholders for the purpose of seeking the approval of MTN Zakhele Shareholders for the MTN Zakhele Unwinding Scheme;
- 1.1.80 **"MTN Zakhele Shareholders"** – the Persons registered as holders of MTN Zakhele Ordinary Shares from time to time in its certificated or uncertificated share register including, as the context requires, the beneficial holders thereof;



- 1.1.81 **"MTN Zakhele Unwinding Scheme"** – the scheme of arrangement pursuant to section 114 of the Companies Act to be proposed by the MTN Zakhele Board as between MTN Zakhele and the MTN Zakhele Shareholders, for the purposes of MTN Zakhele buying back and cancelling all of the MTN Zakhele Ordinary Shares from MTN Zakhele Shareholders (other than the MTN Zakhele Ordinary Share to be held by MTN or its subsidiary), and pursuant to which scheme and subject to the terms thereof each MTN Zakhele Shareholder will be entitled to elect to receive (i) MTN Consideration Shares; (ii) cash; (iii) BIC2 Consideration Shares; or (iv) a combination of the MTN Consideration Shares, cash and the BIC2 Consideration Shares;
- 1.1.82 **"New Empowerment Transaction"** – the empowerment transaction or series of transactions given effect to under the BIC2 Transaction Documents pursuant to which, *inter alia*, (i) BIC2 will subscribe for MTN Shares, up to an approximate maximum of 4% of the diluted issued share capital of MTN (measured as at the Signature Date); (ii) BIC2 will issue BIC2 Ordinary Shares to Black Participants pursuant to the BIC2 Public Offer; and (iii) MTN Zakhele will acquire and distribute BIC2 Ordinary Shares to MTN Zakhele Shareholders who elect to receive BIC2 Consideration Shares pursuant to the MTN Zakhele Unwinding Scheme should such scheme be implemented;
- 1.1.83 **"Nominee"** – has the meaning given to this term in the Financial Markets Act;
- 1.1.84 **"Nominee Holder"** – in relation to any Uncertificated BIC2 Ordinary Shares, the Person in whose name such shares are registered from time to time as a Nominee;
- 1.1.85 **"Non-qualifying Shareholder"** – is as defined and determined under clause 8.3.8;
- 1.1.86 **"Parties"** – the parties to this Agreement, being initially MTN and BIC2, and thereafter, any BIC2 Shareholder or other person who becomes a party to this Agreement (or is otherwise bound to its terms) from time to time in accordance with the provisions of this Agreement;
- 1.1.87 **"Preference Share Agent"** – shall bear the meaning ascribed thereto in the BIC2 Pref Subscription Agreement;
- 1.1.88 **"Refinancing"** – in relation to any financial liabilities and obligations means (i) any extension of the scheduled maturity of such liabilities or obligations and/or any variation of the financial terms of such liabilities or obligations and/or (ii) any financial liabilities and/or obligations incurred in replacement of and/or in order to discharge or procure the discharge of all or any part of such liabilities or obligations, including by way of the issue of preference shares or through loans or other means, but does not include the issue of BIC2 Ordinary Shares;
- 1.1.89 **"Ring Fencing Provisions"** – the restrictions on the powers and functions of BIC2 set out in Annexe A which are to be incorporated into the BIC2 Constitutional Documents to secure that BIC2 remains an insolvency-remote, special purpose company during the BIC2 Empowerment Compliance Period;
- 1.1.90 **"Signature Date"** – when this Agreement has been signed by each of MTN and BIC2 (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by such initial Parties;
- 1.1.91 **"Stokvel"** – an association of two or more members who contribute funds to the association on a regular basis, the funds of which are paid, in whole or in part, to its members in accordance with its rules, whether on a rotational basis or upon the occurrence of an event or otherwise;



- 1.1.92 **"Strate Rules and Directives"** – means the depository rules of Strate made or amended from time to time in accordance with section 35 of the Financial Markets Act, and any depository directive issued or amended by Strate in accordance with such depository rules from time to time;
- 1.1.93 **"Suspensive Condition"** – the suspensive condition referred to in clause 3.1 of this Agreement;
- 1.1.94 **"Termination Date"** – the eighth anniversary of the Effective Date;
- 1.1.95 **"Third Party Financing"** – initially, the financial liabilities and obligations owing from time to time by BIC2 under the Finance Documents, and thereafter any financial liabilities and obligations arising from any Refinancing thereof;
- 1.1.96 **"Trading Day"** – any day: (i) that is an ordinary trading day on the exchange operated by the JSE (and does not include a day on which trading on the exchange operated by the JSE is scheduled to close prior to its regular weekday closing time); and (ii) on which trading in the relevant MTN Shares and/or BIC2 Ordinary Shares, as the case may be, was not subject to any suspension;
- 1.1.97 **"Transfer Secretaries"** – a Person appointed from time to time by BIC2 to fulfil the functions of maintaining BIC2's securities register and providing related services;
- 1.1.98 **"Uncertificated BIC2 Ordinary Share"** – a BIC2 Ordinary Share which is dematerialised (ie not evidenced by way of a certificate) and which is recorded as such in BIC2's uncertificated securities register (as administered and maintained by a CSDP or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of BIC2's securities register);
- 1.1.99 **"Verified BIC2 Shareholder"** – during the BEE Listing Period, any Eligible BIC2 Shareholder which BIC2 (or its nominee, delegate or agent) has notified has successfully completed BEE Verification, and whose BEE Verification status has not expired or been withdrawn in accordance with the Verification Terms and Conditions or this Agreement;
- 1.1.100 **"Valuation Date"** – is as defined and determined under clause 12.2;
- 1.1.101 **"Verification Terms and Conditions"** – the terms, conditions, restrictions and limitations applicable to each Verified BIC2 Shareholder and acknowledged and accepted by such Verified BIC2 Shareholder during the BEE Verification process; and
- 1.1.102 **"Warehousing BIC2 Shareholder"** – any person who acquires BIC2 Ordinary Shares pursuant to clause 11 (where, pursuant to such acquisition, such person is designated by MTN as a "Warehousing BIC2 Shareholder") or pursuant to clauses 13 and/or 14.
- 1.2 The clause headings in this Agreement are for the purpose of convenience only and shall not be taken into account in the interpretation of this Agreement.
- 1.3 Unless inconsistent with the context or unless a contrary intention clearly appears from the context, in this Agreement:
- 1.3.1 any reference to a gender shall include the other genders;
- 1.3.2 any reference to the singular shall include the plural and *vice versa*;
- 1.3.3 any reference to a **"person"** or **"Person"** includes any natural, juristic or quasi-juristic person, including without limitation any sole proprietorship, Stokvel, firm, partnership,



trust, close corporation, company, undertaking, joint venture, government or public entity, or other incorporated or unincorporated entity or association;

- 1.3.4 references to a "**subsidiary**" or a "**holding company**" shall be references to a subsidiary or holding company as defined in the Companies Act, save that the interpretation and application of these definitions in the Companies Act shall not be limited to South African companies;
- 1.3.5 the use of the words "**including**", or "**in particular**" or "**for example**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s. Such references to "including", "in particular" and "for example" shall not be construed restrictively but shall mean "including, without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing" and "for example (but without prejudice to the generality of the foregoing)" respectively;
- 1.3.6 any reference to any "**law**" (including the BEE Legislation), or any part thereof, shall be a reference to:
- 1.3.6.1 any law, legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any Authority, which have force of law or which it would be an offence not to obey, and any regulations and subordinate legislation promulgated thereunder, and the common law; and
- 1.3.6.2 such "laws" (as defined above) as interpreted, amended, modified, re-enacted, consolidated or substituted from time to time, whether before or after the Signature Date, including, without limitation, in relation to the BEE Legislation; and
- 1.3.6.3 any reference to any document or agreement (including this Agreement and the BIC2 Constitutional Documents) shall be a reference to that document or agreement as at the Signature Date (or, if later, as at the date on which such agreement is first concluded or document first executed), and as novated, amended, reinstated or substituted from time to time thereafter in accordance with its terms.
- 1.4 If any provision in this clause 1 is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation and definitions or in the introduction clauses.
- 1.5 The rule of construction that, in the event of an ambiguity in respect of a term or terms of an agreement, such term or terms shall be interpreted against the Party responsible for drafting or preparing them, shall not apply.
- 1.6 References to a "day" shall be to any calendar day. Where any number of days or Business Days is prescribed in this Agreement to be before, or after a date, or within a set number of days of a date, the period will be calculated by excluding the reference date and including the date at the end of the set number of days from such reference date unless (in the case of days after a stated date) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day.
- 1.7 Unless stated otherwise, a reference in this Agreement to any person shall be a reference to such person's permitted successors in title, transferee, cessionary and/or delegatee.
- 1.8 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination,



or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

- 1.9 Unless stated otherwise, where any reference is made in this Agreement to the consent or agreement of, or election by, any Party, such consent, agreement or election may, for the avoidance of doubt, be made, given or withheld, conditionally or unconditionally, in the relevant Party's sole and absolute discretion.
- 1.10 Any references in this Agreement to the Empowerment Requirements and/or the "requirements" of or under the BEE Legislation shall, in addition to any mandatory obligations thereunder, include:
- 1.10.1 any matter, fact or circumstance which is measured or evaluated thereunder, and the target set in respect of such matter, fact or circumstance, whether or not such target or measurement criteria are mandatory under law; and
- 1.10.2 any matter, fact or circumstance which may result in a right or benefit being withdrawn or detrimentally varied or not being granted and/or may result in a significant liability being imposed,

in each case in relation solely to the ownership, economic interest and/or control elements by Black People under the BEE Legislation and such requirements shall be considered to be satisfied or met or complied with in relation to the matters, facts or circumstances referred to in clause 1.10.1 only if the measurement or evaluation return or result in an outcome which is the maximum favourable outcome which can apply to such category of matters, facts or circumstances (and, accordingly, meets in full any target set therefor), but excluding any bonus points, and shall be considered to be satisfied or met or complied with in relation to the matters, facts or circumstances referred to in clause 1.10.2 only if the relevant right or benefit is granted in full, without qualification or penalty, is not withdrawn or detrimentally varied, and if no significant liability is imposed.

- 1.11 References to "control" (without capitalisations) shall include any manner by which the business or affairs of a company or entity may be directed, in whole or in part (including where such part is capable, when aggregated with the rights of other persons, of conferring effective control (eg securities carrying voting rights)), and includes through the exercise of rights under an agreement, the exercise of rights as a holder of securities and the right to appoint persons who (alone or together with other persons) have the authority or power to direct the business or affairs of the company or entity.

2. Introduction

- 2.1 MTN wishes to implement the New Empowerment Transaction, being part of the BEE ownership initiative in furtherance of its empowerment objectives in respect of the MTN SA Group.
- 2.2 This empowerment strategy involves, *inter alia*, BIC2 (a Black Company) being afforded the opportunity to subscribe for MTN Shares representing up to approximately 4% of the diluted issued share capital of MTN.
- 2.3 It is an imperative of the New Empowerment Transaction that BIC2 qualifies as a Black Company and that, at all times during the BIC2 Empowerment Compliance Period, it remains a Black Company.
- 2.4 This Agreement accordingly records the terms and conditions agreed between MTN and BIC2, and the BIC2 Shareholders who become Parties hereto, to give effect to the objectives stated above and matters ancillary thereto.

