

AGREEMENT for the access to and use of MTN Active

between

MTN SERVICE PROVIDER (PTY) LTD

(Registration number 1993/002648/07)

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

and

_____)
(Registration number _____)

("the Dealer")

1. Introduction

- 1.1 MTN SP and the Dealer have entered into an agreement in terms of which the Dealer was appointed to market, promote and facilitate distribution by MTN SP of Network Services and Stock in the Territory ("**the Dealer Agreement**").
- 1.2 MTN SP has developed a facility (known to the parties as "**MTN Active**") whereby the Dealer will have direct access to certain of MTN SP's electronic and administrative systems by means of the Internet. Through the use of MTN Active the Dealer will be able, *inter alia*, to perform certain of its obligations under the Dealer Agreement.
- 1.3 This Agreement records the terms and conditions under which MTN SP will grant the Dealer access to MTN Active and under which the Dealer will be entitled to use MTN Active.

2. Definitions and interpretation

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

"Agreement" means this Agreement and all Annexures hereto;

"Confidential Information" means technical, commercial, financial, scientific, marketing, or business information, in whatever form, relating to MTN SP, the Dealer, MTN Active or the MTN Active Website :

- i. which is not in the public domain (for a reason other than a breach of this or previous agreements between the parties); and
- ii. to which the Party being given or receiving such information would not be privy other than by virtue of this or previous agreements between the Parties.

"Customer" means a party to whom the Service Provider has agreed to provide Network Services, pursuant to the conclusion between the Service Provider and such party of an End User Agreement or the purchase of a Pre Paid Kit and/or Pre Paid Debit Card;

- “Dealer Agreement” means the agreement concluded between the Service Provider and the Dealer, dated [insert date], recording the respective rights and obligations of the Service Provider and the Dealer and, *inter alia*, the terms and conditions upon which the Network Services and ancillary services and/or benefits will be made available by the Service Provider to the Dealer;
- "Dealer's Technology" means the telecommunications and information technology network and facilities of the Dealer and/or used by the Dealer to access and use MTN Active, the computer networks, hardware, software, firmware, databases, terminals and components comprising such telecommunications and information technology network and facilities;
- “Dealer Super Administrator” means an employee, agent or representative of the Dealer, nominated by the Dealer as its primary contact person for MTN SP in relation to this Agreement and who shall supervise the Authorised Employee, and be primarily responsible for procuring that the obligations of the Dealer are performed. Such person shall be deemed to be authorised to act on behalf of the Dealer.
- "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;
- “End User 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;
- “GSM” means Global System for Mobile Communications as defined in the European Technical Standards Institute structure of specifications;

“ICC”	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;
“IMSI”	means the International Mobile Subscriber Identity, being a number unique to each SIM Card;
“MSISDN”	means the Mobile Station International Subscriber Directory Number programmed into each SIM Card supplied by the Service Provider to the Dealer under this Agreement;
“Network”	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;
“Network Services”	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 an End User Agreement or the purchase of a Pre Paid Kit or Pre Paid Debit Card;
“Operator”	means Mobile Telephone Networks (Proprietary) Limited, Registration number;
"Pre Paid Kit"	means: <ul style="list-style-type: none">(i) a "Handset Kit" being an item of Terminal Equipment packaged in a sealed kit together with, inter alia, a special SIM Card for use in respect of the Operators pre-paid tariff; and(ii) a "SIM Pack", being a special SIM Card packaged in a sealed kit, but without an item of Terminal Equipment for use in respect of the Operators pre-paid tariff;
"Pre Paid Debit Card"	means a disposable debit card with a concealed card activation number which is purchased by the Customer from the Distribution Outlets and which provides the

means, when activated on the Network, to transfer a pre-determined credit value as displayed on the debit card to that Customer's prepaid account, enabling that Customer to make or receive calls on the Network until the credit value is depleted;

"PIN AND MSISDN" means the characters to be used by a respective User, unique and confidential to such User, to be used by 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;

"MTN Active" means the facility known as "MTN Active" which is made available by way of the MTN Active Website and maintained by MTN SP whereby the Dealer will have direct access to certain of MTN SP's electronic and administrative systems by means of the Internet and any other electronic device determined by MTN SP from time to time, for the purposes of administering certain aspects of the relationship between MTN SP and the Dealer arising from the Dealer Agreement 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 and/or such other URLs or domain names designated by MTN SP 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;

"Stock" means the stock of Terminal Equipment, SIM Cards, Pre Paid Kits and/or Pre Paid Debit Cards and any other of

the Service Provider's products which the Dealer is authorised to sell at the Dealer's Store;

