

**MTN 2016 TRANCHE 1 SUBSCRIPTION AND CALL OPTION AGREEMENT**

between

**MTN ZAKHELE FUTHI (RF) LIMITED**  
(Registration Number 2016/268837/06)

and

**MTN GROUP LIMITED**  
(Registration Number 1994/009584/06)

## Table of Contents

	<b>Page No</b>
1. Definitions and interpretation .....	1
2. Introduction.....	14
3. Condition Precedent .....	14
4. Overriding effect of the Subordination and Undertaking Agreement.....	15
<b>PART A: SUBSCRIPTION FOR THE MTN TRANCHE 1 SUBSCRIPTION SHARES.....</b>	<b>15</b>
5. Subscription.....	15
6. Payment of the MTN Tranche 1 Subscription Price.....	15
7. Allotment and issue of the MTN Tranche 1 Subscription Shares.....	15
8. Implementation .....	16
9. Warranties and representations .....	16
<b>PART B: THE NVF CALL OPTION .....</b>	<b>17</b>
10. Calculation of the NVF Balance and Maximum NVF Call Option Shares ..	17
11. Grant of the NVF Call Option .....	18
12. Exercise of the NVF Call Option .....	19
13. Regulatory approvals.....	22
14. Transfer terms .....	24
15. Early exercise of the NVF Call Option.....	25
16. Rebalancing Subscriptions .....	30
17. Acceleration of the right to exercise the NVF Call Option.....	31
18. Priority of payments .....	32
19. Certificates.....	35
20. Impossibility .....	35
21. Adjustment on Corporate Events .....	36
<b>PART C: GENERAL TERMS .....</b>	<b>36</b>
22. Termination and breach.....	36
23. Dispute resolution.....	38
24. Expert determination.....	41
25. Miscellaneous matters .....	42
25.1 notices .....	42
25.2 address for service of legal documents.....	43
25.3 entire contract.....	44
25.4 no stipulation for the benefit of a third person .....	44

25.5	no representations .....	44
25.6	variation, cancellation and waiver .....	44
25.7	indulgences .....	45
25.8	cession and delegation .....	45
25.9	set off .....	46
25.10	applicable law .....	46
25.11	costs .....	46
25.12	signature in counterparts .....	46
25.13	independent advice.....	46
25.14	co-operation .....	47
Annexe A	Warranties by MTN.....	48
Annexe B	Warranties by MTN.....	50
Annexe C	Undertakings by BIC2.....	52
Annexe D	Representations and Warranties by BIC2 .....	64
Annexe E	Expert determination.....	71

## 1. Definitions and interpretation

1.1 The capitalised terms in this Agreement (other than the terms defined in clause 1.2) shall bear the meanings ascribed to them in the Implementation Agreement.

1.2 In this Agreement, the following further words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- |       |  |   |
|-------|--|---|
| 1.2.1 | <b>"Acceleration Event"</b>                | has the meaning given to that term in clause 17.2;  |
| 1.2.2 | <b>"Additional Shares"</b>                 | shall bear the meaning ascribed to the term "Additional Shares" in the BIC2 Pref Share Terms; |
| 1.2.3 | <b>"Agreement"</b>                         | means this agreement, including the Annexes, as amended from time to time;                    |
| 1.2.4 | <b>"Annexes"</b>                           | means the annexes attached to this Agreement;   |
| 1.2.5 | <b>"Balancing Purchase Amount"</b>         | has the meaning given to that term in clause 15.5.1   |
| 1.2.6 | <b>"Balancing Purchased MTN Shares"</b>    | has the meaning given to that term in clause 15.5.3.2;  |
| 1.2.7 | <b>"Balancing Subscription Amount"</b>     | has the meaning given to that term in clause 15.5.1   |
| 1.2.8 | <b>"Balancing Subscription MTN Shares"</b> | has the meaning given to that term in clause 15.5.2;  |