3. **Suspensive Condition**

- 3.1 The rights and obligations of the Parties under this Agreement (other than those rights and obligations set out in clause 1, this clause 3 and in clauses 24 to 26 which shall be of full force and effect and unconditional on and with effect from the Signature Date) shall be subject to and suspensively conditional upon the Effective Date occurring by no later than 25 November 2016 (or such later date/s as MTN may specify in writing from time to time).
- 3.2 The Suspensive Condition is for the benefit of both MTN and BIC2, and may be waived in writing, in whole or in part, jointly by MTN and BIC2 (such waiver to be binding on all Parties). In addition, MTN and BIC2 may jointly, in writing, and from time to time extend the period for the fulfilment of the Suspensive Condition to an agreed date (such extension to be binding on all Parties).
- 3.3 If the Suspensive Condition is not timeously fulfilled (and fulfilment thereof is not waived in terms of clause 3.2), this Agreement (save for the provisions of clauses 1, this clause 3 and in clauses 24 to 26, which rights and obligations shall continue to be of full force and effect) shall never become effective and the Parties shall restore to one another any performance which they may have rendered or received under this Agreement. No Party shall have any claim against any of the others under this Agreement as a result of the failure of the Suspensive Condition, except for such claims, if any, as may arise from the provisions of clause 1, this clause 3 and in clauses 24 to 26.

4. **Duration**

This Agreement shall commence on the Effective Date and endure until the end of the BIC2 Empowerment Compliance Period, on which date all of the ongoing rights and obligations of the Parties pursuant to this Agreement shall expire, without prejudice to any of the accrued rights and/or obligations of any of the Parties hereunder.

PART 2: MTN SHAREHOLDER PROVISIONS

5. **MTN Shares certificates**

Save to the extent as may otherwise be required under the BEE Transaction Documents to which BIC2 is a party (including in particular the Finance Documents to which BIC2 is a party), the MTN Shares held by BIC2 shall be held in certificated form and the relevant share certificates in respect thereof shall be retained and held by MTN (or its nominees or agents) on behalf of BIC2. Such share certificates shall only be released, if necessary, for the purposes of implementing any transfer permitted in terms of this Agreement and/or required under the BEE Transaction Documents on the basis that once such transfer is implemented, all share certificates in respect of the remaining MTN Shares after such transfer are retained and held by MTN (or its relevant nominees or agents).

PART 3: EMPOWERMENT PROVISIONS

6. **General undertakings by BIC2**

- 6.1 BIC2 irrevocably and unconditionally undertakes, during the BIC2 Empowerment Compliance Period (to the extent that and for so long as it holds any MTN Shares or any other form of equity interest, directly or indirectly, in the MTN SA Group), to MTN that – save as MTN may otherwise permit by prior written consent – it shall:
- 6.1.1 comply in all respects with the provisions of this Agreement and the BEE Transaction Documents to which it is a party;

- 6.1.2 not issue or permit the transfer of any BIC2 Ordinary Shares or beneficial interest therein to any person, whether pursuant to the BIC2 Public Offer, the MTN Zakhele Unwinding Scheme or otherwise, unless such person agrees to be bound by the provisions of this Agreement and the BIC2 Constitutional Documents, in such capacity, in a form and on terms to the reasonable satisfaction of MTN, or to an Approved Nominee of such person;
- 6.1.3 not issue or permit the transfer of any BIC2 Ordinary Shares or beneficial interest therein, whether pursuant to the BIC2 Public Offer, the MTN Zakhele Unwinding Scheme or otherwise, other than (i) to Black Participants or (ii) an Approved Nominee;
- 6.1.4 be a Black Company on the Effective Date;
- 6.1.5 not cease to be a Black Company at any time during the BIC2 Empowerment Compliance Period;
- 6.1.6 subject to the provisions of this Agreement and the BEE Transaction Documents to which it is a party, at all times during the BIC2 Empowerment Compliance Period procure that:
- 6.1.6.1 (save for the limited exceptions temporarily permitted in clauses 9 and 10) the beneficial interests in all BIC2 Ordinary Shares shall be owned by Black Participants;
- 6.1.6.2 (save for the limited exceptions temporarily permitted in clauses 9 and 10) the majority of all of the voting rights in BIC2 shall be exercisable, directly or indirectly by Black People; and
- 6.1.6.3 in excess of 50% of the directors of BIC2 (who shall be entitled to in excess of 50% of the voting rights of directors at meetings of the BIC2 Board) shall be Black People;
- 6.1.6.4 no Nominee shall hold BIC2 Ordinary Shares other than a Permitted Nominee for an on behalf of a Beneficial Holder who is a Black Participant;
- 6.1.7 co-operate with MTN and to take such steps as are reasonably open to it to procure and/or enforce compliance by the BIC2 Shareholders of their obligations under this Agreement and the BIC2 Constitutional Documents;
- 6.1.8 procure and hereby warrants that:
- 6.1.8.1 during the BIC2 Empowerment Compliance Period, the BIC2 Ordinary Shares shall only be transferable by and transferred to Eligible BIC2 Shareholders as provided for in this Agreement; and
- 6.1.8.2 during the BEE Listing Period, (i) Certificated BIC2 Ordinary Shares and the beneficial interests therein shall only be transferable by and transferred to Verified BIC2 Shareholders as provided for in this Agreement and (ii) Uncertificated BIC2 Ordinary Shares and the beneficial interests therein shall only be transferable by and transferred to Verified BIC2 Shareholders or Approved Nominees as provided for in this Agreement;
- 6.1.9 not apply for or take steps to secure, or do anything which would have the effect of or result in, BIC2 being wound up (voluntarily or involuntarily) or being de-registered or being subject to any business rescue provisions or otherwise ceasing to be a juristic entity and having control over its business and affairs;

- 6.1.10 not register the transfer of any BIC2 Ordinary Shares or beneficial interest therein, and shall procure that no such transfer is registered, unless:
- 6.1.10.1 subject to the provisions of clause 6.1.10.2 below, during the BIC2 Empowerment Compliance Period, such transfer is to an Eligible BIC2 Shareholder; or
- 6.1.10.2 during the BEE Listing Period, any transfer of (i) Certificated BIC2 Ordinary Shares and/or beneficial interests therein is to a Verified BIC2 Shareholder and (ii) Uncertificated BIC2 Ordinary Shares and/or beneficial interests therein is to a Verified BIC2 Shareholder or to an Approved Nominee on behalf of a Verified BIC2 Shareholder; and
- 6.1.10.3 unless such transfer is permitted in accordance with the provisions of clauses 8, 9, 10, 11 and/or 14;
- 6.1.10.4 the relevant transferee Beneficial Holder has agreed to be bound by the terms of this Agreement and the BIC2 Constitutional Documents by executing a Deed of Adherence and has executed and delivered such Deed of Adherence to BIC2's company secretary (or is otherwise so bound in a form and on terms to the reasonable satisfaction of MTN); and
- 6.1.10.5 in respect of a transfer to a Nominee Holder, such person is an Approved Nominee;
- 6.1.11 not permit any director to be appointed to the BIC2 Board if:
- 6.1.11.1 as a result of such appointment the majority of the directors on the BIC2 Board are not Black People; or
- 6.1.11.2 immediately prior to such appointment the minority of the directors on the BIC2 Board are Black People, unless such director is himself a Black Person,
- and BIC2 accordingly undertakes that it will not give effect to any agreement or exercise any right in terms of any such agreement that permits the appointment of directors to the BIC2 Board otherwise than in accordance with the foregoing;
- 6.1.12 not do or omit to do anything and will not permit anything to be done, directly or indirectly, which would negate any one or more or all of the undertakings given by it in this Agreement;
- 6.1.13 comply with the Ring Fencing Provisions and procure that, for so long as such provisions apply to BIC2, and to the maximum extent permitted by applicable law and in a manner consistent with the terms of the Finance Documents to which BIC2 is a party, the BIC2 Constitutional Documents shall incorporate the Ring Fencing Provisions and such other provisions of this Agreement as may be required to be included in the BIC2 Constitutional Documents from time to time, and that the powers of BIC2 will be limited accordingly;
- 6.1.14 procure that the BIC2 Constitutional Documents (as applicable) shall contain *inter alia* the undertakings set out in clauses 6 and 7, as well as the provisions set out in clauses 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22 and, in so far as such clause relates to the foregoing provisions inserted into the BIC2 Constitutional Documents, clause 24;
- 6.1.15 procure that, save for changes required under and made pursuant to clause 17, the provisions of the BIC2 Constitutional Documents will not be changed without the prior written consent of MTN having been obtained (which consent shall not be unreasonably



withheld or delayed – it being agreed that MTN's consent shall not be regarded as being unreasonably withheld or delayed if the proposed change will, or in MTN's opinion are reasonably expected to, negatively affect MTN's compliance with the Empowerment Requirements (including its BEE rating thereunder) and/or or will negatively affect the BEE Status of BIC2 under the BEE Legislation); and

6.1.16 provide such documents and other evidence as may reasonably be requested by MTN from time to time to prove to MTN BIC2's compliance with its undertakings in this Agreement, if proof is so required by MTN, and as and when so required from time to time.

6.2 The provisions of this clause 6 shall not serve to limit or restrict, and shall not be breached by, anything done or not under or in connection with clauses 13 and/or 14.

7. BIC2 Shareholder undertakings

7.1 Each BIC2 Shareholder (other than the Warehousing BIC2 Shareholders) irrevocably and unconditionally undertakes in favour of each of MTN and BIC2 that (save with MTN's prior written consent):

7.1.1 during the BIC2 Empowerment Compliance Period, it shall not Dispose of or Encumber its BIC2 Ordinary Shares or any beneficial interest therein other than as is consistent with or permitted under clauses 8, 9 or 10;

7.1.2 in respect of any permitted transfer of BIC2 Ordinary Shares or any beneficial interest therein, it shall, save in respect of any transfer effected in accordance with the BEE Listing Terms and Conditions on the exchange in respect of which the BEE Listing occurs:

7.1.2.1 co-operate fully with the ESTC, the Transfer Secretaries or the BIC2 Verification Agent (as applicable) in respect of such transfer;

7.1.2.2 thoroughly check that the transferee Beneficial Holder is, and at the time of transfer will be, an Eligible BIC2 Shareholder or a Verified BIC2 Shareholder (as applicable, as contemplated under clause 6.1.8 above);

7.1.2.3 ensure that the relevant transferee Beneficial Holder has agreed to be bound by the terms of this Agreement and the BIC2 Constitutional Documents by executing a Deed of Adherence (or otherwise is bound in a form and on terms to the reasonable satisfaction of MTN); and

7.1.2.4 where applicable, that any transferee's Nominee Holder is an Approved Nominee;

7.1.3 if it is a Black Group, during the BIC2 Shareholder Minimum Investment Period:

7.1.3.1 in respect of BIC2 Ordinary Shares acquired by it under the BIC2 Public Offer and/or pursuant to the MTN Zakhele Unwinding Scheme (as applicable), it shall remain a Black Group and shall maintain its BEE Status at not less than the level set out in its application for such shares under the BIC2 Public Offer or, in the case of an acquisition pursuant to the MTN Zakhele Unwinding Scheme, not less than the level of its BEE Status at the 'operative date' of the MTN Zakhele Unwinding Scheme (as such term is defined in the MTN Zakhele Scheme Circular);

7.1.3.2 in respect of BIC Ordinary Shares acquired by it subsequent to the BIC2 Public Offer and/or the MTN Zakhele Unwinding Scheme (as applicable), it shall maintain



its BEE Status at not less than the level pursuant to which it secured the approval of the ESTC for such acquisition;