- "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 Director General Communication of the Territory;
- "Technical Infrastructure" means the information technology and telecommunications infrastructure and systems utilised by MTN SP of its businesses and operations and the MTN Active Website, including (without limitation) the computer networks, hardware, software, middleware, firmware, databases, terminal and components comprising this information technology and telecommunications infrastructure and its configuration;
- "Terms of use" means 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 Dealer in performing its obligations in terms of this Agreement, as well as procedures to be complied with by the Dealer, including (without any limitation) standards and procedures relating to issues relevant to the relationship between the Dealer and MTN SP and/or the use of MTN Active;
- "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 Dealer Agreement, the provisions of the Dealer Agreement 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** and shall continue thereafter until terminated in accordance with the further provisions of this Agreement.

4. **Grant of licence**

Subject to the further provisions of this Agreement, MTN SP hereby grants the Dealer a non-exclusive, non-transferable and revocable licence to access and use MTN Active for purposes of performing its obligations under this Agreement and under the Dealer Agreement.

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

- 5.1 The Dealer shall be required to use MTN Active for purposes of performing all its obligations under the Dealer Agreement signed with MTN SP. At all times this agreement shall be read together with the said Dealer Agreement.
- 5.2 MTN SP reserves the right, at any time and without notice to the Dealer, to amend or vary or revoke the rights of use of, or access to, MTN Active and

MTN Active Website by the Dealer, the Authorised Employee or the Dealer Super Administrator.

- 5.3 The Dealer agrees to use MTN Active and the MTN Active Website on the terms of this Agreement and the Terms of Use, as amended from time to time.

6. **Procedures**

- 6.1 In performing its obligations under the Dealer Agreement through the use of MTN Active, the Dealer shall be required to comply with the procedures and directions detailed in User manual available on request from MTN SP.
- 6.2 MTN SP reserves the right, at any time, to vary the procedures and directions detailed in the said User Manual, on written notice to the Dealer.

7. **MSISDN and PIN**

- 7.1 The Dealer will be provided with a password and PIN to enable the Dealer to use MTN Active for purposes of complying with its obligations under this Agreement. The Dealer shall keep its password and PIN secret and confidential and shall only disclose it to Authorised Employees that require the use of the password and PIN in order to use MTN Active on behalf of the Dealer.
- 7.2 The Dealer shall be responsible and wholly liable for the acts and omissions of the Authorised Employee and the Dealer's Super Administrator including the use or misuse of their MSISDN or PIN. The Dealer specifically indemnifies MTN SP for any claim, liability, damage or loss arising as a result of the use or misuse of such MSISDN or PIN. Authorised Employees and shall ensure that such employees keep the Dealer's password and PIN secret and confidential.
- 7.3 The Authorised Employee and the Dealer Super Administrator shall immediately notify MTN SP in writing should the secrecy or confidentiality of the Dealer's MSISDN or PIN be compromised or should the Dealer's MSISDN or PIN be disclosed to any unauthorised person.
- 7.4 MTN SP is not responsible, in any manner, for the use or misuse of the Dealer's password and PIN. The Dealer specifically indemnifies MTN SP for

any claim, liability, damage or loss arising as a result of the use or misuse of the Dealer's password or PIN.

8. Dealer's additional obligations

8.1 The Dealer shall:

8.1.1 ensure that all information provided to MTN SP is accurate in all material respects;

8.1.2 ensure that all its employees that may use MTN Active are properly trained;

8.1.3 perform all its obligations in terms of the Agreement with due diligence and reasonable skill and care;

8.1.4 provide MTN SP with all assistance reasonably required by MTN SP for the purpose of designing, developing, enhancing or modifying the MTN Active and/or the MTN Active Website.

8.1.5 undertakes to take reasonable care in ensuring that the Customers PIN/Password is not misused by the Authorised employees and understands that MTN SP does not take responsibility for the misuse thereof;

- 8.1.6 ensure that any telephonic request made by a Customer to a Dealer, shall be ratified by a fax confirming the said request and the Dealer undertakes to provide the Service Provider, upon request, with a certified copy of the Customers Identity Document, written proof of such request and a duly signed Power of Attorney detailing the Customer's PIN;
- 8.1.7 comply with such Terms Of Use of which MTN SP may notify the Dealer 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 SP shall be entitled, without further notice to the Dealer, to vary the contents of any Terms of Use from time to time;
- 8.1.8 ensure that the Authorised Employees and Dealer Super Administrator comply with the provisions of clauses 8.1.1 to 8.1.7, which clauses shall be deemed to apply *mutatis mutandis* to the Authorised Employee and Dealer Super Administrator.

