

**ANNEXURE C**

**AGREEMENT for the access to and use of MTN ACTIVE**

between

**MOBILE TELEPHONE NETWORKS (PROPRIETARY) LIMITED**

Registration Number: 1993/001436/07

(**"MTN"** or **"the Service Provider"**)

and

**CUSTOMER (PROPRIETARY) LIMITED**

Registration Number:

(**Referred to herein as "the Corporate"**)

**1. Introduction**

- 1.1 MTN and the CORPORATE have entered into or are in the process of concluding a Corporate Network Services Agreement in terms of which the CORPORATE receives/or will receive Network Services and certain ancillary services and benefits from MTN in the Territory ("**the CNSA**").
- 1.2 MTN has developed a facility (known to the parties as "MTN Active"), which is to be rolled out in phases as determined by MTN, in its discretion whereby the CORPORATE will have direct access to certain of MTN's electronic and administrative systems by means of the Internet. Through the use of MTN Active, the CORPORATE will be able, inter alia, to manage certain aspects of its dealings with MTN under the CNSA, the nature and extent of which shall be determined solely by MTN in its discretion.
- 1.3 This Agreement records the terms and conditions under which MTN will grant the CORPORATE access to MTN Active and under which THE CORPORATE will be entitled to use MTN Active.
- 1.4 It is contemplated that certain Affiliates may require the use of MTN Active. In this regard, the parties hereby create a stipulation for the benefit of those third parties referred to in this Agreement as Affiliates (stipulation alteri).

**2. Definitions and interpretation**

2.1 Unless the context indicates the contrary, the terms set out below shall have the corresponding meaning: -

- "Affiliate"** means an entity which is directly or indirectly owned, operated, or controlled by the Customer;
- "Agreement"** means this Agreement and all Annexures hereto;
- "CNSA"** means Corporate Network Services Agreement concluded between the Service Provider and THE CORPORATE, .....20, recording the respective rights and obligations of the Service Provider and THE CORPORATE and, inter alia, the terms and conditions upon which Network Services and ancillary services and/or

benefits will be made available by the Service Provider to THE CORPORATE;

**"The CORPORATE"** means

CUSTOMER (Proprietary) Limited, Registration Number:

**"Corporate Administrator"**

means an employee, agent or representative of THE CORPORATE, who has been approved by THE CORPORATE, through its Corporate Super Administrator, to utilise MTN Active on behalf of THE CORPORATE and who shall be deemed to be authorised to act on behalf of THE CORPORATE and the Employees;

**"Corporate Super Administrator"**

means an employee, agent or representative of the CORPORATE, nominated by the CORPORATE as its primary contact person for MTN in relation to this Agreement and who shall supervise the CORPORATE Administrators, and be primarily responsible for procuring that the obligations of THE CORPORATE are performed. Such person shall be deemed to be authorised to act on behalf of THE CORPORATE and Employees;

**"Corporate's Technology"**

means the telecommunications and information technology network and facilities of THE CORPORATE and/or used by THE CORPORATE to access and use MTN Active, and includes the computer networks, hardware, software, middleware, firmware, databases, terminals and components comprising such telecommunications and information technology network and facilities;

**"Effective Date"**

means the earlier of the date on which this Agreement is signed by the party signing last in time, or the first occasion on which a representative of the CORPORATE utilises MTN Active;

<b>“Employee”</b>	means any person, permanently employed by THE CORPORATE, and who is entitled by virtue of such capacity to receive Network Services or any component of it, pursuant to the CNSA concluded between MTN and THE CORPORATE;
<b>“GSM”</b>	means Global System for Mobile Communications as defined in the European Technical Standards Institute structure of specifications;
<b>“ICC”</b>	means the International Card Configuration, being an identity number unique to each SIM Card and pre-programmed into each SIM Card by the manufacturer thereof at the point of manufacture;
<b>“IMSI”</b>	means the International Mobile Subscriber Identity, being a number unique to each SIM Card;
<b>“Licence”</b>	means a non-exclusive, non-transferable, revocable right to access and use MTN Active, subject to the terms and conditions of this Agreement;
<b>“MSISDN”</b>	means the Mobile Station International Subscriber Directory Number programmed into each SIM Card supplied by the Service Provider to THE CORPORATE under this Agreement;
<b>“Network”</b>	means the public wireless telephone network operated by the Operator and through which the Network Services are made available by the Service Provider to its Customers;
<b>“Network Services”</b>	means those GSM telecommunications services made available, from time to time, by the Service Provider to its Customers via the Network,

pursuant to the conclusion of the CNSA or an End User Agreement;