- 7.1.4 if it is a Black Group, upon the conclusion of the BIC2 Shareholder Minimum Investment Period and for the remainder of the BIC2 Empowerment Compliance Period, it shall continue to qualify as a Black Group;
- 7.1.5 it will immediately notify MTN and BIC2 of any Call Event in respect of itself (or of any matter, fact, event or circumstances which, following the giving of notice and no further steps being taken by the recipient of the notice, will give rise to a Call Event in respect of itself);
- 7.1.6 it will not (i) perform any act or refrain from performing any act within its power or control or of which it is capable; or (ii) attempt to procure or propose (other than where it is specifically required by law or by a court of law to so procure or propose), any resolution; or (iii) exercise any right as BIC2 Shareholder in any way; or (iv) enter into any arrangement, transaction or agreement; or (v) otherwise take any action whatsoever or procure the taking of any actions, which (alone or taken together with the acts, omissions or votes of any other person) will or is reasonably likely to (or which, following the giving of notice and no further steps being taken by the recipient of the notice, will or is reasonably likely to) result in BIC2 breaching the provisions of this Agreement;
- 7.1.7 it will not vote in favour of, and will vote against, any resolution which may be proposed to remove the directors appointed to the BIC2 Board by MTN under clause 15, unless such resolution is consented to by MTN in writing; and
- 7.1.8 it will, where so requested by MTN or BIC2, exercise such rights as it has as a BIC2 Shareholder to vote in favour of any resolution or take such other action as will itself (or with such other affirmative votes and/or actions by other BIC2 Shareholders) as may be necessary or reasonably required to procure that the provisions of this Agreement are complied with by BIC2.
- 7.2 Each BIC2 Shareholder (other than the Warehousing BIC2 Shareholders) agrees in favour of MTN and BIC2 that MTN (for itself and any member of the MTN SA Group) and/or BIC2 shall be entitled from time to time (and at least once in every calendar year) in their sole discretion during the BIC2 Empowerment Compliance Period to:
 - 7.2.1 request in writing any BIC2 Shareholder to provide it with all information and documents reasonably requested by BIC2 and/or MTN (or other member of the MTN SA Group) pertaining to such BIC2 Shareholder to enable it to determine and officially obtain and/or maintain its BEE Status under the BEE Legislation and/or its compliance with the Empowerment Requirements; and/or
 - 7.2.2 request in writing each BIC2 Shareholder to confirm, formally in writing, its continuing compliance with its obligations under this Agreement and the BIC2 Constitutional Documents; and/or
 - 7.2.3 request in writing the preparation and issue by an accredited or approved BEE rating agency (or another suitable person) nominated by MTN from time to time of a certificate ("**BEE Ownership Certificate of Compliance**") recording any or all of the following (as may be requested):
 - 7.2.3.1 the identity and Composition of the Effective Participants in such BIC2 Shareholder and the Composition of its board of directors, board of trustees or analogous body; and/or

- 7.2.3.2 whether or not the BIC2 Shareholder qualifies as a Black Person or Black Group; and/or
- 7.2.3.3 the BEE Status of the BIC2 Shareholder; and/or
- 7.2.3.4 any other matter pertaining to such BIC2 Shareholder relevant to an assessment by MTN and/or BIC2 and/or members of the MTN SA Group of its or their compliance with the Empowerment Requirements,

and undertakes to comply fully with such request within 45 days thereof.

- 7.3 For the avoidance of doubt, the costs to a BIC2 Shareholder of complying with its obligations under this clause 7 shall be for its own account.

8. Restriction on Disposal or Encumbrance of BIC2 Ordinary Shares

8.1 General

- 8.1.1 Subject to clause 8.1.2, the Parties agree that, during the BIC2 Empowerment Compliance Period and for purposes of ensuring compliance with this Agreement while at the same time facilitating the BEE Listing and consequent future trading in BIC2 Ordinary Shares pursuant thereto, unless otherwise agreed between MTN and BIC2:
 - 8.1.1.1 BIC2 shall issue the BIC2 Ordinary Shares to BIC2 Shareholders, whether pursuant to the BIC2 Public Offer and/or the MTN Zakhele Unwinding Scheme, in uncertificated form, to be held in accordance with the provisions of this clause 8.1.1;
 - 8.1.1.2 all BIC2 Ordinary Shares shall be held as Uncertificated BIC2 Ordinary Shares in the name of a Nominee approved by MTN and appointed by BIC2 ("**the Custodian**") to act as the registered Nominee Holder, holding such Uncertificated BIC2 Ordinary Shares for and on behalf of each BIC2 Shareholder who will be the Beneficial Holder thereof. Each BIC2 Shareholder agrees to be bound by the provisions of the Strate Rules and Directives, as well as any applicable custody/mandate arrangement with the Custodian (to the extent that they relate to them (save that they shall not be liable for the fees of the Custodian in respect of the custodial role during the BIC2 Shareholder Minimum Investment Period)), in respect of his/her/its BIC2 Ordinary Shares;
 - 8.1.1.3 if and to the extent that, for whatever reason, any BIC2 Ordinary Share is at any time held as either (i) a Certificated BIC2 Ordinary Share; or (ii) an Uncertificated BIC2 Ordinary Share with the registered holder being someone other than the Custodian, and the provisions of clause 8.1.1.2 still prevail (ie MTN and BIC2 have not agreed that BIC2 Ordinary Shares may be held otherwise than as Uncertificated BIC2 Ordinary Shares with the Custodian), then the relevant BIC2 Shareholder unconditionally undertakes and agrees that:
 - 8.1.1.3.1 it shall, at MTN's election, either:
 - 8.1.1.3.1.1 allow any Certificated BIC2 Ordinary Share to be dematerialised into an Uncertificated BIC2 Ordinary Share within 14 days of receipt of a written notice from MTN requesting that such BIC2 Ordinary Share be so dematerialised, and the relevant BIC2 Shareholder hereby unconditionally and irrevocably consents to, and authorises and instructs MTN and/or BIC2 to procure, the dematerialisation with such Uncertificated BIC2 Ordinary Share to be held in the name of a Nominee Holder appointed by BIC2 to act as the registered holder; or

- 8.1.1.3.1.2 deposit the share certificate in respect of any Certificated BIC2 Ordinary Share with the Custodian within 14 days of receipt of a written notice from MTN requesting that the share certificate for such BIC2 Ordinary Share be so deposited with the Custodian, who will retain such Certificated BIC2 Ordinary Share for so long as it is held in such form;
- 8.1.1.3.2 for so long as such BIC2 Ordinary Share is held in uncertificated form other than in the name of the Custodian, it shall only be deposited with a CSDP approved of by MTN, it being recorded that MTN shall require that such BIC2 Shareholder's mandate agreement with the relevant CSDP recognises the relevant terms and restrictions in respect of such BIC2 Ordinary Share as contained in this Agreement and the BIC2 Constitutional Documents; and
- 8.1.1.3.3 it shall not give any instructions to its CSDP which would constitute or result in a contravention of this Agreement or the BIC2 Constitutional Documents; and
- 8.1.1.4 a BIC2 Shareholder will, subject to clause 8.1.2, be entitled to rematerialise his/her/its Uncertificated BIC2 Ordinary Shares in accordance with section 49(6) read with section 54 of the Companies Act, whereupon his/her/its BIC2 Ordinary Shares will be held in certificated form subject to the principles recorded in clause 8.1.1.3.1.2;
- 8.1.2 During the BEE Listing Period, the BIC2 Ordinary Shares may be held as Certificated BIC2 Ordinary Shares or Uncertificated BIC2 Ordinary Shares; provided that:
- 8.1.2.1 if a BIC2 Ordinary Share is held as a Certificated BIC2 Ordinary Share, the share certificate in respect thereof shall be deposited with and retained by the Custodian for so long as it is held in such form; and
- 8.1.2.2 if a BIC2 Ordinary Share is held as an Uncertificated BIC2 Ordinary Share:
- 8.1.2.2.1 the relevant BIC2 Shareholder's mandate agreement with the person providing custody and administration services in respect of such Uncertificated BIC2 Ordinary Share (including any nominee or intermediary of such service provider) must be an Approved Nominee and shall accordingly be required to recognise the restrictions imposed upon the holding and/or transfer of such BIC2 Ordinary Share as contained in the Verification Terms and Conditions; and
- 8.1.2.2.2 the relevant BIC2 Shareholder shall not give any instruction to its broker or CSDP (or any nominee or intermediary thereof or Nominee Holder) which would constitute or result in a contravention of the provisions of the BEE Listing Terms and Conditions.
- 8.1.3 For the avoidance of doubt, should the BEE Listing be terminated for whatsoever reason at any time during the BIC2 Empowerment Compliance Period, the provisions of clause 8.1.2 shall cease to apply and the provisions of clause 8.1.1 shall thereupon again apply for the remainder of the BIC2 Empowerment Compliance Period.

8.2 During the BIC2 Shareholder Minimum Investment Period

Save and only to the limited extent permitted under clauses 9, 10, 11 and 14, no BIC2 Shareholder (other than the Warehousing BIC2 Shareholders) shall at any time during the BIC2 Shareholder Minimum Investment Period Dispose of or Encumber any BIC2 Ordinary Share held by it or any beneficial interest therein, or otherwise cease to be the Beneficial Holder thereof.

8.3 After the BIC2 Shareholder Minimum Investment Period

- 8.3.1 In acknowledgement and furtherance of the MTN SA Group's imperative to procure and maintain an optimal BEE rating under the BEE Legislation, each of the BIC2 Shareholders (other than the Warehousing BIC2 Shareholders) agree and undertake in favour of MTN that, upon the conclusion of the BIC2 Shareholder Minimum Investment Period and for the remainder of the BIC2 Empowerment Compliance Period, save and only to the limited extent permitted under clauses 9, 10, 11 and 14, (i) it shall not Encumber any BIC2 Ordinary Share (or beneficial interest therein) held by it; and (ii) it shall not Dispose of any BIC2 Ordinary Shares (or beneficial interest therein) other than to Eligible BIC2 Shareholders or Verified BIC2 Shareholders (as applicable) in accordance with the provisions of this clause 8.3, and BIC2 undertakes not to accept and register the transfer of any BIC2 Ordinary Shares (or beneficial interest therein) in contravention of any provision of this clause 8.3.
- 8.3.2 BIC2 shall use its good faith endeavours (but otherwise without any liability or obligation) to procure the BEE Listing on and from the end of the BIC Shareholder Minimum Investment Period for the purpose of facilitating trading in BIC2 Ordinary Shares, subject at all times to the restrictions imposed upon the transfer of ownership of and/or beneficial interests in such shares in terms of this Agreement and the BIC2 Constitutional Documents.
- 8.3.3 After the BIC2 Shareholder Minimum Investment Period, subject to clauses 9, 10, 11 and 14:
- 8.3.3.1 subject to clause 8.3.3.3 below, during the BIC2 Empowerment Compliance Period, only Eligible BIC2 Shareholders may be Beneficial Holders of BIC2 Ordinary Shares and only Approved Nominees may be Nominee Holders of BIC2 Ordinary Shares, and no transfer of any beneficial interest or nominee holding shall be permitted unless such transfer has first been approved in writing by either MTN or the ESTC (which approval shall not be unreasonably withheld or delayed) pursuant to its consideration of any proposed transfer and subject to its verification of the BEE Status of the proposed transferee;
- 8.3.3.2 MTN may, or the ESTC may, acting reasonably, at any time withdraw the BEE Verification status of any Person, on notice to such Person, whereupon such Person shall cease to be classified as an Eligible BIC2 Shareholder and/or Verified BIC2 Shareholder, as the case may be;
- 8.3.3.3 during the BEE Listing Period, only Verified BIC2 Shareholders may be Beneficial Holders of BIC2 Ordinary Shares (and any holding in conflict with this will accordingly breach this provision) and only Approved Nominees may be Nominee Holders of BIC2 Ordinary Shares, and no Disposal may be effected inconsistent with this provision.
- 8.3.4 Subject to clause 8.3.5, during the BIC2 Empowerment Compliance Period:
- 8.3.4.1 the ESTC shall consider and approve or decline any proposed transfer pursuant to a Disposal of BIC2 Ordinary Shares (or beneficial interests therein), and shall accordingly regulate, or procure the regulation of, the registration of any such transfer. The exact identity and/or composition of the ESTC shall be determined by MTN from time to time. (If for any reason, and for so long as, the ESTC is not or ceases to be constituted, the rights and obligations of the ESTC shall be fulfilled by BIC2, or any Person appointed by it on its behalf);
- 8.3.4.2 all proposed transfers of BIC2 Ordinary Shares (including a change in beneficial interests), must therefore be submitted to the ESTC for consideration together with

such supporting documentation in respect of the proposed transferee as is reasonably required by the ESTC from time to time, and which initially includes the following:

- 8.3.4.2.1 in respect of individuals, a copy of the proposed transferee's identity document, proof of residence and an affidavit signed by the proposed transferee confirming that the proposed transferee is a Black Person, and any other such document as may reasonably be required by the ESTC;
- 8.3.4.2.2 in respect of Black Companies, a certified copy of their latest BEE Status certification being no older than 12 months (issued by a BEE rating or verification agency acceptable to MTN in its sole and absolute discretion), a certified copy of their memorandum of incorporation, a certified copy of their securities register, and any other such document as may reasonably be required by the ESTC; and
- 8.3.4.2.3 in respect of Black Entities, a certified copy of any applicable constitutional or other such document, a certified copy of any rules or regulations governing the operations and management of such entity, certified copies of the identity documents of the trustees or representatives of the governing body of such entity (if any), and any other such documents as may reasonably be required by the ESTC;
- 8.3.4.3 in considering any proposed transfer of BIC2 Ordinary Shares (including a change in beneficial interests), the ESTC shall, for the purposes of ascertaining the BEE Status of any proposed transferee (and/or its impact thereon on the compliance by the MTN SA Group with the Empowerment Requirements) or other relevant matter under this Agreement, be entitled in addition to requesting any such additional documents as may be necessary to ascertain such BEE Status, to request that such transferee (at its own expense) provide a BEE Ownership Certificate of Compliance (*mutatis mutandis* as contemplated in clause 7.2.3);
- 8.3.4.4 all proposed transfers of BIC2 Ordinary Shares (including a change in beneficial interests) shall be considered by the ESTC as soon as reasonably possible in the circumstances subsequent to being lodged with the ESTC;
- 8.3.4.5 the ESTC may make any further requirements and stipulations from time to time in respect of the consideration and verification of the transfer of BIC2 Ordinary Shares (including a change in beneficial interests), and associated approvals process, as it reasonably deems fit, with the prior written approval of MTN. Without derogating from the ESTC's general discretion to regulate the approvals process and to amend the requirements and stipulations from time to time, and/or to call for and require additional information, whether generally or in relation to a specific transfer or class of transfers, the ESTC will take reasonable steps to make the relevant requirements available for inspection by BIC2 Shareholders at the registered offices of BIC2 (or such other location/s in South Africa as the ESTC may determine from time to time) and electronically on a website designated for such purpose by the ESTC. Notwithstanding the foregoing, BIC2 Shareholders remain responsible for ascertaining the requirements and stipulations which apply to them and to any proposed transfer by them; and
- 8.3.4.6 If the ESTC is satisfied that the provisions of this Agreement and the BIC2 Constitutional Documents have been complied with, it shall approve the transfer.
- 8.3.5 During the BEE Listing Period:



- 8.3.5.1 the Disposal of BIC2 Ordinary Shares (and beneficial interests therein) shall be subject to the provisions of this Agreement, the BIC2 Constitutional Documents and the Verification Terms and Conditions. The BIC2 Verification Agent shall accordingly conduct BEE Verification in respect of each Beneficial Holder (and proposed Beneficial Holder) of BIC2 Ordinary Shares;
- 8.3.5.2 in conducting BEE Verification, the BIC2 Verification Agent shall, for the purposes of ascertaining the BEE Status of any proposed transferee (and/or its impact thereon on the compliance by the MTN SA Group with the Empowerment Requirements) or other relevant matter under this Agreement, be entitled in addition to requesting any such additional documents as may be necessary to ascertain such BEE Status, to request that such transferee (at its own expense) provide a BEE Ownership Certificate of Compliance (*mutatis mutandis* as contemplated in clause 7.2.3). The BIC2 Verification Agent may, on the instruction of MTN, make any further requirements and stipulations from time to time in respect of the BEE Verification process and/or any BIC2 Verified Shareholder. The BIC2 Verification Agent will take reasonable steps to make the relevant requirements for BEE Verification available for inspection at the registered offices of BIC2 (or such other location/s in South Africa as the ESTC may determine from time to time) and electronically on a website designated for such purpose by the ESTC. Notwithstanding the foregoing, BIC2 Shareholders (and proposed BIC2 Shareholders) remain responsible for ascertaining the requirements and stipulations which apply to them under this Agreement, the BIC2 Constitutional Documents and the Verification Terms and Conditions, and to any proposed transfer by them (including the requirements for BEE Verification).
- 8.3.6 No BIC2 Ordinary Shares (or beneficial interest therein) shall be approved for transfer or transferred where, in the good faith opinion of MTN, the ESTC or their relevant nominees, delegates or agents, such transfer will or might or is reasonably likely to result in a breach of any of the provisions of this Agreement, the BIC2 Constitutional Documents and/or the Verification Terms and Conditions.
- 8.3.7 To the maximum extent permitted in law, neither MTN nor the ESTC, nor any of its or their directors, officers, employees, nominees, delegates and or agents, shall be liable to BIC2 and/or any of the BIC2 Shareholders for any direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused, arising as a result of any act or omission (including any negligent act or omission) on the part of MTN or the ESTC (or, as the case may be, its or their directors, officers, employees, nominees, delegates and or agents), and any such claims are hereby waived.
- 8.3.8 To the extent that at any time during the BIC2 Empowerment Compliance Period, and for whatever reason (whether intentionally, negligently or accidentally), and for so long as any BIC2 Ordinary Share (or beneficial interest therein) is transferred to or held by any Person as Beneficial Holder who is not an Eligible BIC2 Shareholder or a Verified BIC2 Shareholder (as the case may be) and/or to any Nominee Holder who is not an Approved Nominee ("**the Non-qualifying Holder**"), such BIC2 Ordinary Share shall, unless MTN expressly permits otherwise in writing, result in such Non-qualifying Holder being deemed, on the date on which such BIC2 Ordinary Share (or beneficial interest therein) was transferred to or so held by such Non-qualifying Holder:
- 8.3.8.1 to have ceded to MTN or its nominee/s all rights to any dividend, distribution, or payment or other economic benefit by virtue of the holding of that BIC2 Ordinary Share; and
- 8.3.8.2 to have ceded to MTN or its nominee/s any voting rights attaching to such BIC2 Ordinary Share pursuant to this Agreement or the BIC2 Constitutional Documents

and to have irrevocably appointed MTN or its nominee as proxy for the exercise of such voting rights.

- 8.3.9 For the avoidance of doubt, neither the ESTC nor the BIC2 Verification Agent will be required to approve, verify or confirm the transfer of BIC2 Ordinary Shares to a Warehousing BIC2 Shareholder approved by MTN.
- 8.3.10 The reasonable costs and disbursements of the ESTC shall be borne by BIC2.
- 8.3.11 Where the ESTC is a third party (ie a person other than a member of the MTN Group (or committee or sub-committee appointed by such member), MTN will consult with BIC2 prior to making the appointment.

9. Death

9.1 Death of a Black Person

- 9.1.1 In the event of the death during the BIC2 Empowerment Compliance Period of a BIC2 Shareholder who is a Black Person, the executor of the deceased BIC2 Shareholder's estate shall be entitled to transfer the relevant BIC2 Ordinary Shares to such BIC2 Shareholder's heir, provided that such person is an Eligible BIC2 Shareholder (as approved by the ESTC *mutatis mutandis* under clause 8.3) or a Verified BIC2 Shareholder (as the case may be), as contemplated under clause 6.1.8 above.
- 9.1.2 If the heir is not an Eligible BIC2 Shareholder or a Verified BIC2 Shareholder (as the case may be), the heir and/or the executor shall be permitted (and obligated) to transfer the relevant BIC2 Ordinary Shares to an Eligible BIC2 Shareholder (as approved by the ESTC *mutatis mutandis* under clause 8.3) or a Verified BIC2 Shareholder (as the case may be) within a period of 120 days from the date of death.
- 9.1.3 In the event that the deceased BIC2 Shareholder's executor fails to comply with the provisions of clause 9.1.2, a Call Event shall arise and the provisions of clause 11 shall apply.

9.2 Death of a member of a Black Group

- 9.2.1 In the event of the death of a shareholder, member, participant and/or beneficiary of a BIC2 Shareholder which held BIC2 Ordinary Shares as a Black Group, as a result of which:
- 9.2.1.1 during the BIC2 Shareholder Minimum Investment Period, the BIC2 Shareholder fails to maintain its BEE Status or no longer qualifies as a Black Group; or
- 9.2.1.2 after the BIC2 Shareholder Minimum Investment Period, but during the BIC2 Empowerment Compliance Period, the BIC2 Shareholder no longer qualifies as a Black Group,
- then,
- 9.2.1.3 the BIC2 Shareholder shall have a period of 120 days to remedy the breach caused by such death or to transfer the BIC2 Ordinary Shares held by it to an Eligible BIC2 Shareholder (as approved by the ESTC *mutatis mutandis* under clause 8.3) or a Verified BIC2 Shareholder (as the case may be), as contemplated under clause 6.1.8 above.

- 9.2.2 In the event that the BIC2 Shareholder fails to comply with the provisions of clause 9.2.1.3 or the breach caused by the death has not otherwise been remedied within 120 days from the date of the death in question, a Call Event shall arise and the provisions of clause 11 shall apply.

10. Involuntary sequestration/liquidation

10.1 Involuntary sequestration of a Black Person

- 10.1.1 In the event of a BIC2 Shareholder who is a Black Person being involuntarily sequestered (whether provisionally or finally) during the BIC2 Empowerment Compliance Period, the BIC2 Ordinary Shares held by such sequestered BIC2 Shareholder shall be permitted and required to be transferred by the BIC2 Shareholder and/or the trustee of such BIC2 Shareholder's estate to an Eligible BIC2 Shareholder (as approved by the ESTC *mutatis mutandis* under clause 8.3) or a Verified BIC2 Shareholder (as the case may be), as contemplated under clause 6.1.8 above, within a period of 120 days from the date of provisional or final sequestration (whichever is the earlier), unless the sequestration order is set aside within such 120 day period.
- 10.1.2 In the event that the BIC2 Shareholder and/or the sequestered BIC2 Shareholder's trustee fails to comply with the provisions of clause 10.1.1, a Call Event shall arise and the provisions of clause 11 shall apply. The application by a Black Person for voluntary sequestration shall be a breach of clause 7.1.6.