1.2.9	<b>"BIC2 Discharge Date"</b>	shall bear the meaning ascribed to the term "BIC2 Discharge Date" in the BIC2 Pref Share Terms;
1.2.10	<b>"BIC2 Empowerment Compliance Period"</b>	a period of <del>eleven</del> <sup>eight</sup> years commencing on the date on which BIC2 Ordinary Shares are allotted and issued to Black Participants under the BIC2 Public Offer and ending on the <del>eleventh</del> <sup>eight</sup> anniversary of such date;
1.2.11	<b>"BIC2 MOI"</b>	shall mean the constitutional documents of BIC2 from time to time;
1.2.12	<b>"BIC2 Pref Share Terms"</b>	shall bear the meaning ascribed to the term "BIC2 Preference Share Terms" in the BIC2 Pref Subscription Agreement;
1.2.13	<b>"BIC2 Priority of Payments"</b>	shall bear the meaning ascribed to the term "Priority of Payments" in the BIC2 Pref Share Terms;
1.2.14	<b>"BIC2 Public Offer Documents"</b>	shall bear the meaning ascribed to the term "Public Offer Documents" in the BIC2 Pref Share Terms;
1.2.15	<b>"Calculation Dispute Notice"</b>	has the meaning given to that term in clause 24.1;
1.2.16	<b>"Condition Precedent"</b>	means the condition precedent in clause 3;
1.2.17	<b>"CPI"</b>	means the weighted average consumer price index of all items of the 12 areas specified in the notice as notified by Statistics South Africa;
1.2.18	<b>"Distributable Cash"</b>	means all cash on hand and any positive cash balances in respect of any account or

- investment at any bank or otherwise available to BIC2 from time to time, excluding (prior to the BIC2 Discharge Date) any amount standing to the credit in the 'BIC2 Security Account' pursuant to (and as that account is defined in the BIC2 Pref Share Terms;
- 1.2.19            **"Encumbrance"**            in relation to any property, includes any security cession, pledge, charge, hypothecation, lien, subordination, mortgage, option over, right of retention or any other encumbrance whatsoever, or any form of hedging or similar derivative instrument of any nature whatsoever of or over that property or class of property (or any part or proceeds thereof), or any lending of that property, and the words "**Encumber**", "**Encumbered**" and "**Encumbering**" shall have corresponding meanings;
- 1.2.20            **"Expert"**                            the person appointed from time to time as such under paragraph 1 of Annexe "E" to this Agreement;
- 1.2.21            **"Implementation Agreement"**            means the written agreement entitled "New Empowerment Transaction and MTN Zakhele Unwinding Implementation Agreement" entered into or to be entered into amongst *inter alia* MTN, BIC2, MTN Zakhele, BFC2 and BFC, which agreement provides, *inter alia*, for the closing and implementation of the Transaction Documents and matters related thereto;
- 1.2.22            **"Initial NVF Balance"**            means an amount calculated as the difference between (a) the Transaction

- Share Price, multiplied by the MTN Tranche 1 Subscription Shares and (b) the MTN Tranche 1 Subscription Price;
- 1.2.23            **"Longstop Date"**            has the meaning given to that term in clause 15.3.2;
- 1.2.24            **"Market Value"**            in respect of the MTN Shares means, as at a particular date ("**the Reference Date**"), the VWAP as at the 1<sup>st</sup> Business Day prior to the Reference Date; provided that if at any time such calculation is not able to be performed due to the MTN Shares not being listed or being suspended from listing at any time during the relevant period, the Market Value shall be determined by the statutory auditors for the time being of MTN or an independent financial institution or advisory firm with an office in South Africa nominated for this purpose by MTN, in each case acting as experts and not as arbitrators;
- 1.2.25            **"Market Purchase Period"**            has the meaning given to that term in clause 15.5.3.1;
- 1.2.26            **"Maximum NVF Call Option Shares"**            means, as at any particular date ("**the Reference Date**"), a number of MTN Shares (fractions rounded down), equal to the NVF Balance as at the day immediately preceding the Reference Date divided by the Market Value of the MTN Shares as at the Reference Date;
- 1.2.27            **"Maximum NVF Reduction"**            has the meaning given to that term in clause 15.3.1;

