

## **MTN ACTIVE terms and conditions of use (Online Click Wrap Agreement)**

### **1. Introduction**

- 1.1 MTN SP and the Independent Billing principal (“IBP”)IBP have entered into an IBP Commercial Agreement in terms of which the IBP receives Network Services and certain ancillary services and benefits from MTN SP in the Territory (“the Agreement”).
- 1.2 MTN SP has developed a facility (known to the parties as “MTN Active”), which is to be rolled out in the phases as determined by MTN SP, in its discretion whereby the IBP 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 IBP will be able, inter alia, to manage certain aspects of its dealings with MTN SP under the AGREEMENT, the nature and extend of which shall be determined solely by MTN SP in its discretion.
- 1.3 These terms and conditions record the terms and conditions under which MTN SP will grant the IBP access to MTN Active and under which the IBP 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:-

“Terms and Conditions”

Means this document and all Annexures hereto;

“**AGREEMENT**”

Means the IBP Commercial Agreement concluded between the Service Provider and the IBP, recording the respective rights and obligations of the Service Provider and the IBP 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 IBP;

“**Confidential Information**”

Means technical, commercial, financial, scientific, marketing, or business information, in whatever form, relating to MTN SP, the IBP, the Customers, MTN Active or the MTN Active Website:

- i. which is not in the public domain (for a reason other than a breach other 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.

“**IBP Administrator**”

Means an employee, agent or representative of the IBP, which has been approved by the IBP, through its IBP Super Administrator, to utilise MTN Active on behalf of the IBP and who shall be deemed to be authorised to act on behalf of the Customers;

**“IBP Super Administrator”**

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

**“IBP’s Technology”**

Means the telecommunications and information technology network and facilities of the IBP and/or used by the IBP to access and use MTN Active, the computer. Networks, hardware, software, middleware, firmware, databases, terminals and components comprising such telecommunications and information technology network and facilities;

**“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, as facilitated by the IBP;

**“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;

**“License”**

means a non-exclusive, non-transferable, revocable right to access and use MTN Active, subject to the terms and conditions of this Agreement;

**“MSISDN”**

means the Mobile Station International Subscriber Directory Number programmed into each SIM Card supplied by the Service Provider to the IBP under this Agreement.

**“Network”**

means the public wireless telephone network Operated by the operator and through which the Network services are made available by end 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 the Agreement or an End User Agreement;

**“Operator”**

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

**“PIN”**

means the characters to be used by a respective Administrator or Super Administrator, unique and confidential to such Administrator, to be used in order to gain access to MTN Active for the purpose of assisting Customers with day to day queries relating to the Network Services and End User Agreement;

**“Technical Infrastructure”**

means the information technology and telecommunications infrastructure and systems utilised by MTNSP 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’

**“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 IBP 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 MTNSP from time to time, for the purposes for administering certain aspects of the relationship between MTN SP and the IBP arising from the Agreement and performing various transactions related thereto, on behalf of the Customer;

**“License”**

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 it’s 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;

**“VAT”**

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 AGREEMENT, the provisions of the AGREEMENT will prevail.
- 2.3 Clause headings shall not be used in the interpretation of this Agreement and words, 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. Grant of License**

Subject to the further provision of this Agreement, MTN SP hereby grants the IBP a non-exclusive, non-transferable and revocable license to access and use MTN Active for purposes of managing certain aspects of its dealings with MTN SP under this Agreement and under the AGREEMENT, the nature and extent of which shall be determined solely by MTN SP in its discretion.

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

- 4.1 The IBP shall be permitted to use MTN Active for purposes of managing certain aspects of its dealings with MTN SP under the AGREEMENT, to the extent determined solely by certain aspects of its dealing with MTN SP under the AGREEMENT, to the extent determined solely by MTN SP in its discretion, as set out on the MTN Active Website.
- 4.2 MTN SP reserves the right, at any time and without notice to the IBP, to amend or vary or revoke the rights of use of, or access to, MTN Active and the MTN Active Website by the IBP, the IBP Administrators or the IBP Super Administrator.
- 4.3 The IBP agrees to use MTN Active and the MTN Active Website on the terms of this Agreement and Terms of Use, as generated and amended by the Service Provider from time to time.