10.2 Involuntary liquidation of a Black Group

- 10.2.1 In the event that a BIC2 Shareholder which held BIC2 Ordinary Shares as a Black Group is involuntarily liquidated (whether provisionally or finally) and as a result of which:
- 10.2.1.1 during the BIC2 Shareholder Minimum Investment Period, it fails to maintain its BEE Status or no longer qualifies as a Black Group, as the case may be; or
- 10.2.1.2 after the BIC2 Shareholder Minimum Investment Period, but during the BIC2 Empowerment Compliance Period, it no longer qualifies as a Black Group, then,
- 10.2.1.3 the BIC2 Shareholder (and/or its liquidator) shall have a period of 120 days to remedy the breach caused by such events or to transfer the BIC2 Ordinary Shares held by it to an Eligible BIC2 Shareholder (as approved by the ESTC *mutatis mutandis* under clause 8.3) or a Verified BIC2 Shareholder (as the case may be), as contemplated under clause 6.1.8 above, unless the liquidation order is set aside within such 120 day period.
- 10.2.2 In the event that the BIC2 Shareholder and/or its liquidator fails to comply with the provisions of clause 10.2.1.3, a Call Event shall arise and the provisions of clause 11 shall apply. The passing of a resolution for the voluntary winding-up or deregistration of a Black Group shall be a breach of clause 7.1.6.

11. Call Option in favour of MTN

- 11.1 A "Call Event" shall arise in respect of a BIC2 Shareholder (for the avoidance of doubt excluding any Warehousing BIC2 Shareholder) if, at any time prior to the end of the BIC2 Empowerment Compliance Period, the circumstances set out in clauses 9.1.3, 9.2.2, 10.1.2, 10.2.2 and/or 21.3.2 occur and/or if the BIC2 Shareholder:
- 11.1.1 has misrepresented or misstated its/his/her BEE Status; or

- 11.1.2 has made a fraudulent, untrue or inaccurate statement in the application form submitted to BIC2 in terms of the BIC2 Public Offer or in any supporting documents, or if any information contained in the application from submitted to BIC2 in terms of the BIC2 Public Offer cannot be verified to MTN's satisfaction; or
- 11.1.3 has made or given a fraudulent, untrue or inaccurate confirmation or representation in connection with the election to acquire BIC2 Shares under the MTN Zakhele Unwinding Scheme, or its relevant information (including as to BEE Status) cannot be verified to MTN's satisfaction; or
- 11.1.4 has made a fraudulent, untrue or inaccurate statement in respect of any transfer or proposed transfer of BIC2 Ordinary Shares (or beneficial interest therein), or in any documents supporting such transfer or proposed transfer, or in any information provided to the ESTC, the BIC2 Verification Agent and/or any other service provider in respect of any transfer of BIC2 Ordinary Shares (or beneficial interest therein) to such BIC2 Shareholder cannot thereafter be verified to MTN's satisfaction;
- 11.1.5 has made a fraudulent, untrue or inaccurate statement in respect of any other documentation or information submitted to MTN, BIC2, the ESTC, the BIC2 Verification Agent and/or any other service provider, including but not limited to the information provided under clauses 7.2 and 19, or any such information cannot be verified to MTN's satisfaction; or
- 11.1.6 commits an act, or there arises an event or circumstance (howsoever arising), constituting or resulting in a breach by or in respect of such BIC2 Shareholder (and/or the BIC2 Ordinary Shares and/or beneficial interests held by it) of any of clauses 7, 8, 9, 10, 13.1, 16, 17, 19, 20 and/or 21 of this Agreement, and fails to remedy any such breach within the time period (if any) provided in the relevant clause or, if no such express remedy period is provided, within 30 days of receiving written notice from MTN or BIC2 to do so (or such additional period as MTN may agree to in writing).
- 11.2 If and for so long as the Call Event persists, MTN shall be entitled, but not obliged, by giving written notice to the relevant BIC2 Shareholder (or its Nominee Holder, if applicable) to that effect ("**the Call Option Notice**"), to require such BIC2 Shareholder and/or Nominee Holder to sell to MTN all of its BIC2 Ordinary Shares (and/or beneficial interests therein, or such number thereof as MTN in its discretion may elect ("**the Call Shares**")), and the BIC2 Shareholder and/or Nominee Holder shall be obliged to sell the Call Shares, and BIC2 shall procure that the BIC2 Constitutional Documents contain such obligation to sell.
- 11.3 The sale of the relevant BIC2 Ordinary Shares shall be concluded on the following terms and conditions:
- 11.3.1 at MTN's sole election and as recorded in the Call Option Notice, the Call Shares shall be sold and transferred with effect from either the date the Call Event occurred or the date of the Call Option Notice ("**Call Trigger Date**");
- 11.3.2 the Call Shares shall be delivered and transferred (as further envisaged below) on the 2nd Business Day following the later of (a) the date on which the Call Option Notice is delivered to the BIC2 Shareholder or (b) the date of determination of the price therefor pursuant to clauses 11.3.3, 11.3.4, 11.3.5 and/or 11.3.6, as read with clause 12;
- 11.3.3 the purchase price of the Call Shares shall, if the Call Event is a breach of clause 9.1.3, be the Call Reference Price calculated as at or with reference to the Call Trigger Date;

- 11.3.4 the purchase price of the Call Shares shall, if the Call Event is a breach of clauses 9.2.2 or 10.1.2, be the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 10%;
- 11.3.5 the purchase price of the Call Shares shall, if the Call Event is a breach of clause 10.2.2, be the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 40%;
- 11.3.6 the purchase price of the Call Shares shall, if the Call Event is any event or circumstances other than those under clauses 9.1.3, 9.2.2, 10.1.2 or 10.2.2, be:
- 11.3.6.1 the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 70%, if the Call Event occurs during the first two years following the Effective Date;
- 11.3.6.2 the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 50%, if the Call Event occurs during the third or fourth years following the Effective Date; or
- 11.3.6.3 the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 40%, if the Call Event occurs during the fifth or sixth years following the Effective Date; or
- 11.3.6.4 the Call Reference Price calculated as at or with reference to the Call Trigger Date discounted by 25%, if the Call Event occurs during the seventh or eighth years following the Effective Date;

provided that in each such case if the Call Event arises from a fraudulent act or wilful misrepresentation by or on behalf of the BIC2 Shareholder the purchase price will be the lesser of the price determined in this clause 11.3.6 and the price paid by the BIC2 Shareholder for the relevant Call Shares;

- 11.3.7 the purchase price shall be payable against delivery by the BIC2 Shareholder of the transfer form and share certificate/s in respect of the Call Shares if such shares are held as Certificated BIC2 Ordinary Shares, or against entry of such transfer being effected in the relevant account of the CSDP if such shares are held as Uncertificated BIC2 Ordinary Shares (as applicable). As regards Certificated BIC2 Ordinary Shares, for purposes of providing the share certificate/s to MTN, the BIC2 Shareholder shall, upon delivering a copy of the Call Option Notice to the Custodian, procure the release of its share certificate/s from the Custodian to MTN. If MTN has not received the requisite transfer form and share certificate/s within 3 days of the date of the Call Option Notice, or for any other reason the BIC2 Shareholder fails to effect transfer of the Call Shares to MTN within such 3 day period, MTN is irrevocably and *in rem suam* authorised and appointed as the BIC2 Shareholder's attorney and agent, to sign the necessary transfer forms and to take all such other steps as may be required to effect the transfer of the Call Shares to MTN. As regards Uncertificated BIC2 Ordinary Shares, for purposes of effecting transfer thereof to MTN, the BIC2 Shareholder shall promptly instruct its Nominee Holder/s, if any, or its CSDP (and any other relevant nominee or intermediary), as the case may be, to effect the required transfer. If such instruction has not been issued within 3 days of the date of the Call Option Notice, or for any other reason the BIC2 Shareholder fails to effect transfer of the Call Shares to MTN within such 3 day period, MTN is irrevocably and *in rem suam* authorised and appointed as the BIC2 Shareholder's attorney and agent to take all such steps as may be required to effect the transfer of the Call Shares to MTN;
- 11.3.8 the BIC2 Shareholder represents and warrants to MTN that, on transfer of the Call Shares, (i) MTN shall become the sole beneficial and registered owner of the Call

Shares; (ii) the Call Shares are not Encumbered; and (iii) no person has any right of any nature whatsoever to acquire the relevant Call Shares;

- 11.3.9 the Call Shares are transferred together with all rights and benefits attaching to them as from the Call Trigger Date; and
- 11.3.10 the securities transfer tax payable in respect of the registration of the transfer of the BIC2 Ordinary Shares sold in terms of this clause 11 shall be borne by MTN.
- 11.4 Notwithstanding the provisions of clauses 11.3.3, 11.3.4, 11.3.5 and 11.3.6, MTN shall be entitled, in its sole and absolute discretion, taking into account all relevant circumstances, to increase the price at which it shall acquire the Call Shares from the relevant BIC2 Shareholder.
- 11.5 MTN shall, on written notice to BIC2 from time to time, be entitled to (i) exercise its rights pursuant to this clause 11 through one or more nominees; and/or (ii) cede to any person all or any part of its rights and/or delegate any of its obligations pursuant to this clause 11 and whether in respect of a specific Call Event or generally from time to time, and in such instances references in this clause 11 to MTN shall be read *mutatis mutandis* to be such nominees and/or cessionary.
- 11.6 Each BIC2 Shareholder in respect of whom a Call Event arises under clause 11.1 undertakes to MTN not to Dispose of its BIC2 Ordinary Shares at any time while such Call Event persists, other than pursuant to an exercise by MTN of the Call Option or with MTN's prior written permission, and agrees that it shall not be entitled to (and shall account on demand to MTN for) any gain or profit made by it from any Disposal made in breach of this undertaking.