**“Operator”**

means Mobile Telephone Networks (Proprietary) Limited, Registration Number **1993/001436/07**;

**“MSISDN and PIN”**

means the characters to be used by a respective User, unique and confidential to such User, in order to gain access to MTN Active;

**"PIN"**

means a Personal Identification Number, being a number which is used to identify and verify the identity of an individual in order for that individual to access MTN Active and which is unique to that individual for this purpose;

**“Subscriber Agreement”**

means an agreement in the standard form provided by the Service Provider, from time to time, recording the respective rights and obligations of the Service Provider and its Customers and, *inter alia*, the terms and conditions upon which Network Services will be made available by the Service Provider to its Customers;

**"Technical Infrastructure"**

means the information technology and telecommunications infrastructure and systems utilised by MTN for purposes of its businesses and operations and the MTN Active Website, including (without limitation) the computer networks, hardware, software, middleware, firmware, databases, terminals and components comprising this information technology and telecommunications infrastructure and its configuration;

**“Terms of Use”**

means such documents and materials (whether in electronic form or otherwise) generated by the Service Provider, from time to time, which set out, *inter alia*, further terms and conditions

governing the use of MTN Active; standards required of the CORPORATE in performing its obligations in terms of this Agreement; as well as procedures to be complied with by the CORPORATE, including (without any limitation) standards and procedures relating to issues relevant to the relationship between the CORPORATE and MTN and/or the use of MTN Active;

**"MTN Active"**

means the facility known as "MTN Active" which is made available by way of the MTN Active Website and maintained by MTN whereby the CORPORATE will have direct access to certain of MTN's electronic and administrative systems by means of the Internet, and any other electronic device determined by MTN from time to time, for the purposes of administering certain aspects of the relationship between MTN and THE CORPORATE arising from the CNSA and performing various transactions related thereto;

**"MTN Active Website"**

means the website through which MTN Active is accessible, with the URL: [www.mtnsp.co.za](http://www.mtnsp.co.za) and/or such other URLs or domain names designated by MTN for this purpose from time to time;

**"SIM Card"**

means a Subscriber Identification Module (incorporating an ICC, IMSI and an MSISDN), which, when activated by the Service Provider enables access by a Customer to the Network Services when used in conjunction with compatible Terminal Equipment;

**"Sub Licence"**

means the agreement between the Service Provider and the Operator, in terms of which the Service Provider is appointed to supply Network Services and to administer the billing of a Customer's utilisation of the Network Services;

**“Terminal Equipment”** means a GSM terminal and its accessories which, when connected via a GSM radio link to the Network, may be used by a Customer to send and/or receive messages which are to be or have been conveyed by means of the Network, all of which have been duly licensed by the Independent Communications Authority of South Africa in accordance with the provisions of the Electronic Communications Act, 36 of 2005;

**“User”** means the CORPORATE, duly licensed by MTN to use MTN Active pursuant to this Agreement, and subject to the terms hereof;

**“V.A.T”** means Value Added Tax levied in terms of the Value Added Tax Act, 1991, as amended, from time to time, by the South African Revenue Services.

- 2.2 Should there be any conflict between this Agreement and the provisions of the CNSA, the provisions of the CNSA will prevail.
- 2.3 Clause headings shall not be used in the interpretation of this Agreement and words and phrases, which are defined, shall bear the meaning assigned to them, unless the context indicates the contrary.
- 2.4 Unless the context clearly requires otherwise, words referring to:
- 2.4.1 one gender includes a reference to the other genders;
  - 2.4.2 the singular includes the plural and vice versa;
  - 2.4.3 natural persons include artificial persons and vice versa.
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on the parties, notwithstanding that it is only in the definition clause, effect shall be given to it, as if it were a substantive provision in the body of this Agreement.