- 1.2.28            **"MTN Acceded Nominee"**            is as defined in the Subordination and Undertaking Agreement;
- 1.2.29            **"MTN SA Group"**            Mobile Telephone Networks Proprietary Limited, and its South African subsidiaries from time, and any other South African operating subsidiary of any of MTN, Mobile Telephone Networks Holdings Limited and/or MTN International Proprietary Limited designated in writing by MTN to BIC2 from time to time;
- 1.2.30            **"MTN Shares"**            means ordinary shares with a par value of R0.0001 each in the issued share capital of MTN. For the avoidance of doubt, references to the MTN Shares include references – changed as necessary – to any class of shares into which such shares may be converted (whether pursuant to the Companies Act or otherwise) and to such shares as they may be consolidated and sub-divided from time to time;
- 1.2.31            **"MTN Tranche 1 Additional Subscription Shares"**            means additional MTN Shares, if any, subscribed for by BIC2 as contemplated in clause 15.5.2;
- 1.2.32            **"NVF Balance"**            means, from time to time, an amount calculated in accordance with clause 10, representing the notional outstanding balance from time to time of the Notional Vendor Finance to BIC2;
- 1.2.33            **"NVF Call Option"**            means the call options granted to MTN (and/or its nominee/s and/or its cessionaries, as applicable) pursuant to Part B of this Agreement;



- 1.2.34            **"NVF Call Option Counterparty"**            means, in respect of any NVF Call Option, MTN or its nominee or cessionary, as the case may be, as contemplated in clause 12.5;
- 1.2.35            **"NVF Call Option Delivery Date"**            means, in respect of any exercise of an NVF Call Option, the date of delivery by BIC2 to the relevant NVF Call Option Counterparty of the NVF Call Option Shares in respect of which such NVF Call Option was exercised, as set out in clause 14.4;
- 1.2.36            **"NVF Call Option Discharge Date"**            means the later of the date (after the New Empowerment Transaction Closing Date) on which (a) on or after the end of the BIC2 Empowerment Compliance Period the NVF Balance is or is reduced to RNil; and (b) BIC2 has discharged in full and unconditionally all of its obligations to MTN in connection with the NVF Call Option under this Agreement;
- 1.2.37            **"NVF Call Option Early Exercise Notice"**            has the meaning given to that term in clause 15.3;
- 1.2.38            **"NVF Call Option Early Exercise Shares"**            has the meaning given to that term in clause 15.4.2;
- 1.2.39            **"NVF Call Option Exercise Date"**            means, in respect of any exercise of an NVF Call Option, the date of exercise thereof as set out in clause 12;
- 1.2.40            **"NVF Call Option Exercise Price"**            means, in respect of any exercise of an NVF Call Option, the price payable for the

relevant NVF Call Option Shares, being R0.0001 per NVF Call Option Share;

- 1.2.41            **"NVF Call Option Reference Date"**            means, in respect of any exercise of an NVF Call Option, the NVF Call Option Exercise Date;
- 1.2.42            **"NVF Call Option Reference Price"**            means, in respect of any exercise of an NVF Call Option, the Market Value of an MTN Share on the relevant NVF Call Option Reference Date;
- 1.2.43            **"NVF Call Option Shares"**            means the MTN Shares which are the subject of an NVF Call Option;
- 1.2.44            **"NVF Call Option Trigger Date"**            means the later of:
- 1.2.44.1            the first Business Day after the ~~eleventh~~<sup>eighth</sup> anniversary of the New Empowerment Transaction Closing Date or such later date and/or dates as (a) MTN may from time to time notify BIC2 in writing prior to such ~~eleventh~~<sup>eighth</sup> anniversary (or the then current NVF Call Option Trigger Date, if later than the ~~eleventh~~<sup>eighth</sup> anniversary), such date notified by MTN however not being later than the later of (i) 6 months from the ~~eleventh~~<sup>eighth</sup> anniversary of the New Empowerment Transaction Closing Date and (ii) 6 months after the BIC2 Discharge Date and/or (b) MTN and BIC2 may agree in writing; and

- 1.2.44.2 the BIC2 Discharge Date (or such earlier date as MTN and the New Preference Share Agent and MTN may agree in writing);
- 1.2.45 **"NVF Roll-up Rate"** means a nominal annual compounded monthly in arrears rate equal to 80% of the Prime Rate;
- 1.2.46 **"Parties"** means the parties to this Agreement, being BIC2 and MTN;
- 1.2.47 **"Prime Rate"** means the rate of interest (nominal annual compounded monthly in arrears) from time to time published by the Prime Rate Reference Bank as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be final and binding on the Parties);
- 1.2.48 **"Permitted Refinancing"** any 'Refinancing' of the 'Third Party Financing' (each as defined in the Relationship Agreement) which is approved in writing by MTN pursuant to clause 22 of the Relationship Agreement;
- 1.2.49 **"Permitted Refinancing Documents"** the agreements or documents (including, if applicable, the relevant provisions of the BIC2 MOI) giving rise to or regulating the Permitted Refinancing and identified as such for purposes of this Agreement by MTN in writing;