12. Calculation of the Call Reference Price

- 12.1 For the purposes of clause 11, "Call Reference Price" shall mean the value of the BIC2 Ordinary Shares on the relevant date as agreed or determined under this clause 12; provided that such determination shall *inter alia* (a) include a discount for no or limited liquidity of 10% (but not more than that) and (b) shall - as assets within BIC2 - value the MTN Shares held by BIC2 (while such shares are listed on the JSE) at the 30-Day VWAP and (c) shall, while the BIC2 Ordinary Shares are listed on the JSE, not exceed (and shall thus be limited to) the 30-Day VWAP of such shares on the JSE, in each case as at the relevant date on which the Call Reference Price is set.
- 12.2 In order to expedite any potential sales and transfers under clause 11, MTN and BIC2 may, from time to time, by written recordal determine the Call Reference Price as at a stipulated date ("**the Valuation Date**"), and may do so with regard to such professional advice as they consider appropriate. In the alternative, MTN may (at its cost) appoint an investment bank with experience in the telecommunications industry to determine the Call Reference Price at the Valuation Date. The relevant investment bank shall be agreed to in writing by MTN and BIC2 and, failing agreement within 5 days of MTN requesting BIC2 to agree to a proposed investment bank, the investment bank shall be nominated by the South African Institute of Chartered Accountants on the written request of MTN. The investment bank shall act as an expert and not as an arbitrator.
- 12.3 For the purposes of any sale under clause 11, the Call Reference Price of the BIC2 Ordinary Shares shall be as agreed in writing between the disposing BIC2 Shareholder and MTN. If MTN and the relevant BIC2 Shareholder fail to agree on the Call Reference Price within 5 Business Days of MTN requesting in writing such agreement (or such longer period as they may agree), then the Call Reference Price shall, at MTN's election:

- 12.3.1 be the Call Reference Price (if any) determined under clause 12.2; provided that the relevant Valuation Date for such determination is within a 6 month period before or after the relevant Call Trigger Date and provided further that where there is more than one such determination within this period, the determination nearest in time to the Call Trigger Date shall be used; or
- 12.3.2 be determined by way of final and binding expert determination. The expert shall be an investment bank with experience in the telecommunications industry agreed to in writing by MTN and the relevant BIC2 Shareholder, and failing agreement within 5 days of the expiry of the aforementioned 5 day period, the expert (being an investment bank with experience in the telecommunications industry) shall be appointed by the South African Institute of Chartered Accountants on the written request of either MTN or the BIC2 Shareholder. The expert shall act as an expert and not as an arbitrator, and his decision shall (absent manifest error) be final and binding on MTN and the relevant BIC2 Shareholder in relation to the sale and transfer (and only such sale and transfer) to which the determination applies.
- 12.4 For purposes of this Agreement, the 30-Day VWAP shall:
- 12.4.1 be calculated from, and with reference to, the volume weighted daily data supplied by the JSE (or relevant third party data provider, as the case may be) to MTN from time to time in accordance with the data package subscribed for from time to time by MTN;
- 12.4.2 if the shares trade 'cum dividend' for any Trading Day forming part of the 30-Day VWAP calculation, be adjusted to exclude from the 30-Day VWAP calculation (by subtracting from the relevant trading price/s) the face value of any cash distribution (and the fair value of any *in specie* distribution) on each such affected Trading Day; and
- 12.4.3 if any share split or share consolidation occurs in respect of the shares during the period in respect of which the 30-Day VWAP is determined, or after its determination but before the delivery of the relevant shares, then the 30-Day VWAP will be adjusted such that the aggregate value determined, or price payable, as the case may be, for the relevant shares, as so split or consolidated, will remain the same.

13. Funding of BIC2 by MTN

- 13.1 The Parties record that in certain circumstances under the BIC2 Transaction Documents, MTN (or its nominee or subsidiary) has the right (but no obligation) to subscribe for BIC2 Ordinary Shares, in order to facilitate the New Empowerment Transaction; it being MTN's intention that it will in due course transfer such BIC2 Ordinary Shares (or the beneficial interests therein) to Black Participants.
- 13.2 In addition to clause 13.1, the Parties acknowledge that MTN may, on such terms as may be agreed to between it and BIC2 (neither Party being obliged to so agree), (i) subscribe for BIC2 Ordinary Shares; (ii) subscribe for and/or acquire preference shares in the share capital of BIC2; (iii) make subordinated loans to BIC2 on arms' length terms; or (iv) give such other funding assistance to BIC2, as may be required by it from time to time. Each of the BIC2 Shareholders agrees to give such authorisations and consents, and pass such resolutions, as may be necessary to enter into, approve and/or implement any such agreement reached between MTN and BIC2.

14. No restriction on MTN, its nominees or subsidiaries holding BIC2 Ordinary Shares, and founding shareholders

- 14.1 The Parties acknowledge that, should MTN and/or its nominee/s and/or subsidiary/ies designated in writing by MTN for this purpose at any time become the beneficial and/or

registered holder/s of any BIC2 Ordinary Shares, for whatever reason, including as envisaged under clauses 11 and/or 13, unless MTN specifies otherwise in writing, MTN and/or its nominee/s and/or its subsidiary/ies shall hold such BIC2 Ordinary Shares as "Warehousing BIC2 Shareholders" and shall accordingly be exempt from any and all of the provisions of this Agreement and the BIC2 Constitutional Documents regulating the transfer of BIC2 Ordinary Shares and the restrictions upon the holding of such BIC2 Ordinary Shares only by Black Participants.

- 14.2 The Parties further acknowledge that shareholders that initially founded BIC2 (each holding up to 2 BIC2 Ordinary Share) shall hold such initial BIC2 Ordinary Shares (but no further BIC2 Ordinary Shares) as "Warehousing BIC2 Shareholders", and shall accordingly be exempt from any and all of the provisions of this Agreement and the BIC2 Constitutional Documents regulating the transfer of BIC2 Ordinary Shares and the restrictions upon the holding of such BIC2 Ordinary Shares only by Black Participants.

15. MTN representation on the BIC2 Board

- 15.1 For so long as the BIC2 Empowerment Compliance Period subsists, MTN shall be entitled to appoint, remove and replace 2 of the 5 directors to the BIC2 Board (and their respective alternates) ("**the MTN BIC2 Board Directors**"), at least one of which must at all times be a Black Person.

- 15.2 The MTN BIC2 Board Directors shall:

- 15.2.1 meet the criteria prescribed by law from time to time;
- 15.2.2 be nominated by MTN in its sole discretion;
- 15.2.3 be entitled to vote on any matter under consideration by the BIC2 Board, and in this regard shall each have the same number of votes as each other director; and
- 15.2.4 be appointed, removed, replaced and/or substituted by written notice from MTN to BIC2.

16. BIC2 Ordinary Shares certificates

- 16.1 Subject to the provisions of clause 8.1.1, all share certificates issued to BIC2 Shareholders in respect of Certificated BIC2 Ordinary Shares shall:

- 16.1.1 upon their issue, be endorsed as follows:

"This certificate and the shares represented hereby are transferable only in compliance with the provisions of the Relationship Agreement dated during or about [●] 2016, as amended from time to time (a copy of which is on file with the company secretary of [MTN Zakhele Futhi] (RF) Limited) and in the specific circumstances contemplated in the memorandum of incorporation (as amended from time to time) of [MTN Zakhele Futhi] (RF) Limited (a copy of which is on file with the company secretary of [MTN Zakhele Futhi] (RF) Limited). Restrictions also apply to the transfer of all and any rights in and to the shares and to the granting of any encumbrance over the shares."; and

- 16.1.2 be retained and held by the Custodian. Such share certificates shall only be released, if necessary, for the purpose of implementing any transfer permitted in terms of this Agreement and/or the BIC2 Constitutional Documents on the basis that once such transfer is implemented, all share certificates resulting from such transfer are retained and held by the Custodian.

- 16.2 Upon the conclusion of the BIC2 Empowerment Compliance Period, the Custodian will, at BIC2's election, post to each BIC2 Shareholder such BIC2 Shareholder's share certificate (if any), at the address nominated by such BIC2 Shareholder in terms of clause 26.1.1 from time to time (or such other address as may be provided for in the BIC2 Constitutional Documents), at such BIC2 Shareholder's risk or shall retain such share certificate pending collection thereof by the relevant BIC2 Shareholder, should BIC2 determine that such retention poses less risk to the BIC2 Shareholder as opposed to the posting thereof.
- 16.3 The terms and conditions under which the Custodian will fulfil its obligations contemplated in this Agreement shall be regulated by the relevant agreement governing such services concluded between MTN (and/or BIC2, as the case may be) and the Custodian on terms reasonably available or standard in the market for such services, and such terms shall be binding on the BIC2 Shareholders to the extent that they relate to them (save that they shall not be liable for the fees of the Custodian). Such terms may provide that neither the Custodian nor any of its directors, officers, employees or agents shall be liable to the BIC2 Shareholders for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused, or any loss of value or profit, arising as a result of any act or omission (including any negligent act or omission) on the part of the Custodian (or any of its directors, officers, employees or agents) as regards such BIC2 Shareholder's BIC2 Ordinary Shares.

17. Changes to the BIC2 Constitutional Documents

- 17.1 To the maximum extent permitted by applicable law, if (i) there is any conflict or inconsistency between the provisions of this Agreement as at the Effective Date and the provisions of the BIC2 Constitutional Documents at any time, the provisions of this Agreement shall (except where the relevant conflict or inconsistency relates to those provisions of BIC2's Constitutional Documents which are inserted pursuant to Annexure "A" of the BIC2 Pref Subscription Agreement) prevail to the extent of the conflict or inconsistency, or if (ii) there is any conflict or inconsistency between any amended term of this Agreement effected after the Effective Date and the provisions of the BIC2 Constitutional Documents at any time, the provisions of this Agreement shall, except where such amended term of this Agreement is in conflict with the Finance Documents (other than the BIC2 Constitutional Document) to which BIC2 is a party, prevail to the extent of the conflict or inconsistency, and the Parties shall whenever necessary promptly exercise all voting and other rights and powers available to them to procure the amendment, waiver or suspension of the relevant provisions of BIC2's Constitutional Documents to the extent necessary to permit the affairs of BIC2 to be administered as provided for in this Agreement.
- 17.2 The Parties agree that if any provisions of this Agreement become unenforceable following the implementation of any replacement or amendment to the Companies Act or any other applicable law, then they will promptly enter into such agreements and/or arrangements and take such steps as may be necessary (including amending the BIC2 Constitutional Documents), insofar as legally possible, to preserve, implement and give effect to such provisions such that the Parties are placed insofar as legally possible in the same position they were in prior to such change in the law.
- 17.3 For the avoidance of doubt, the BIC2 Constitutional Documents shall be deemed to be in conflict with this Agreement, as the case may be, to the extent that such BIC2 Constitutional Documents permit (in whole or in part) the doing of anything by BIC2 and/or the BIC2 Shareholders which is not permitted by this Agreement, or which would or is reasonably likely to give rise to a Call Event.
- 17.4 The provisions of this clause 17 are subject to the BIC2's obligations under the Finance Documents to which it is a party to obtain the consent of the Preference Share Agent (as defined therein) to amend the BIC2 Constitutional Documents.

18. Amendments

The BIC2 Shareholders acknowledge and agree that:

- 18.1 the terms of this Agreement, as they apply to BIC2 Shareholders, can be amended either by:
 - 18.1.1 the BIC2 Shareholders, BIC2 and MTN signing a written agreement to that effect (such agreement being binding on the relevant Parties who sign such agreement which for the avoidance of doubt need not be all of the BIC2 Shareholders); and/or
 - 18.1.2 BIC2 and MTN signing a document incorporating any amendment approved by resolution passed at a separate meeting of the BIC2 Shareholders at which BIC2 Shareholders present or represented at the meeting and exercising not less than 65% of the votes exercisable in respect of the BIC2 Ordinary Shares at that meeting, voted in favour of such resolution, which amendments will, subject to MTN and BIC2 signing the document referred to above, bind all BIC2 Shareholders as from the date specified in the amending resolution;
- 18.2 the rights and obligations of MTN and BIC2 in terms of and in relation to this Agreement, as between one another, may be amended by BIC2 and MTN signing a written agreement to that effect.