### **3. Term**

This Agreement shall be deemed to have commenced on the **Effective Date** as defined and shall continue indefinitely until terminated in accordance with the further provisions of this Agreement, alternatively until the termination of the CNSA.

### **4. Grant of licence**

Subject to the further provisions of this Agreement, MTN hereby grants the CORPORATE a non-exclusive, non-transferable and revocable licence to access and use MTN Active for purposes of managing certain aspects of its dealings with MTN under this Agreement and under the CNSA, the nature and extent of which shall be determined solely by MTN in its discretion provided that in exercising its discretion, MTN does not act unreasonably.

### **5. Use of MTN Active and the MTN Active Website**

5.1 The CORPORATE shall be permitted to use MTN Active for purposes of managing certain aspects of its dealings with MTN under the CNSA and to the extent determined solely by MTN in its discretion, as set out on the MTN Active Website.

5.2 MTN reserves the right, at any time and without notice to the CORPORATE, to amend or vary or revoke the rights of use of, or access to, MTN Active and the MTN Active Website by the CORPORATE, the Corporate Administrators or the Corporate Super Administrator.

5.3 The CORPORATE agrees to use MTN Active and the MTN Active Website on the terms of this Agreement and the Terms of Use, as generated and amended by the Service Provider from time to time.

### **6. MSISDN and PIN**

6.1 The Corporate Super Administrator will, on behalf of THE CORPORATE, allocate an MSISDN with either an 083 or 073 prefix and MTN shall issue the Corporate Super Administrator with a PIN, provided that the Corporate Super Administrator complies with the procedures designated by MTN for this purpose. Such MSISDN and PIN, when used in conjunction with one another shall enable THE CORPORATE to gain access to MTN



Active. The Corporate Super Administrator shall keep the MSISDN and PIN secret and confidential and shall only make use of the MSISDN and PIN in order to use MTN Active on behalf of THE CORPORATE and/or the Employees. The Corporate Super Administrator may, in its discretion, create a number of other Corporate Administrators with their own applicable MSISDNs and PINs, provided that the Corporate Super Administrator ensures that each Corporate Administrator complies with the procedures designated by MTN for this purpose. THE CORPORATE shall procure that its Corporate Administrators keep their MSISDN's and PIN's secret and confidential.

- 6.2 The CORPORATE shall be responsible and wholly liable for the acts and omissions of the Corporate Administrators, the Corporate Super Administrator and the Employees, including (without limitation) for the use or misuse by the Corporate Administrators and the Corporate Super Administrators of their MSISDNs and PINs. The CORPORATE specifically indemnifies MTN for any claim, liability, damage or loss arising as a result of the use or misuse of such MSISDNs or PINs, provided that MTN shall not be indemnified where any claim, liability, damage or loss can be attributed to an act of gross negligence and/or omission on the part of MTN.
- 6.3 The Corporate Administrators and the Corporate Super Administrator shall immediately notify MTN in writing should the secrecy or confidentiality of any of their MSISDN's or PIN's be compromised or should such MSISDNs or PIN' be disclosed to any unauthorised person.
- 6.4 Notwithstanding any provision in this Agreement to the contrary, neither Party shall be liable to the other Party for any indirect or consequential loss or damage arising from or in respect of this Agreement

## **7. Corporate's additional obligations**

- 7.1 The CORPORATE shall:
- 7.1.1 ensure that all information provided to MTN is accurate in all material respects;
  - 7.1.2 ensure that all individuals that it permits to use MTN Active are duly authorised to do so and are Corporate Administrators or the Corporate Super Administrator;
  - 7.1.3 perform all its obligations in terms of the Agreement with due diligence and reasonable skill and care;

- 7.1.4 provide MTN with all reasonable assistance in incorporating any special needs that are applicable to IS for the purpose of designing, developing, enhancing or modifying the MTN Active facility and/or the MTN Active Website;
- 7.1.5 comply with such Terms of Use of which MTN may notify the CORPORATE from time to time, or, which may be displayed on or accessible through, the MTN Active Website from time to time. Such Terms of Use shall be deemed to form part of this Agreement. In the event of any discrepancy between the provisions of this Agreement and the Terms of Use, the provisions of this Agreement shall prevail. MTN shall be entitled, without further notice to THE CORPORATE, to vary the contents of any Terms of Use from time to time;
- 7.1.6 ensure that the Corporate Administrators and the Corporate Super Administrator comply with the provisions of clauses 7.1.1 to 7.1.5, which clauses shall be deemed to apply mutatis mutandis to the Corporate Administrators and the Corporate Super Administrator.