### **5. MSISDN and PIN**

- 5.1 The IBP Super Administrator will, on behalf of the IBP, allocate an MSISDN with either an 083 or 073 prefix and MTN SP shall issue the IBP Super Administrator with a PIN, provided that the IBP Super Administrator complies with the procedures designated by MTN SP for the purpose. Such MSISDN and PIN, when used in conjunction with one another shall enable the IBP to gain access to MTN Active. The IBP Super Administrator shall keep its MSISDN and PIN secret and confidential and shall only use of the MSISDN and PIN in order to use MTN Active on behalf of the IBP and / or the Customers. The IBP Super Administrator may, in its discretion, create a number of other IBP Administrators with their own applicable MSISDN's and PINs, provided that the IBP

Super Administrator each IBP Administrator complies with the procedures designated by MTN SP for this purpose. The IBP shall procure that its IBP Administrators keep their MSISDNs and PINs secret and confidential.

- 5.2 The IBP shall be responsible and wholly liable for the acts and omissions of the IBP Administrators, the IBP Super Administrator and the Customers, including (without limitation) for the use or misuse by the IBP Administrators and the IBP Super Administrators of their MSISDN's and PINs. The IBP specifically indemnifies MTN SP for any claim, liability, damage or loss arising as a result of the use or misuse of such MSISDNs or PINs.
- 5.3 The IBP Administrators and the IBP Super Administrators shall immediately notify MTN SP in writing should the secrecy or confidentiality of any of their MSISDNs or PINs be compromised or should such MSISDNs or PINs be disclosed to any unauthorized person.
- 5.4 The IBP shall ensure that the Customers specifically indemnify MTN SP for any claim, liability, damage, or loss arising as a result of the use or misuse of the MTN Active Website and MTN Active and any acts or omissions of the IBP, the IBP Administrator and the IBP Super Administrator.

## **6. IBP additional obligations**

- 6.1 The IBP shall:
  - 6.1.1 ensure that all information provided to MTN SP is accurate in all material aspects
  - 6.1.2 ensure that all individuals that it permits to use MTN Active are duly authorized to do so and are IBP Administrators or the IBP Super Administrator;
  - 6.1.3 perform all its obligations in terms of the Agreement with due diligence and reasonable skill and care;
  - 6.1.4 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;
  - 6.1.5 comply with such Terms of Use of which MTN SP may notify the IBP 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 IBP, to vary the contents of any Terms of Use from time to time;
  - 6.1.6 ensure the IBP Administrators and the IBP Super Administrator comply with the provisions of clauses 7.1.1 to 7.1.15, which clauses shall be deemed to apply mutatis mutandis to the IBP Administrators and the IBP Super Administrator.

## **7. Regulatory Requirements**

The IBP warrants that, in addition to its obligations under the 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 the provision of the Network Services, MTN Active and the MTN Active Website.

## **8. Technical Systems**

- 8.1 The IBP undertakes that, to the extent that this is reasonably required by MTN SP, MTN SP shall be granted access to the IBP's Technology for the purpose of making MTN Active available to the IBP and monitoring the IBP's compliance with its obligations

under this Agreement. In this regard, the IBP shall also provide MTN SP with all assistance and information reasonably required by it.

- 8.2 The IBP warrants and undertakes that neither the IBP’s Technology nor any content contained in or transmitted through the IBP’s Technology shall corrupt, compromise or jeopardise the operation of MTN Active, the MTN Active Website or the Technical Infrastructure.
- 8.3 The IBP 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 jeopardized, in any manner whatsoever, by the IBP’s Technology nor any content or data contained in or transmitted through the IBP’s Technology.

## **9. Restrictions on use**

The IBP may not:

- 9.1 copy, tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure;
- 9.2 attempt to copy, tamper with, reverse engineer, re-write and/or reengineer MTN Active, the MTN Active Website or the Technical Infrastructure
- 9.3 permit any person or entity, other than MTN SP or MTN SP’s agent duly authorized in writing, to tamper with, reverse engineer, re-write and/or re-engineer MTN Active, the MTN Active Website or the Technical Infrastructure
- 9.4 use the MTN Active Website for the purposes other than those referred to in this Agreement or permitted by MTN SP.

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

- 10.1 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, that the information transmitted by and/or available to the IBP by way of MTN Active or the MTN Active Website:
  - 10.1.1 will be preserved or sustained in its entirety;
  - 10.1.2 will be suitable for any purpose, including but not limited to a purpose for which the IBP intends to utilize the MTN Active or the MTN Active Website;
  - 10.1.3 will be free of inaccuracies, errors, bugs or viruses of any kind; and MTN SP assumes no liability, responsibility or obligations in regard to any of the foregoing exclusions.