19. The BIC2 Ownership Certificate of Compliance

- 19.1 BIC2 and each of the BIC2 Shareholders acknowledge the importance to the MTN SA Group of successfully implementing the New Empowerment Transaction in order that the MTN SA Group may optimise its BEE rating under the Empowerment Requirements, and of demonstrating such successful implementation to stakeholders in MTN as well as to the relevant authorities. The Parties accordingly acknowledge and accept that MTN (for itself and any member of the MTN SA Group) will from time to time (and at least once every calendar year) be entitled to:
 - 19.1.1 request in writing that BIC2 provide it with all information and documents reasonably required by MTN (or member of the MTN SA Group) to enable it to determine and officially obtain and/or maintain its BEE Status and/or compliance with the Empowerment Requirements; and/or
 - 19.1.2 procure (at its cost) the preparation and issue by an accredited or approved BEE rating agency (or another suitable person) nominated by MTN from time to time of a certificate ("**BIC2 Ownership Certificate of Compliance**") recording any or all of the following (as may be requested):
 - 19.1.2.1 the identity and Composition of the Effective Participants in BIC2 and the Composition of its board of directors; and/or
 - 19.1.2.2 whether BIC2 qualifies as a Black Company; and/or
 - 19.1.2.3 the BEE Status of BIC2; and/or
 - 19.1.2.4 any other matter relevant to an assessment by MTN of its compliance with the Empowerment Requirements,

and BIC2 undertakes to comply fully with such request within 60 days thereof (or such longer period and MTN may agree to).



- 19.2 BIC2 shall, for the duration of this Agreement, fully co-operate with and assist MTN and its representatives by providing them with access to all information and records which are in its possession or which it may be entitled and/or obliged to keep in its possession or to require to be placed in its possession, within 10 Business Days of a written request therefor from MTN or such representatives, for purposes of enabling MTN to obtain the issue of the BIC2 Ownership Certificate of Compliance.
- 19.3 Each BIC2 Shareholder undertakes to MTN and BIC2, in addition to their obligations under clause 7.2, to do all things reasonable necessary or requested within its power or control or of which it is capable to enable and assist MTN to obtain the BIC2 Ownership Certificate of Compliance.
- 19.4 Upon receipt of each BIC2 Ownership Certificate of Compliance, MTN shall provide a copy thereof to BIC2.

20. Listing

The Parties agree that BIC2 may not list any of the BIC2 Ordinary Shares on any securities exchange, including but not limited to the securities exchange operated by the JSE, at any time during the BIC2 Empowerment Compliance Period unless MTN consents thereto in writing.

21. Maximum shareholding

21.1 Definitions

For the purposes of this clause 21:

- 21.1.1 "**Acquire**" means to purchase, receive by distribution, donation or exchange or in any manner whatsoever acquire, whether voluntarily or involuntarily, or enter into any arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned (including but not limited to any transaction, or series of arrangements or transactions, or the cession of any rights or the granting of any option or any similar transaction/s which would have the same economic effect), and "**Acquisition**" shall be construed accordingly;
- 21.1.2 "**Acting in Concert**" means co-operation for the common purpose in relation to the direct or indirect exercise of control of or the influence of votes in relation to a company by two or more persons pursuant to an agreement, arrangement or understanding, whether formal or informal, between them; and "**Act in Concert**" shall have a corresponding meaning
- 21.1.3 "**Concert Party**" means, in respect of any person, any other person who is Acting in Concert with such person;
- 21.1.4 "**Connected Person**" means any persons related or inter-related to such person in terms of section 2 (read with section 3) of the Companies Act; provided that for such purposes references to a company therein shall be read to include any juristic person, trust or unincorporated association or other legal entity, howsoever formed, foreign or domestic, with expressions appropriate to companies being construed as references to the corresponding persons, officers, documents or agents (as the case may be) appropriate to undertakings of that description; and
- 21.1.5 "**Shareholding Limit**" means 15% of the issued ordinary share capital of BIC2, or such higher percentage as MTN may notify to BIC2 in writing from time to time.

21.2 Maximum shareholding

21.2.1 Save as may be permitted by MTN in writing, no BIC2 Shareholder may at any time hold any BIC2 Ordinary Shares (or beneficial interest therein) which, when such shares are aggregated with the holdings of and/or beneficial interests in BIC2 Ordinary Shares held by all Connected Persons and Concert Parties of such person, exceed the Shareholding Limit.

21.2.2 This prohibition on holding BIC2 Ordinary Shares (or beneficial interests) in excess of the Shareholding Limit shall apply jointly and severally to each relevant Connected Person and Concert Party, to the extent such person is, by separate application of the provision with reference to it, also in breach of the Shareholding Limit.

21.2.3 If clause 21.2.1 is breached:

21.2.3.1 MTN may, in its sole discretion, identify those BIC2 Ordinary Shares (and/or relevant beneficial interests therein) that are held in excess of the Shareholding Limit and the relevant BIC2 Shareholder and/or Nominee Holder who holds such shares or beneficial interests ("**the Unauthorised Excess Shares**"; "**Relevant BIC2 Shareholder**")), and notify BIC2 in writing accordingly ("**Excess Shares Notice**"). While the relevant breach of clause 21.3 persists, MTN may withdraw the Excess Shares Notice and/or, if so withdrawn, re-issue it from time to time in its sole discretion;

21.2.3.2 once an Excess Shares Notice has been issued to BIC2 and until such Excess Shares Notice is withdrawn or the breach is remedied, the Relevant BIC2 Shareholder shall, unless MTN directs otherwise in writing, be deemed hereby:

21.2.3.2.1 to have ceded to MTN or its nominee/s all rights to any dividend, distribution, or payment or other economic benefit by virtue of the holding of the Unauthorised Excess Shares; and

21.2.3.2.2 to have ceded to MTN or its nominee/s any voting rights attaching to the Unauthorised Excess Shares and to have irrevocably appointed MTN or its nominee as proxy for the exercise of such voting rights; and

21.2.3.3 MTN may require the sale or other outright disposal of all or any of the Unauthorised Excess Shares in accordance with clause 21.3.

21.3 Disposal of Unauthorised Excess Shares

21.3.1 If an Excess Shares Notice has been issued, MTN may, at any time while a breach of clause 21.2 persists, by a written transfer notice ("**transfer notice**") to the Relevant BIC2 Shareholder (or its Nominee Holder, if applicable), require that Relevant BIC2 Shareholder (or its Nominee Holder, if applicable) to sell or otherwise dispose outright of all or part of the Unauthorised Excess Shares. The number of Unauthorised Excess Shares required to be disposed of will be specified in the transfer notice.

21.3.2 If the requirements of the transfer notice are not complied with by the Relevant BIC2 Shareholder (or its Nominee Holder, if applicable) within 28 days of the transfer notice, in MTN's sole discretion (a) a Call Event shall occur in respect of the Unauthorised Excess Shares (or any part thereof notified by MTN) or (b) MTN may sell the number of Unauthorised Excess Shares specified in the transfer notice (or any lesser number of those Unauthorised Excess Shares) in such manner and on such terms as it in its absolute discretion determines.

21.3.3 In respect of any sale under clause 21.3.2:

21.3.3.1 MTN is authorised to do all things necessary to sell those Unauthorised Excess Shares including signing or authorising a transfer of those Unauthorised Excess Shares; and

21.3.3.2 BIC2 is authorised and obliged, and the Relevant BIC2 Shareholder (or its Nominee Holder, if applicable) is obliged, to do all things necessary or reasonably required to affect the transfer of those Unauthorised Excess Shares sold by MTN.

21.3.4 MTN may deduct the costs associated with a sale of Unauthorised Excess Shares under clause 21.3.2. MTN will then pay the remaining balance of the proceeds of sale to the registered holder of the Unauthorised Excess Shares so sold by cheque posted to the address of the registered holder or by transfer to the bank account reflected for such holder in the corporate records of BIC2 at such time.

21.4 Restriction on Acquisitions

Save as may be permitted by MTN in writing, no BIC2 Shareholder may offer to Acquire (including by scheme of arrangement) or enter into any agreement (whether conditional or unconditional) to Acquire, any BIC2 Ordinary Shares if, as a result of that Acquisition or upon implementation of the relevant Acquisition agreement, the provisions of clause 21.2.1 would be breached by such BIC2 Shareholder or by any of its Connected Persons or Concert Parties.

21.5 Provision of information

Each BIC2 Shareholder undertakes to MTN to provide it with all information and documents reasonably requested by MTN in order to verify compliance, or establish non-compliance, by that BIC2 Shareholder and/or any other BIC2 Shareholder with this clause 21, and to do so within 14 Business Days of receipt of such request. MTN shall be entitled to make such request at any time and from time to time in its sole discretion.

22. Refinancing

22.1 The Parties note that the funding provided to BIC2 under the BIC2 Pref Shares (and the related liabilities and obligations under the Finance Documents) have a scheduled maturity on or about the fifth anniversary of the Effective Date ("**Initial Scheduled Maturity Date**"), and are required to be settled at such time, whereas the BIC2 Empowerment Compliance Period of the scheme and the scheduled maturity of the notional vendor finance from MTN (and related liabilities and obligations in respect thereof) are both 8 years after the Effective Date.

22.2 BIC2 acknowledges that (i) the overriding objective for MTN in facilitating the New Empowerment Transaction is for BIC2, as a Black Company, to obtain a material shareholding in MTN on the commencement of the New Empowerment Transaction and for it thereafter to maintain such shareholding for the duration of the Empowerment Period such that the MTN SA Group derives all or a meaningful portion of its empowerment status (as regards equity ownership) from such shareholding, and (ii) commercially it is the parties common intention, in the future, for the Third Party Financing to either be extended or otherwise amended or refinanced so as to have such Third Party Financing endure until, and have a scheduled maturity at, the end of the BIC2 Empowerment Compliance Period.

22.3 Accordingly, BIC2 agrees in favour of MTN that, save to extent that MTN may notify BIC2 otherwise in writing: following the expiry of a period of three years and one day after the date of issue of the BIC2 Pref Shares, as and when market circumstances may thereafter permit but in any event prior to the Initial Scheduled Maturity Date, BIC2 will use all reasonable

endeavours and as permitted and under and in terms of the Finance Documents to procure, through a Refinancing, that it has committed Third Party Funding in place for the full duration of the BIC2 Empowerment Compliance Period in such manner that does not result in BIC2 Disposing of any MTN Shares held by it, which Refinancing may be effected by BIC2 through *inter alia* (i) an extension of the Initial Scheduled Maturity Date of the BIC2 Pref Shares to the end of the BIC2 Empowerment Compliance Period and/or (ii) the issue of new or additional preference shares and/or (iii) loans or other form of debt instrument and/or (iv) other forms of funding approved by MTN (all such being "**the Replacement Funding**"), which Replacement Funding (i) is on terms, conditions and rates approved by MTN and (ii) is effected strictly in accordance with, and subject to, the terms and conditions of the Finance Documents.

- 22.4 Nothing in this clause 22 shall derogate from the obligations of BIC2 to redeem the BIC2 Prefs in full on the applicable Redemption Date (as such terms is defined in the BIC2 MOI) or the rights of the holders of the BIC2 Pref Shares under and in terms of the Finance Documents.

23. Change of name of BIC2

- 23.1 The Parties record that BIC2 has procured that its name has been changed from the name on incorporation of "BIC B" to "MTN Zakhele Futhi" pursuant to the limited license granted to it in this clause 23.
- 23.2 MTN hereby grants (or undertakes to procure the grant) of a non-transferable, non-exclusive limited licence to BIC2 to use the term "MTN Zakhele Futhi" in its corporate name and related branding and corporate communications until the earlier of 30 days after (i) the date on which BIC2 ceases to hold any shares in MTN; or (ii) the date on which MTN, in its sole discretion, gives it written notice to cease to use such term, or any part thereof. In the event of the termination of the aforesaid limited licence, BIC2 shall immediately cease all direct or indirect uses thereof, or any part thereof, and shall *inter alia* accordingly remove such name from any signage and cease to use it on any communication materials and other corporate documents.
- 23.3 BIC2 agrees that nothing in this Agreement (or anything done pursuant hereto) shall operate as an agreement to transfer (nor shall transfer) any right, title or interest in any trade mark, house mark, domain name, web site or company name to the extent it contains or consists of the words and/or abbreviations "Mobile Telephone Networks", "MTN", "Zakhele" and/or "Futhi", or any related or associated emblem or in any other mark in which one of those names or elements appears, or to the words or abbreviations in any translational, transliteral or phonetic form, and that it will not seek to assert any such right or challenge MTN's (or any member of the MTN Group's) rights thereto.