9. Regulatory Requirements

The Dealer warrants that, in addition to its obligations under the Dealer Agreement, 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 MTN Active and the MTN Active Website.

10. Technical systems

- 10.1 The Dealer undertakes that, to the extent that this is reasonably required by MTN SP, MTN SP shall be granted access to the Dealer's Technology for the purpose of making MTN Active available to the Dealer and monitoring the Dealer's compliance with its obligations under this Agreement. In this regard, the Dealer shall also provide MTN SP with all assistance and information reasonably required by it.
- 10.2 The Dealer warrants and undertakes that neither the Dealer's Technology nor any content contained in or transmitted through the Dealer's Technology shall corrupt, compromise or jeopardise the operation of MTN Active, the MTN Active Website or the Technical Infrastructure.

- 10.3 The Dealer specifically indemnifies MTN SP 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 Dealer's Technology nor any content or data contained in or transmitted through the Dealer's Technology.

11. **Restrictions on use**

The Dealer may not:

- 11.1 copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure;
- 11.2 attempt to copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure;
- 11.3 permit any person or entity, other than MTN SP or MTN SP's agent 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;
- 11.4 use the MTN Active Website for purposes other than those referred to in this Agreement or permitted by MTN SP.

12. **Exclusion of warranties and representations**

- 12.1 Due to the nature of the Internet and the inherent difficulties associated with the transmission, exchange and storage of electronic information, MTN SP 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 SP or not. Without derogating from the generality of the foregoing, MTN SP 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 Dealer acknowledges that there are various factors that may cause MTN Active or the MTN Active Website to be unavailable. Without limitation, MTN SP does not guarantee that the information transmitted by and/or available to the Dealer by way of MTN Active or the MTN Active Website:

- 12.1.1 will be preserved or sustained in its entirety;
- 12.1.2 will be suitable for any purpose, including but not limited to a purpose for which the Dealer intends to utilise the MTN Active or the MTN Active Website;
- 12.1.3 will be free of inaccuracies, errors, defects, bugs or viruses of any kind, and MTN SP assumes no liability, responsibility or obligations in regard to any of the foregoing exclusions.

13. **Content and functionality of MTN Active and the MTN Active Website**

- 13.1 The Dealer acknowledges that the content and functionality of MTN Active or the MTN Active Website may be changed by MTN SP in its sole discretion and at any time.
- 13.2 MTN SP 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 SP 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.
- 13.3 Notwithstanding anything to the contrary contained in this Agreement, MTN SP reserves the right in its absolute discretion and after the receipt by MTN SP 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.
- 13.4 In order to conduct maintenance, repair and/or improvement 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 SP undertakes to notify users whenever reasonably possible, and all liability on the part of MTN SP 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 15.1 shall apply, *mutatis mutandis* to such exclusion.

14. Intellectual Property Rights

- 14.1 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 SP, MTN Active or the MTN Active Website ("**Intellectual Property**"), shall vest in MTN SP. In no event will the Dealer acquire any right, title or interest in the Intellectual Property unless expressly provided otherwise in this Agreement.
- 14.2 The Dealer shall have no right to use any trade marks, logo, name, domain name or design of MTN SP or of the Operator or any other Intellectual Property, other than in accordance with the prior written instructions of MTN SP or of the Operator (as the case may be).
- 14.3 The Dealer undertakes not, while this Agreement is in force or at any time thereafter, to challenge the rights of MTN SP in the Intellectual Property, or the validity of these rights, nor to assist any third party directly or indirectly to do so.
- 14.4 If the Dealer becomes aware of any infringement of any of MTN SP's rights in the Intellectual Property, or any claim or legal proceedings which may in any way affect any of such rights, the Dealer shall immediately notify MTN SP in writing and provide MTN SP with all details of such infringement, claim or legal proceeding known to the Dealer. The Dealer undertakes to render all reasonable assistance requested by MTN SP in investigating such infringement, claim or legal proceedings and in any legal proceedings instituted by MTN SP arising from such infringement.

15. Indemnity

- 15.1 Except as otherwise expressly provided herein to the contrary, MTN SP shall not be liable to the Dealer 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 Dealer hereby indemnifies MTN SP against such claims, liabilities, losses or damages.

- 15.2 The Dealer shall have no claim or right against MTN SP 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.
- 15.3 Without derogating from the generality of clause 14.1, MTN SP shall not be liable for any damage or loss arising from the loss of any of the Dealer's information, the loss or corruption of any data or the incompatibility of any of the Dealer's Technology with that of the Technical Infrastructure, save for damage or loss caused by wilful misconduct or gross negligence by MTN SP.