## **8. Regulatory Requirements**

THE CORPORATE warrants that, in addition to its obligations under the CNSA, it will comply with the requirements of any law enforcement agency, regulatory authority and with all laws, rules and regulations, which may be relevant to the provision of Network Services, MTN Active and the MTN Active Website.

## **9. Technical systems**

- 9.1 The CORPORATE undertakes that, to the extent that this is reasonably required by MTN, MTN shall be granted access to the CORPORATE's Technology for the purpose of making MTN Active available to the CORPORATE and monitoring the CORPORATE's compliance with its obligations under this Agreement. In this regard, THE CORPORATE shall also provide MTN with all assistance and information reasonably required by it.
- 9.2 The CORPORATE warrants and undertakes that it shall use its reasonable endeavours, which shall be on a par with acceptable industry standards, to ensure that neither the CORPORATE's Technology nor any content contained in or transmitted through the CORPORATE's Technology shall corrupt, compromise or jeopardise the operation of MTN Active, the MTN Active Website or the Technical Infrastructure.

- 9.3 The CORPORATE specifically indemnifies MTN for any claim, liability, damage or loss arising as a result of operation, functionality, content or appearance of MTN Active, the MTN Active Website or the Technical Infrastructure being corrupted, compromised or jeopardised, in any manner whatsoever, by the CORPORATE's Technology nor any content or data contained in or transmitted through the CORPORATE's Technology provided that such indemnity shall only be available to MTN where it can be shown that the CORPORATE failed to use its reasonable endeavours to avoid corrupting, compromising or jeopardising the operation of MTN Active, the MTN Active Website or the Technical Infrastructure.

## **10. Restrictions on use**

- 10.1 The CORPORATE may not:

- 10.1.1 copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure;
- 10.1.2 attempt to copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure;
- 10.1.3 permit any person or entity, other than MTN or MTN's agent duly authorised in writing, to attempt to copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure.
- 10.1.4 use the MTN Active Website for purposes other than those referred to in this Agreement or permitted by MTN.

## **11. Exclusion of warranties and representations**

- 11.1 Due to the nature of the Internet and the inherent difficulties associated with the transmission, exchange and storage of electronic information, MTN does not make any representations nor does it give any warranty or guarantee of any nature whatsoever in respect of MTN Active, the MTN Active Website, the Technical Infrastructure, or their suitability for any purpose, whether that purpose is notified to MTN or not. Without derogating from the generality of the foregoing, MTN does not warrant or guarantee that MTN Active or the MTN Active Website will be operational and available at any particular time during a certain period, and the CORPORATE acknowledges that there are various

factors that may cause MTN Active or the MTN Active Website to be unavailable. Without limitation, MTN does not guarantee that the information transmitted by and/or available to the CORPORATE by way of MTN Active or the MTN Active Website:

11.1.1 will be preserved or sustained in its entirety;

11.1.2 will be suitable for any purpose, including but not limited to a purpose for which THE CORPORATE intends to utilise the MTN Active or the MTN Active Website;

11.1.3 will be free of inaccuracies, errors, defects, bugs or viruses of any kind, and MTN assumes no liability, responsibility or obligations in regard to any of the foregoing exclusions.

## **12. Content and functionality of MTN Active and the MTN Active Website**

12.1 The CORPORATE acknowledges that the content and functionality of MTN Active or the MTN Active Website may be changed by MTN. Such material changes to the content and functionality must be preceded by no less than 45 (forty-five) prior written notice to CORPORATE by MTN, or earlier where agreed to by the parties.

12.2 MTN shall not be liable for direct, indirect, consequential or special loss or damage due to errors, inaccuracies or deficiencies in the content or functionality of MTN Active or the MTN Active Website. MTN makes no representations or warranties, either express or implied, as to the accuracy, completeness or reliability of information provided and shall not be bound in any manner by such information.