1.2.50	<b>"Prime Rate Reference Bank"</b>	if and for so long as such is a bank registered as such in South Africa and quotes a prime lending rate, Nedbank Limited; or, failing it, FirstRand Bank Limited; or, failing it, The Standard Bank of South Africa Limited; or, failing it, Absa Bank Limited; or, failing it, such other bank as the statutory auditors of MTN may specify from time to time;
1.2.51	<b>"Rebalancing Subscription"</b>	a subscription by BIC2 for (or purchase of) MTN Shares in the circumstances and as provided for in clauses 16.3 to 16.5;
1.2.52	<b>"Rebalancing Subscription Date"</b>	is as defined in clause 16.3, being the date on which a Rebalancing Subscription is to occur;
1.2.53	<b>"Rebalancing Subscription Price"</b>	an amount of R0,0001 per MTN Share;
1.2.54	<b>"Rebalancing Subscription Shares"</b>	in respect of each Rebalancing Subscription, such number of shares as are to be subscribed for (or purchased, as the case may be) pursuant to clause 16 on the relevant Rebalancing Subscription Date;
1.2.55	<b>"Relevant Date"</b>	has the meaning given to that term in clause 18.2;
1.2.56	<b>"Sell" or "Dispose"</b>	means sell, alienate, donate, exchange, distribute, transfer or in any manner whatsoever dispose of, whether voluntarily or involuntarily, or enter into any arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned sale,

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

1.2.57            "**Signature Date**"

means, when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;

1.2.58            "**Surviving Provisions**"

means clause 1 (*Definitions and interpretation*), clause 3 (*Condition precedent*), clause 22 (*Termination and Breach*), clause 23 (*Dispute resolution*), clause 25 (*Miscellaneous matters*) and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination by non-fulfilment of the Condition Precedent;

1.2.59            "**Trading Day**"

any day: (i) that is an ordinary trading day on the exchange operated by the JSE (and does not include a day on which trading on the exchange operated by the JSE is scheduled to close prior to its regular weekday closing time); and (ii) on which MTN Shares traded freely;

- 1.2.60                    **"VWAP"**                    with reference to any date ("**VWAP Calculation Date**"), and as contemplated in clause 12.7, the volume weighted average price of an MTN Share for the 30 (thirty) Trading Days immediately preceding the VWAP Calculation Date, such VWAP to be calculated and rounded to the fifth decimal place (ie the sixth decimal place rounded up if greater than or equal to five and rounded down if less than five), and as further determined and adjusted, if applicable, as set out in clause 12.7;
- 1.2.61                    **"VWAP Data Provider"**                    a provider of data services who supplies pricing and trading data from which the VWAP can be determined, who (and whose relevant datapackage) shall be selected by written agreement between BIC2 and MTN from time to time or, failing such agreement, then such person will be INET bfa (or applicable division or subsidiary within the Naspers Limited's group); provided that if INET bfa (or relevant Naspers Limited's division or subsidiary) ceases to provide such services then the VWAP Data Provider will, from time to time, be such leading provider of similar data services whose services are available in the market generally, and which MTN engages at such time for this purpose on a non-exclusive basis; and
- 1.2.62                    **"Waterfall Payment Dates"**                    has the meaning given to that term in clause 15.2.
- 1.3                    The clause headings in this Agreement are for the purpose of convenience only and shall not be taken into account in the interpretation of this Agreement.

- 1.4 Unless inconsistent with the context or unless a contrary intention clearly appears from the context, in this Agreement:
- 1.4.1 any reference to a gender shall include the other genders;
- 1.4.2 any reference to the singular shall include the plural and vice versa;
- 1.4.3 any reference to a "**person**" or "**Person**" includes any natural, juristic or quasi-juristic person, including any sole proprietorship, stokvel, firm, partnership, trust, close corporation, company, undertaking, joint venture, government or public entity, or other incorporated or unincorporated entity or association;
- 1.4.4 references to a "**subsidiary**" or a "**holding company**" shall be references to a subsidiary or holding company as defined in the Companies Act, save that the interpretation and application of these definitions in the Companies Act shall not be limited to South African companies;
- 1.4.5 the use of the words "including", or "in particular" or "for example" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s. Such references to "including", "in particular" and "for example" shall not be construed restrictively but shall mean "including, but without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing" and "for example, but without prejudice to the generality of the foregoing" respectively;
- 1.4.6 any reference to any "**law**" (including the BEE Legislation), or any part thereof, shall be a reference to:
- 1.4.6.1 any law, legislation, statutes, regulations, directives, orders, notices, promulgations and other decrees of any Authority, which have force of law or which it would be an offence not to obey, and any regulations and subordinate legislation promulgated thereunder, and the common law; and