16. **Force Majeure**

Subject to clause 15, MTN SP 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 SP, 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.

17. **Confidentiality**

- 17.1 Each Party acknowledges that the unauthorised disclosure of the other Party's confidential information may give rise to substantial damage to the other Party.
- 17.2 Each Party undertakes that:
- 17.2.1 any confidential information of the other Party in its possession or under its control will be maintained under conditions of strict confidentiality;
- 17.2.2 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;

- 17.2.3 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 17 as if they were the Dealer;
- 17.2.4 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
- 17.2.5 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.
- 17.3 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.
- 17.4 For the avoidance of doubt, no provision of this Agreement should be construed in such a way that a Party disclosing confidential information ("**the disclosing Party**") to the other Party ("**the receiving Party**") is deemed to have granted its consent to the receiving Party to disclose the whole or any part of the confidential information in the event that:
- 17.4.1 the receiving Party receives a request for the whole or any part of the confidential information 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
- 17.4.2 the disclosing Party has previously disclosed any of its confidential information in terms of the provisions of the Act or any other law or court order.
- 17.5 Subject to the provisions of clause 17.6, 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.
- 17.6 The Parties acknowledge that the provisions of clause 17.5 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.

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

18. Termination

This Agreement may be terminated by MTN SP if:

- 18.1 the Dealer or its employee, Authorised Employee or the Dealer Super Administrator commits a breach of any of the 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
- 18.2 the Dealer 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
- 18.3 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 Dealer;
- 18.4 there is a change in management or ownership, in whole or in part, of the Dealer or in any person, body or entity who has stood as surety for the obligations of the Dealer to the Service Provider or if such person, body or entity is placed under provisional or final liquidation or under provisional or final receivership or judicial management, or if that party 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
- 18.5 the Dealer, after the Effective Date, disposes of its business, in whole or in part, to anyone else, without the prior written consent of the Service Provider; or
- 18.6 it gives the Dealer 30 (thirty) days written notice of termination;or
- 18.6 if MTN SP is required to terminate the Agreement by law, or in order to comply with any law, immediately upon notice to the Dealer;
- 18.7 the Dealer Agreement terminates.

19. Consequences of Termination

- 19.1 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.
- 19.2 Upon termination of this Agreement, the Dealer shall no longer have the right to use and shall immediately cease using MTN Active and the MTN Active Website.

20. Miscellaneous matters

20.1 addresses

- 20.1.1 MTN SP chooses the following address to which notices may be given, and at which documents in legal proceedings may be served (ie the *domicilium citandi et executandi*), in connection with this Agreement :

MTN SP

postal address : Private Bag 9955
Sandton
2146

physical address : 3 Alice Lane
Sandown
Sandton

current fax no : (011) 301-6455

and shall be marked for the attention of General Manager:
Commercial Legal and Chief Operations Officer.

- 20.1.2 The Dealer chooses the following address to which notices may be given, and at which documents in legal proceedings may be served (ie the *domicilium citandi et executandi*), in connection with this Agreement :

postal address :

physical address :

current fax no :

and shall be marked for the attention of _____.

20.1.3 Notices given to the parties domicilium citandi et executandi shall be deemed to have been duly given :

20.1.3.1 14 days after posting, if posted by registered post to the party's postal address;

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

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

20.1.4 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.

20.2 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.

20.3 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.

20.4 variation, cancellation and waiver

Subject to clause 5,13 and 18 and MTN SP's rights to impose 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.

20.5 **indulgences**

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

20.5.1 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;

20.5.2 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.

20.6 **assignment**

The Dealer may not cede or assign its rights or obligations under this Agreement without the prior written consent of MTN SP. MTN SP shall be entitled to cede or assign its rights and obligations in this Agreement to any third party without the consent of the Dealer.

20.7 **dispute resolution**

20.7.1 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.

20.7.2 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.

- 20.7.3 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.
- 20.7.4 If the parties do not agree to refer the dispute to arbitration, they will proceed to litigation in the courts.
- 20.7.5 Nothing in this clause shall prevent any party from obtaining interdict relief in the courts pending the outcome of or pending the consideration of alternative dispute resolution procedures.

20.8 **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.

20.9 **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.

Signed at _____ on _____ 2004.

Witness:

1.-----

2.-----

3.-----

Servi-----

for **MTN Service Provider (Pty) Limited**

Signed at _____ on _____ 2004.

Witness:

for **the Dealer**

.....

.....

Name:

who by signing warrants that he/she is duly authorised to sign on behalf of the Dealer.