

RELATIONSHIP AGREEMENT - 2019 AMENDMENTS

RELATIONSHIP AGREEMENT

between

MTN GROUP LIMITED

and

MTN ZAKHELE FUTHI (RF) LIMITED

and

THE BIC2 SHAREHOLDERS WHO ARE BOUND THEREBY

WEBBER WENTZEL
in alliance with > Linklaters

Table of Contents

	Page No
PART 1: PRELIMINARY PROVISIONS	1
1. Definitions and interpretation	1
2. Introduction.....	11
3. Suspensive Condition	12
4. Duration.....	12
PART 2: MTN SHAREHOLDER PROVISIONS	12
5. MTN Shares certificates.....	12
PART 3: EMPOWERMENT PROVISIONS	12
6. General undertakings by BIC2.....	12
7. BIC2 Shareholder undertakings	15
8. Restriction on Disposal or Encumbrance of BIC2 Ordinary Shares	17
8.1 General	17
8.2 During the BIC2 Shareholder Minimum Investment Period.....	18
8.3 After the BIC2 Shareholder Minimum Investment Period.....	19
9. Death.....	22
9.1 Death of a Black Person	22
9.2 Death of a member of a Black Group	22
10. Involuntary sequestration/liquidation.....	23
10.1 Involuntary sequestration of a Black Person	23
10.2 Involuntary liquidation of a Black Group	23
11. Call Option in favour of MTN.....	23
12. Calculation of the Call Reference Price	26
13. Funding of BIC2 by MTN.....	27
14. No restriction on MTN, its nominees or subsidiaries holding BIC2 Ordinary Shares, and founding shareholders.....	27
15. MTN nominations to the BIC2 Board	28
16. BIC2 Ordinary Shares certificates.....	29
17. Changes to the BIC2 Constitutional Documents	30
18. Amendments	31
19. The BIC2 Ownership Certificate of Compliance	31
20. Listing.....	32
21. Maximum shareholding.....	32
21.1 Definitions	32
21.2 Maximum shareholding.....	33
21.3 Disposal of Unauthorised Excess Shares.....	33
21.4 Restriction on Acquisitions.....	34

21.5	Provision of information	34
22.	Refinancing	34
23.	Change of name of BIC2.....	35
PART 4: GENERAL.....		35
24.	Breach	35
25.	Confidentiality.....	36
26.	Miscellaneous matters	36
26.1	address for service of legal documents	36
26.2	entire contract	37
26.3	no stipulation for the benefit of a third person	37
26.4	no representations	38
26.5	variation, cancellation and waiver.....	38
26.6	indulgences	38
26.7	cession and delegation	38
26.8	severability	38
26.9	applicable law	38
26.10	jurisdiction of South African courts	38
26.11	costs.....	39
26.12	signature in counterparts	39
26.13	independent advice.....	39
26.14	co-operation	39
Annexe A	Ring Fencing Provisions.....	40
Annexe B	Pro Forma Deed of Adherence	42

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 of 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, 15, 19, 20, 21, 22 and, in so far as such clause relates to the aforementioned 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 115, 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.~~

15. MTN nominations to the BIC2 Board

15.1 During the BIC2 Empowerment Compliance Period:

15.1.1 2 positions on the BIC2 Board shall be reserved for persons appointed from time to time in accordance with the provisions of this clause 15 ("Reserved Positions");

15.1.2 in respect of each Reserved Position which at any time is vacant for any reason, MTN shall be entitled to nominate a person (and her respective alternate) to be appointed to such position. Any such nomination shall be made in writing to the BIC2 Board;

15.1.3 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 BIC2 Board (which approval it may give or withhold in its discretion), then the BIC2 Board shall appoint the person to the BIC2 Board to fill such vacancy (and/or act as Alternate Director, as the case may be) pursuant to the provisions of the BIC2 MOI and upon such appointment the relevant Director (and her alternate, as applicable) shall hold the position as an "MTN Nominated Director";

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

15.1.5 the MTN Nominated Directors shall:

- 15.1.5.1 meet the criteria prescribed by law from time to time; and
- 15.1.5.2 subject to the Companies Act, 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;
- 15.1.6 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 BIC2, and shall be effective on and as from the date on which the notice is given to BIC2 or, if a later effective date is stated in the notice, such later date;
- 15.1.7 in addition to clause 15.1.6, 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 provisions as apply to the other Directors, and the provisions of clauses 24.7 and 25.1.8 of the BIC2 MOI shall accordingly apply to the MTN Nominated Directors;
- 15.1.8 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 of the BIC2 MOI 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 15.1.6 and/or 15.1.7); and
- 15.1.9 the Directors (and their Alternate Directors) who hold office as "MTN Appointed Directors" as at the time of commencement of this amended clause 15 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 15.1.6 and/or 15.1.7).

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 (or such higher percentage or basis as MTN and BIC2 may agree to in writing from time to time), 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 14 th 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 BIC2 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 _____ on _____ 2016.

Witnesses: _____ for **MTN Group Limited**, who warrants he/she is duly authorised

.....
Director

Signed at _____ on _____ 2016.

Witnesses: _____ for **MTN Zakhele Futhi (RF) Limited**, who warrants he/she is duly authorised

.....
Director

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**