- 1.4.6.2 such "laws" (as defined above) as interpreted, amended, modified, re-enacted, consolidated or substituted from time to time, whether before or after the Signature Date; and
- 1.4.7 any reference to any document or agreement (including this Agreement) shall be a reference to that document or agreement as at the Signature Date (or, if later, as at the date on which such agreement is first concluded or document first executed), and as novated, amended, reinstated or substituted from time to time thereafter in accordance with its terms.
- 1.5 If any provision in this clause 1 is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the interpretation and definitions clause.
- 1.6 The rule of construction that, in the event of an ambiguity in respect of a term or terms of an agreement, such term or terms shall be interpreted against the Party responsible for drafting or preparing them, shall not apply.
- 1.7 References to a "day" shall be to any calendar day. Where any number of days or Business Days is prescribed in this Agreement to be before, or after a date, or within a set number of days of a date, the period will be calculated by excluding the reference date and including the date at the end of the set number of days from such reference date unless (in the case of days after a stated date) the last day falls on a day not being a Business Day, in which event the last day shall be the next succeeding Business Day.
- 1.8 Unless stated otherwise, a reference in this Agreement to any person shall be a reference to such person's permitted successor in title, transferee, cessionary and/or delegatee.
- 1.9 Unless stated otherwise, where any reference is made in this Agreement to the consent or agreement of, or election by, any Party, such consent, agreement or election may, for the avoidance of doubt, be made, given or withheld, conditionally or unconditionally, in the relevant Party's sole and absolute discretion.
- 1.10 The expiration or termination of this Agreement shall not affect the Surviving Provisions or such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity



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

- 1.11 In the event of any conflict between the provisions of this Agreement and those of the Implementation Agreement, the provisions of the Implementation Agreement shall take precedence.

## 2. Introduction

- 2.1 As an integral part to achieving the objectives of the New Empowerment Transaction, MTN wishes to allot and issue, and BIC2 wishes to subscribe for, the MTN Tranche 1 Subscription Shares on the New Empowerment Transaction Closing Date, subject to MTN's rights in terms of the NVF Call Option.

- 2.2 The Parties accordingly agree on the terms and conditions as set out below.

## 3. Condition Precedent

- 3.1 The provisions of this Agreement (other than the Surviving Provisions, which shall be unconditional and of immediate force and effect on and with effect from the Signature Date), are subject to the fulfilment or waiver of the Condition Precedent that the Implementation Agreement is entered into by each of the intended parties thereto by no later than the Business Day preceding the Determination Date (as defined in the Implementation Agreement) and all of the New Empowerment Transaction Conditions Precedent have been fulfilled or waived (or deemed fulfilled) as the case may be (save for any New Empowerment Transaction Condition Precedent requiring this Agreement or other Transaction Document to become unconditional) within the time permitted therefor and in the manner provided for in terms of the Implementation Agreement.

- 3.2 If the Condition Precedent is not timeously fulfilled or waived in writing by the Parties, this Agreement (save for the Surviving Provisions) shall never become effective and the Parties shall restore to one another any performance which they may have rendered or received under this Agreement. Neither Party shall have any claim against the other under this Agreement as a result of the failure of the Condition Precedent, except for such claims, if any, as may arise from the provisions of the Surviving Provisions.

#### 4. **Overriding effect of the Subordination and Undertaking Agreement**

The Parties record, acknowledge and agree that, notwithstanding anything to the contrary in this Agreement, including in clauses 12, 15 and 17, their respective abilities to enforce rights, take certain actions and perform their obligations under this Agreement, including the right of MTN or any party to whom MTN cedes its rights and/or delegates its obligations in terms of this Agreement, to claim any amount from BIC2 in terms of this Agreement, are subject in all respects to the terms of the Subordination and Undertaking Agreement. MTN agrees that, prior to the BIC2 Discharge Date, notwithstanding anything to the contrary contained herein, unless the New Preference Share Agent otherwise permits in writing, it may only cede and/or delegate its rights and/or obligations under this Agreement to an MTN Acceded Nominee.