12.3 Notwithstanding anything to the contrary contained in this Agreement, MTN reserves the right in its absolute discretion and after the receipt by MTN of any complaint from any governmental department, regulator, authority, organisation or any other third party that any aspect of MTN Active or the MTN Active Website is unlawful or contains information that infringes a third party's rights, to immediately modify MTN Active or the MTN Active Website and/or remove the offending information or any portion thereof from MTN Active or the MTN Active Website.

12.4 In order to conduct maintenance, repairs and/or improvements on MTN Active and/or the MTN Active Website and/or the Technical Infrastructure, the provision of MTN Active or the MTN Active Website may be suspended from time to time and MTN undertakes to notify users whenever reasonably possible, and all liability on the part of MTN for any loss or damage of whatsoever nature and/or howsoever arising thereby incurred or for

any costs, claims or demands of any nature arising therefrom, is excluded, and the provisions of clause 14.1 shall apply, mutatis mutandis to such exclusion.

### **13. Intellectual Property Rights**

- 13.1 Subject to the rights of a third party, all intellectual property and proprietary rights, including (without limitation) copyright, patent and trade marks, whether registered or unregistered, relating in any manner to MTN, MTN Active or the MTN Active Website ("**Intellectual Property**"), shall vest in MTN. In no event will the CORPORATE acquire any right, title or interest in the Intellectual Property unless expressly provided otherwise in this Agreement.
- 13.2 The CORPORATE shall have no right to use any trademark, logo, name, domain name or design of MTN or of the Operator or any other Intellectual Property, other than in accordance with the prior written instructions of MTN or of the Operator (as the case may be).
- 13.3 The CORPORATE undertakes not, while this Agreement is in force or at any time thereafter, to challenge the rights of MTN in the Intellectual Property, or the validity of these rights, nor to assist any third party directly or indirectly to do so.
- 13.4 If the CORPORATE becomes aware of any infringement of any of MTN's rights in the Intellectual Property, or any claim or legal proceedings which may in any way affect any of such rights, the CORPORATE shall immediately notify MTN in writing and provide MTN with all details of such infringement, claim or legal proceeding known to the CORPORATE. the CORPORATE undertakes to render all reasonable assistance requested by MTN in investigating such infringement, claim or legal proceedings and in any legal proceedings instituted by MTN arising from such infringement.
- 13.5 MTN shall have no right to use any trade mark, logo, name, domain name or design of the Customer or its Affiliates or any other intellectual property, other than in accordance with the prior written consent of the Customer or its Affiliates (as the case may be).

### **14. Indemnity**

- 14.1 Except as otherwise expressly provided herein to the contrary, MTN shall not be liable to THE CORPORATE or any third party for any claim, liability, loss or damage of

whatsoever nature and/or howsoever arising from the use of MTN Active or the MTN Active Website or this Agreement (including consequential or incidental loss or damage such as, without limitation, loss to property or of profit, business, goodwill, revenue or anticipated savings) and the CORPORATE hereby indemnifies MTN against such claims, liabilities, losses or damages, save for damage or loss caused by wilful misconduct and/or gross negligence on the part of MTN.

14.2 The CORPORATE shall have no claim or right against MTN in respect of or arising out of MTN Active, the MTN Active Website or the use, or failure thereof or any defect therein or damage caused thereby.

14.3 Without derogating from the generality of clauses 14.1 and 14.2, MTN shall not be liable for any claim, liability, damage or loss arising from the loss of any of the CORPORATE's information, the loss or corruption of any data or the incompatibility of any of the CORPORATE's Technology with that of the Technical Infrastructure, save for damage or loss caused by wilful misconduct and/or gross negligence on the part of MTN.

## **15. Force Majeure**

Subject to clause 14.3, MTN shall not be liable for any failure to perform any obligation under the Agreement, any incomplete transactions, interruptions in the availability of the MTN Active Website and/or MTN Active or for any damage that is incurred due to circumstances beyond the reasonable control of MTN, such as (without limitation) new legislation or regulations or unforeseeable actions by local or foreign authorities, acts of nature, fire, flood, abnormal weather conditions, war, military drafts, sabotage, labour disputes (strike, blockade, boycott, lock-out, etc.), currency restrictions, interruptions, malfunctions or delays in telecommunications, computers (hardware or software) or other means of communication.