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

- 11.1 The IBP 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.
- 11.2 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.

11.3 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, organization, 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.

11.4 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 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 14.1 shall apply mutatis mutandis to such exclusion.

## **12. Intellectual Property Rights**

12.1 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 IBP acquire any right, title or interest in the Intellectual Property unless expressly provided otherwise in this Agreement.

12.2 The IBP shall have no right to use any trade mark, 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).

12.3 The IBP undertakes no, 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.

12.4 If the IBP 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 IBP shall immediately notify MTN SP in writing and provide MTN SP with all details of such infringement, claim or legal proceeding known to the IBP. The IBP 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.

## **13. Indemnity**

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

13.2 The IBP 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.

- 13.3 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 IBP’s information, the loss or corruption of any data or the incompatibility of any of the IBP’s Technology with that of the Technical Infrastructure, save for damage or loss caused by willful misconduct or gross negligence by MTN SP.

#### **14. Force Majeure**

Subject to clause 14, 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 (strikes, blockade, boycott, lock-out etc), currency restrictions, interruptions, malfunctions or delays in telecommunications, computers (hardware or software) or other means of communication.

#### **15. Confidentiality**

- 15.1 Each Party acknowledges that the unauthorised disclosure of the other Party’s confidential information may give rise to substantial damage to the other Party.
- 15.2 Each Party undertakes that:
- 15.2.1 any confidential information of the other Party in its possession or under its control will be maintained under conditions of strict confidentiality;
- 15.2.2 confidential information of the other Party will be made available to only those of its officials, Customers, sub-contractors and agents who need to know that confidential information for the purpose of performing its obligations under this Agreement;
- 15.2.3 it will ensure that those officials, Customers, sub-contractors and agents are aware of, and agree to be bound by the provisions of this clause 16, as if they were the IBP;
- 15.2.4 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
- 15.2.5 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.
- 15.3 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.
- 15.4 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:
- 15.4.1 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
- 15.4.2 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.
- 15.5 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.

- 15.6 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 with the Act.
- 15.7 The provisions of this clause shall survive the termination or expiration of this Agreement for any reason.

## **16. Termination**

This Agreement may be terminated by MTN SP if:

- 16.1 the IBP, IBP Administrator(s) or IBP Super Administrator commits a breach of clause 5, clause 6, clause 7, clause 8, clause 9, clause 10, clause 13, clause 14 or clause 16, immediately upon notice to the IBP;
- 16.2 The IBP 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
- 16.3 The IBP 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
- 16.4 The Sub License 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 IBP;
- 16.5 There is a change in management or ownership, in whole or in part, of the IBP or in any person, body or entity who has stood as surety for the obligations of the IBP 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 death of any such person, body or entity, or
- 16.6 The IBP, 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
- 16.7 It gives the IBP 30 (thirty) days written notice of termination; or
- 16.8 If MTN SP is required to terminate the Agreement by law, or in order to comply with any law, immediately upon notice to the IBP; or
- 16.9 The AGREEMENT terminates, immediately upon written notice to the IBP

## **17. Consequences of Termination**

- 17.1 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 continuation in force of any provision of this Agreement, which is expressly or by implication intended to come into or continue in force after the termination.
- 17.2 Upon termination of this Agreement, the IBP shall no longer have the right to use and shall immediately cease using MTN Active and the MTN Active Website, and the IBP hereby authorises MTN SP, in its discretion, to cease providing access to MTN Active and the MTN Active Website to the IBP in such event.

**17.3 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.

**17.4 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.

**17.5 variation, cancellation and waiver**

Subject to clause 5, clause 12, clause 17 and MTN SP’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.

**17.6 indulgences**

If either party at any time breaches any of that party’s Obligations under this Agreement, the other party (“the aggrieved party”):

- 17.6.1 may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of a 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;
- 17.6.2 shall not be stopped (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.

**17.7 assignment**

The IBP 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 IBP.

**17.8 dispute resolution**

- 17.8.1 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.
- 17.8.2 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.
- 17.8.3 If the parties agree to refer the dispute to arbitration, the rules of arbitration will be the rules of the South African Association of Arbitration 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.
- 17.8.4 If the parties do not agree to refer the dispute to arbitration, they will proceed to litigation in the courts.
- 17.8.5 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.

**17.9 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.

**17.10 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.