### **PART A: SUBSCRIPTION FOR THE MTN TRANCHE 1 SUBSCRIPTION SHARES**

#### 5. **Subscription**

On the New Empowerment Transaction Closing Date, BIC2 hereby subscribes for the MTN Tranche 1 Subscription Shares at the MTN Tranche 1 Subscription Price.

#### 6. **Payment of the MTN Tranche 1 Subscription Price**

On the New Empowerment Transaction Closing Date, BIC2 shall pay the MTN Tranche 1 Subscription Price to MTN, in cash, by physical payment of money or by way of electronic funds transfer to the MTN Implementation Account (free of exchange and bank commission and free of set-off or any other withholding or deduction), which payment to MTN shall constitute a complete discharge of BIC2's obligations to pay the MTN Tranche 1 Subscription Price.

#### 7. **Allotment and issue of the MTN Tranche 1 Subscription Shares**

7.1 Against payment by BIC2 to MTN of the MTN Tranche 1 Subscription Price on the New Empowerment Transaction Closing Date pursuant to clause 6, MTN shall allot and issue the MTN Tranche 1 Subscription Shares to BIC2.

7.2 All the costs of the creation, allotment and issue of the MTN Tranche 1 Subscription Shares shall be borne and paid for by MTN.

## 8. Implementation

The steps set out in clauses 5 to 7 above shall be effected and implemented on the New Empowerment Transaction Closing Date in the manner and sequence provided for in the Implementation Agreement, and the relevant terms of the Implementation Agreement relating to the implementation of such steps under this Agreement will be incorporated as terms of, and regarded as obligations under, this Agreement.

## 9. Warranties and representations

- 9.1 MTN gives to BIC2 the warranties set out in Annexe "A" in connection with the subscription of the MTN Tranche 1 Subscription Shares.
- 9.2 Other than the warranties set out in Annexe "A", MTN gives no other warranties (whether express, implied or tacit) in relation to or in connection with the MTN Tranche 1 Subscription Shares and/or the direct or indirect business, assets, liabilities, share capital, financial position of MTN and/or any other matter concerning MTN or its subsidiaries at any time, whether before or after the Signature Date, and the MTN Tranche 1 Subscription Shares are otherwise allotted and issued to and subscribed for by BIC2 on a "voetstoots" basis. BIC2 acknowledges and agrees that it relies entirely on its own judgment in subscribing for the MTN Tranche 1 Subscription Shares. Save for the rights accorded to BIC2 under this Agreement, BIC2 hereby waives and/or limits to the full extent permitted by law its rights in respect of all warranties and/or other remedies which may arise or be implied or imposed by law in respect of the transactions under this Agreement.
- 9.3 MTN makes no representations to BIC2 whatsoever in connection with the MTN Tranche 1 Subscription Shares and/or the direct or indirect business, assets, liabilities, share capital, financial position of MTN and/or any other matter concerning MTN or its subsidiaries at any time, and no warranty given in Annexe "A" shall be construed as a representation. BIC2 acknowledges that it has not received or relied on any representations from any other person and, as an irrevocable *stipulatio alteri* in favour of such persons (which may be accepted at any time and without further notice to BIC2), waives any claims which it has or may have in respect thereof.

- 9.4 BIC2 agrees and undertakes to MTN that, except in the case of fraud, it has no rights against and shall not make any claim against any present or former employee, director, agent or officer of MTN (or any of its subsidiaries) on whom it may have relied before agreeing any term of or before entering into this Agreement (including in relation to any information supplied or omitted to be supplied by any such person in connection with the warranties in Annexe "A"). The provisions of this clause 9.4 will be an irrevocable *stipulatio alteri* in favour of such present and former employees, directors, agents and officers who may accept the *stipulatio* at any time and without further notice to BIC2.
- 9.5 Save where a claim arises from the fraudulent or wrongful, wilful acts or omissions of MTN, MTN's liability for breach of warranty or undertaking hereunder shall at all times be limited to an amount equal to the Transaction Share Price, multiplied by the number of MTN Tranche 1 Subscription Shares. In no circumstances (to the maximum extent so permissible in law), shall MTN be liable for any consequential losses or damages which arise from or in connection with any breach of breaches of warranty or undertaking, including loss of profit, loss of income and loss of prospective increase in value of the MTN Tranche 1 Subscription Shares.
- 9.6 Nothing in this clause 9 shall in any way whatsoever limit or detract from the respective rights and obligations of MTN and BIC2 under the Subordination and Undertaking Agreement and/or from the enforcement by any party thereto of any rights and/or remedies which may arise or be implied or imposed by law in respect of such agreement.