## **16. Confidentiality**

16.1 Each Party acknowledges that the unauthorised disclosure of the other Party's confidential information may give rise to substantial damage to the other Party.

16.2 Each Party undertakes that:

16.2.1 any confidential information of the other Party in its possession or under its control will be maintained under conditions of strict confidentiality;

- 16.2.2 confidential information of the other Party will be made available to only those of its officials, employees, sub-contractors and agents who need to know that confidential information for the purpose of performing its obligations under this Agreement;
  - 16.2.3 it will ensure that those officials, employees, sub-contractors and agents are aware of, and agree to be bound by, the provisions of this clause 16;
  - 16.2.4 it will not disclose any confidential information of the other Party to any other person or entity without the prior written consent of the other Party; and
  - 16.2.5 other than to perform its obligations under this Agreement, it will not use or copy any of the other Party's confidential information for any purpose without the prior written consent of the other Party.
- 16.3 Each Party undertakes that if it becomes aware that there has been, as a result of or in the course of the performance of this Agreement, unauthorised disclosure or use of the confidential information of the other Party, it shall promptly bring the matter to the attention of the other Party in writing.
- 16.4 the Corporate may disclose in whole or any part of the confidential information in the event that:
- 16.4.1 the Corporate is required to do so in terms of the provisions of the South African legislation referred to as the Promotion of Access to Information Act, No. 2 of 2000, as amended ("the Act") or any other law or by order of any court or tribunal of competent jurisdiction, provided that before making any disclosure the disclosing Party will be given a written request by the receiving Party of the reasons for such disclosure and a reasonable opportunity to consider such reasons.
- 16.5 Subject to the provisions of clause 16.6, the Parties agree that the disclosure of confidential information by the receiving Party otherwise than in accordance with the provisions of this Agreement shall entitle the disclosing Party to institute action for breach of confidence against the receiving Party as envisaged by section 65 of the Act, as amended.
- 16.6 The Parties acknowledge that the provisions of clause 16.5 shall not be construed in such a manner as to exclude the applicability of any other ground of refusal contained in

the Act which may be applicable in the event that the receiving Party receives a request for the whole or any part of the information in terms of the Act.

16.7 The provisions of this clause shall survive the termination or expiration of this Agreement for any reason.

## 17. Termination

17.1 This Agreement may be terminated by MTN if:

17.1.1 The CORPORATE or its Employees, Corporate Administrator(s) or Corporate Super Administrator commits a breach of clause 5, clause 6, clause 7, clause 8, clause 9, clause 10, clause 13 or clause 16, immediately upon notice to the CORPORATE;

17.1.2 The CORPORATE commits a breach of any other terms and conditions of this Agreement and fails to remedy such breach to the satisfaction of the Service Provider within 7 (seven) days of receipt of a written notice from the Service Provider, specifying the nature of the breach and requiring its remedy; or

17.1.3 The CORPORATE commits a second or subsequent breach of this Agreement after having remedied an earlier similar breach during the preceding 3 (three) months duration after written notice to do so; or

17.1.4 The Sub Licence is terminated for any reason whatsoever, irrespective of whether such cancellation occurs by virtue of the fault of the Service Provider or not, immediately upon notice to the CORPORATE;

17.1.5 The CORPORATE is placed under provisional or final liquidation or under provisional or final receivership or judicial management, or if The CORPORATE becomes insolvent or compromises or attempts to compromise with its creditors, or as a result of the death of any such person, body or entity; or

17.1.5.1 it gives The CORPORATE 30 (thirty) days written notice of termination; or



17.1.5.2 if MTN is required to terminate the agreement by law, or in order to comply with any law, immediately upon notice to the CORPORATE;  
or

17.1.5.3 the CNSA terminates, immediately upon notice to the CORPORATE.