PART 4: GENERAL

24. Breach

- 24.1 No Party shall be entitled to cancel this Agreement for any reason, including for any breach hereof.
- 24.2 If any Party breaches any material provision or term of this Agreement (other than those provisions which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 days of receipt of written notice from an aggrieved Party requiring it to do so, then the aggrieved Party shall be entitled without further notice, in addition to any other remedy available to it at law or under this Agreement (but subject always to clause 24.1), including obtaining an interdict, to claim specific performance of the relevant obligation, and any related obligation, whether or not the due date for performance thereof has arrived, and without prejudice to the aggrieved Party's rights to claim damages.

- 24.3 For the sake of clarity, the provisions of clause 24.224.1 shall only be applicable with effect from the Effective Date.

25. Confidentiality

BIC2 shall at all times keep confidential any information of or relating to MTN or its operations or affairs which it has acquired or may acquire in relation to MTN or its operations or affairs prior to or pursuant to this Agreement, save for any information:

- 25.1 which is publicly available or becomes publicly available through no act or default of BIC2;
- 25.2 which was in the possession of BIC2 prior to its disclosure otherwise than as a result of any breach by BIC2 of any obligation of confidentiality owed to any other person whether pursuant to this Agreement or otherwise;
- 25.3 which is disclosed to BIC2 by a person which person did not acquire the information under an obligation of confidentiality;
- 25.4 which is reasonably required (and only to such extent) by BIC2 in the course of the enforcement of its rights or performance of its obligations under the BEE Transaction Documents, or in defending legal or arbitration proceedings to which it is a party; in which event it shall take such steps as are open to it to limit such disclosures to the minimum disclosure required, and will advise MTN in writing prior to making any such disclosure); or
- 25.5 which is independently acquired by BIC2 as a result of work carried out by a person to whom no disclosure of such information has been made,

and BIC2 shall not use or disclose such information except with the prior written consent of MTN or in accordance with an order of court of competent jurisdiction or in order to comply with any law or governmental regulations by which any Party concerned is bound or as may be lawfully requested in writing by any governmental authority.

26. Miscellaneous matters

26.1 address for service of legal documents

- 26.1.1 Each BIC2 Shareholder shall, on becoming a shareholder in BIC2, provide to BIC2 a physical address within the Republic of South Africa at which such BIC Shareholder can be served notices and documents under this Agreement.

- 26.1.2 The Parties choose the following physical addresses at which written notices and documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*):

- 26.1.2.1 in the case of **MTN** to:

physical address: MTN Innovation Centre
216 14th Avenue
Fairland
Roodepoort
telefax no: (011) 912 4093

and shall be marked for the attention of the Group Company Secretary;

26.1.2.2 in the case of **BIC2** to:

physical address: 5th Floor
Block D, 135 Rivonia Road
Sandown, Sandton, 2196
telefax no: (011) 294 8018

and shall be marked for the attention: c/o Nedbank Share Administration;

with a copy to **MTN** at:

physical address: MTN Innovation Centre
216 14th Avenue
Fairland
Roodepoort
telefax no: (011) 912 4093

and is marked for the attention of the Group Company Secretary;

26.1.2.3 in the case of a BIC2 Shareholder, to the physical address or telefax number provided for this purpose pursuant to clause 26.1.1.

26.1.3 A notice shall be deemed to have been duly given:

26.1.3.1 if delivered, on the date of delivery;

26.1.3.2 if sent by post, 10 days after posting;

26.1.3.3 if sent by telefax, on the Business Day following the day on which the telefax is transmitted.

26.1.4 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing to the other Parties, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

26.1.5 MTN and/or BIC2 shall be entitled to give notice to the BIC2 Shareholders, or any of them, (i) by publishing such notice in a newspaper circulating generally in the Republic of South Africa, and such notice will be effective as from the first Business Day after the date of publication thereof, or (ii) in any other manner provided for in the BIC2 Constitutional Documents for the giving of notices by BIC2.

26.1.6 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to it notwithstanding that it was not sent to or delivered or served at its chosen *domicilium citandi et executandi*.

26.2 entire contract

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

26.3 no stipulation for the benefit of a third person

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

26.4 no representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

26.5 variation, cancellation and waiver

Save as provided in clause 18, no contract varying, adding to, deleting from or canceling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the relevant Parties.

26.6 indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

26.7 cession and delegation

26.7.1 Except as provided for elsewhere in this Agreement, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement.

26.7.2 In addition to any other rights of MTN under this Agreement (in particular the rights under clause 11 and in respect of the ESTC and the BIC2 Verification Agent), MTN shall be entitled on prior written notice to transfer any right or rights which it has under this Agreement (including any warranties and/or representations given in its favour; any discretions, elections, notices or consents which it may exercise, make or give; and the rights under clauses 6, 7, 11, 15 and 19) and/or delegate any obligations which it has hereunder to any of its subsidiaries and/or to any member/s of the MTN SA Group, or to any other person nominated by it, or to such subsidiary/ies and/or members of the MTN SA Group and such one other person, as it deems fit. In addition, the ESTC shall, with the written consent of MTN, be entitled to exercise any of its rights and fulfil any of its obligations under this Agreement directly or delegate any of its powers and functions to such person or persons as the ESTC may determine.

26.8 severability

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be reduced in scope so as to remove the illegality, invalidity or unenforceability (and to the least such extent) or, to the extent that such reduction in scope is not permissible, the provision shall (to the least extent possible) be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

26.9 applicable law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.



26.10 jurisdiction of South African courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) for any proceedings arising out of or in connection with this Agreement.

26.11 costs

26.11.1 Save as otherwise expressly provided in this Agreement, each Party shall bear its own costs in relation to the execution and implementation of this Agreement.

26.11.2 Any costs including attorney and client costs incurred by a Party arising out of a breach by any other Party of any of the privileges of this Agreement shall be borne by the Party in breach.

26.12 signature in counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

26.13 independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

26.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

26.13.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

26.14 co-operation

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

SIGNED by the initial Parties and witnessed on the following dates and at the following places respectively:

Signed at *Fairland*

on *8 August* 2016.

Witnesses:

N. Apollidis

for **MTN Group Limited**, who warrants he/she is duly authorised

Director

Signed at

S. S. S. S.

on *9th August* 2016.

Witnesses:

for **MTN Zakhele Futhi (RF) Limited**, who warrants he/she is duly authorised

Director

a

Annexe A

Ring Fencing Provisions

1. BIC2's main purpose and main business is solely to (i) enter into the BEE Transaction Documents to which it is a party; (ii) exercise its rights and perform its obligations under the BEE Transaction Documents to which it is a party; (iii) to carry on the business of holding and managing and generally dealing with the MTN Shares, cash and such other property as may be received or acquired solely by virtue of or in relation to the MTN Shares, in each case in accordance with and subject to the BEE Transaction Documents to which it is a party; (iv) receiving and distributing dividends and other distributions in terms of the BEE Transaction Documents to which it is a party; and (v) such other main business as may, subject to the Finance Documents to which BIC2 is a party, be approved in writing by MTN in its sole discretion.
2. During the BIC2 Empowerment Compliance Period, except pursuant to or as is expressly required under the BEE Transaction Documents to which it is a party, BIC2 shall not (and, to the maximum extent permitted by law, the board of directors of BIC2 and each other body and organ shall not have the capacity to), without the prior written consent of MTN:
 - 2.1 alter its issued or authorised share capital including issuing any options or instruments which are by nature equity;
 - 2.2 vary, amend or otherwise alter the rights attaching to any class of shares in its share capital;
 - 2.3 cancel, repurchase, consolidate, subdivide or extend any rights offer over its shares;
 - 2.4 incur any material indebtedness;
 - 2.5 change the BIC2 Constitutional Documents (to the extent within its power) or agree to an amendment to the BIC2 Constitutional Documents;
 - 2.6 hold any investment or conduct any business, other than as set out in paragraph 1;
 - 2.7 Dispose of or Encumber or enter into any other transaction in respect of the MTN Shares (or any rights and interests therein);
 - 2.8 Dispose of or Encumber or cease to exercise direct control over the whole or any material part of its present or future undertakings, assets, rights or revenues, whether by one or a series of transactions related or not;
 - 2.9 amend or modify, or consent to the amendment or modification of, any BEE Transaction Document to which it is a party, the effect of which is or may, in the opinion of MTN, be materially adverse to the rights, obligations or interests of MTN and/or any member of the MTN SA Group, including under the BEE Legislation;
 - 2.10 enter into any merger, consolidation, or amalgamation or similar restructuring;
 - 2.11 except in respect of funding provided to it in respect of its main business, make any loans, grant any credit or give any guarantee, insurance or indemnity to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any other person;
 - 2.12 undertake, issue or enter into, whether directly or indirectly, any agreement, arrangement, undertaking or understanding whatsoever except only as is necessary for or reasonably incidental to the purpose of conducting the limited business permitted in paragraph 1 or for



exercising its rights, or performing its obligations, under the BEE Transaction Documents to which it is a party.

3. For the avoidance of doubt, nothing in this Annexe A shall preclude or be construed to limit BIC2's capacity and authority to negotiate and enter into the BEE Transaction Documents to which it is a party, and from time to time to amend, novate, re-instate and cancel such BEE Transaction Documents to which it is a party in accordance with their terms.
4. No amendment to the special conditions in this Annexe A shall be of any force or effect unless such amendment has been agreed to in writing by MTN.
5. Nothing in this Annex A shall derogate from, or serve in any way to relax or modify, any restrictions placed on BIC2 under the Finance Documents to which it is a party and/or the BIC2 Constitutional Documents, which restrictions shall apply in addition to those imposed herein.



Annexe B

Pro Forma Deed of Adherence

I/We the undersigned, **[insert full name and particulars]**, ("**the New Shareholder**") wish to become a shareholder of and/or acquire a beneficial interest in the ordinary shares of [MTN ZAKHELE FUTHI] (RF) Limited ("**the Company**"). I/We acknowledge that as a precondition to acquiring any shares in the Company, the New Shareholder is required to bind itself to the agreement titled "Relationship Agreement" dated [●] 2016 (as amended, substituted or novated from time to time) then subsisting between the Company, MTN Group Limited and holders of ordinary shares in the Company ("**the Relationship Agreement**").

I/We the New Shareholder, hereby acknowledge that we have read the terms of the Relationship Agreement and agree and undertake that, with immediate effect from the date of acquisition of any shares and/or beneficial interests in the ordinary shares of the Company, I/we will be bound by all of the provisions of the Relationship Agreement and the BIC2 Constitutional Documents (as defined in the Relationship Agreement) and all the terms thereof will be enforceable against me/us by the relevant parties to the Relationship Agreement as from such date of such acquisition.

Signed at on

.....
for: **The New Shareholder**

Received and acknowledged at on

.....
for: **MTN Zakhele Futhi (RF) Limited, for itself
and on behalf of MTN Group Limited**