## **PART B: THE NVF CALL OPTION**

### **10. Calculation of the NVF Balance and Maximum NVF Call Option Shares**

- 10.1 The NVF Balance will be calculated daily on and from the Last Practicable Date in accordance with the methodology and principles set out in this clause 10.
- 10.2 The NVF Balance will initially be the Initial NVF Balance.
- 10.3 Thereafter, until the later of (i) the end of the BIC2 Empowerment Compliance Period or (ii) such time as the NVF Balance is RNil, the NVF Balance:
- 10.3.1 will increase monthly in arrears, by an amount equal to the sum of the amounts calculated in respect of each day in the relevant month, such daily

amount being the NVF Balance on the commencement of that day multiplied by the NVF Roll-up Rate and divided by 365; provided that, where the NVF Balance is calculated on a day other than the first day of a month in relation to a full exercise of the NVF Call Option, then the relevant NVF Balance will for such purposes be calculated on that day as if it were the end of the month and will accordingly include the sum of the daily amounts which have accumulated under this clause 10.3.1 but which have not yet been added to the NVF Balance;

10.3.2 will, following an exercise of an NVF Call Option (or relevant part thereof) and on the relevant NVF Call Option Delivery Date (but with effect from the relevant NVF Call Option Exercise Date), decrease by an amount equal to:

10.3.2.1 the number of NVF Call Option Shares delivered to the NVF Call Option Counterparty multiplied by the applicable NVF Call Option Reference Price; or

10.3.2.2 if clause 20 applies, the amount paid to the NVF Call Option Counterparty pursuant to clause 20; and

10.3.3 will increase, on each Rebalancing Subscription Date, by an amount equal to the number of Rebalancing Subscription Shares multiplied by the difference between (a) the Market Value of an MTN Share on the Rebalancing Subscription Date and (b) the Rebalancing Subscription Price.

## 11. Grant of the NVF Call Option

On the New Empowerment Transaction Closing Date, and indivisibly with the subscription by BIC2 for the MTN Tranche 1 Subscription Shares (but not as consideration for the issue of those shares), BIC2 irrevocably grants to MTN a call option (and/or call options should the call option be exercised in one or more parts) to purchase from it (and to require BIC2 to sell and deliver to MTN) at the NVF Call Option Exercise Price a variable number of MTN Shares equal in number to the Maximum NVF Call Option Shares (as calculated from time to time) on the dates and at the times set out herein, and grants to MTN the associated rights, and undertakes the associated obligations, as set out in Part B of this Agreement, as read with Part C of this Agreement ("**the NVF Call Option**", as defined). The NVF Call Option shall endure for the entire BIC2 Empowerment Compliance Period (ie. notwithstanding any intermediate fluctuation

or discharge thereof, including if the NVF Balance is Nil at any time during such period), but shall otherwise be discharged and terminate at or after the end of the BIC2 Empowerment Compliance Period on the NVF Call Option Discharge Date.

## 12. Exercise of the NVF Call Option

### Time of exercise

12.1 MTN shall be entitled to exercise the NVF Call Option in whole or in part:

12.1.1 on or, subject to clause 12.3, after the NVF Call Option Trigger Date; or

12.1.2 at any time or times prior to the NVF Call Option Trigger Date:

12.1.2.1 with the prior written consent of:

12.1.2.1.1 (subject to clause 12.1.2.1.3) BIC2, if the NVF Call Option Exercise Date is prior to the eleventh anniversary of the New Empowerment Transaction Closing Date;

12.1.2.1.2 (subject to clause 12.1.2.1.3) the New Preference Share Agent, if the NVF Call Option Exercise Date is prior to the BIC2 Discharge Date; and/or

12.1.2.1.3 both BIC2 and the New Preference Share Agent where clauses 12.1.2.1.1 and 12.1.2.1.2 both apply; or

~~12.1.1~~ 12.1.2.2 as may be permitted pursuant to the provisions of clause 15 (read with clause 18) and/or clause 17.