17.1.6 This Agreement may be terminated, for no cause, by the CORPORATE or on 30 (thirty) days written notice to MTN

## 18. Consequences of Termination

18.1 Any termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law, and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Agreement, which is expressly or by implication intended to come into or continue in force after that termination.

18.2 Upon termination of this Agreement, the CORPORATE shall no longer have the right to use and shall immediately cease using MTN Active and the MTN Active Website, and the CORPORATE hereby authorises MTN, in its discretion, to cease providing access to MTN Active and the MTN Active website to the CORPORATE in such event.

## 19. Miscellaneous Matters

19.1 Address:

Any written notice in connection with this agreement may be addressed:

19.1.1 in the case of **MTN** to

Postal address: Private Bag 9955

Cresta

2118

Physical address: MTN Innovation Centre

216 14<sup>th</sup> Avenue

Fairland

Roodepoort  
Gauteng

telefax no:(011) 911 5549

and shall be marked for the attention of the Chief Operating Officer.

19.1.2 in the case of the Company to

Postal address

Physical address:

telefax no:

and shall be marked for the attention of:

19.1.3 Notices given to the party's domicilium citandi et executandi shall be deemed to have been duly given:

19.1.3.1 14 days after posting, if posted by registered post to the party's postal address;

19.1.3.2 on delivery, if delivered to the party's physical address;

19.1.3.3 on despatch, if sent to the party's then fax number.

19.1.4 A party may change that party's address for this purpose, by notice in writing to the other party, provided that the new address includes a physical address in the Republic of South Africa.

## 19.2 Entire Agreement

Subject to clause 2.2, this Agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the Agreement and the parties waive the right to rely on any alleged express provision not contained in this Agreement.

## 19.3 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.

#### 19.4 Variation, Cancellation and Waiver

Subject to clause 5 and clause 12, MTN's rights to stipulate and amend the Terms of Use from time to time, no contract varying, adding to, deleting from or cancelling 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 parties. This Agreement shall be executed by requiring the parties to sign two identical Agreements, both of which shall serve as originals.

#### 19.5 Indulgences

If either party at any time breaches any of that party's obligations under this Agreement, the other party ("**the aggrieved party**"):

19.5.1 may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. (If the aggrieved party is willing to relinquish that right the aggrieved party will on request do so in writing.) In particular, acceptance of late performance shall for a reasonable period after performance be provisional only, and the aggrieved party may still exercise that right during that period;

19.5.2 shall not be estopped (ie prevented) from exercising the aggrieved party's rights arising out of that breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

#### 19.6 Assignment

THE parties may not cede or assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

#### 19.7 Dispute Resolution

19.7.1 If any dispute arises between the parties in connection with this Agreement or its subject matter, which cannot be resolved amicably by the parties, the parties and their legal representatives will promptly meet to consider whether there is a possibility of resolution by mediation or conciliation;

19.7.2 If both parties agree to refer the matter for conciliation, the parties shall endeavour to agree on the institution under whose auspice such conciliation shall be conducted;

19.7.3 If both parties cannot agree to refer the dispute to mediation or conciliation, the parties will promptly consider whether to refer the dispute to arbitration;

19.7.4 If the parties agree to refer the dispute to arbitration, the rules of arbitration will be the rules of the South African Association of Arbitrators in force at the time of referral of the dispute to arbitration and the arbitration will be conducted in accordance with the provisions of the Arbitration Act, No. 42 of 1965;

19.7.5 If the parties do not agree to refer the dispute to arbitration, they will proceed to litigation in the courts;

19.7.6 Nothing in this clause shall prevent any party from obtaining urgent relief in the courts pending the outcome of or pending the consideration of alternative dispute resolution procedures.

#### 19.8 Severance

If any provision of this Agreement is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

#### 19.9 Governing law and Jurisdiction

This Agreement shall be governed by, and construed in all respects in accordance with the laws of the Republic of South Africa. The parties hereby agree to submit to the non-exclusive jurisdiction of the South Gauteng High Court.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2018.

**Witness:** \_\_\_\_\_ for **MTN**  
.....

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2018.

**Witness:** \_\_\_\_\_ for: **The Corporate**  
.....

Name: .....  
Who by signing warrants that he/she  
is duly authorised to sign on behalf  
of the CORPORATE.