~~12.1.2~~ at such time or times prior to the NVF Call Option Trigger Date at such time or times prior to the NVF Call Option Trigger Date as (i) the New Preference Share Agent may, in its sole discretion, permit; provided that such date may not be earlier than the eighth anniversary of the New Empowerment Transaction Closing Date without the written consent of BIC2 and/or (ii) as may be permitted pursuant to the provisions of clause 15 (read with clause 18) and/or clause 17.

### Manner of exercise

- 12.2 Any exercise of the NVF Call Option (or part thereof) shall, save as otherwise provided in clauses 12.3 and/or 15.6:
- 12.2.1 be effected by written notice to BIC2 (the date of such notice being the relevant "**NVF Call Option Exercise Date**" in relation to such exercise); and
- 12.2.2 record the number of MTN Shares in respect of which the NVF Call Option is being exercised, such number being, for the avoidance of doubt, up to but not exceeding the Maximum NVF Call Option Shares as at such date.
- 12.3 Unless MTN and BIC2 agree otherwise in writing, MTN shall – without further written notice to BIC2 being required – exercise and shall be deemed to have exercised the NVF Call Option in full (ie. in respect of the Maximum NVF Call Option Shares) on the NVF Call Option Trigger Date; provided that, if for any reason such automatic deemed exercise by the Call Option Counterparty would be unlawful, the exercise thereof shall be postponed until the earliest date thereafter that MTN (including, for the avoidance of doubt, the Call Option Counterparty) may lawfully exercise the NVF Call Option; provided that if such extension exceeds a period of 1 year after the NVF Call Option Trigger Date, the provisions of clause 20 shall be deemed to apply *mutatis mutandis* and the NVF Call Option shall be deemed to have been exercised in full at such time and settled in cash in the manner and amount provided for therein.
- 12.4 For the avoidance of doubt, where MTN exercises the NVF Call Option in respect of fewer shares than the Maximum NVF Call Option Shares, the NVF Balance shall be reduced as provided for in clause 10.3.2 and the NVF Call Option (correspondingly resized) shall otherwise continue to be exercisable in all other respects unchanged under this Agreement.

Nominees and cessionaries

- 12.5 MTN shall, on written notice to BIC2 from time to time, be entitled to:
- 12.5.1 exercise the NVF Call Option (in whole or in part) through one or more nominees; and/or
- 12.5.2 cede and/or delegate to any person all or any part of its rights and/or obligations in respect of an NVF Call Option (or any part thereof), including

the right to exercise an NVF Call Option (or any part thereof) and/or to take delivery thereunder,

such person being, in relation to the relevant NVF Call Option and/or part thereof, the "**NVF Call Option Counterparty**" and any references in this Agreement (including as to regulatory triggers and requirements) to MTN in relation to such NVF Call Option and/or part thereof shall, unless expressly stated otherwise or otherwise required in the context, be read as references to the relevant NVF Call Option Counterparty.

#### Effect of exercise

- 12.6 Immediately on exercise of the NVF Call Option (or part thereof) under this Agreement, and without further action being required, a binding agreement of sale and purchase shall arise between BIC2 and the NVF Call Option Counterparty on the terms and conditions in clauses 13 and 14 (as read with Part C of this Agreement).

#### Calculation of VWAP

- 12.7 For purposes of this Agreement, the VWAP shall:
- 12.7.1 be calculated from, and with reference to, the relevant volume weighted daily data supplied by the JSE (or relevant third party VWAP Data Provider, as the case may be) to MTN from time to time in accordance with the relevant data package subscribed for from time to time by MTN;
- 12.7.2 if the MTN Shares trade 'cum dividend' for any Trading Day forming part of the VWAP calculation but the relevant MTN Shares will be settled to MTN or BIC2, as the case may be, excluding such distribution, be adjusted to exclude from the VWAP calculation (by subtracting from the relevant trading price/s) the face value of any cash distribution (and the fair value of any in specie distribution) on each such affected Trading Day; and
- 12.7.3 if any share split or share consolidation occurs in respect of the MTN Shares during the period in respect of which the VWAP is determined, or after its determination but before settlement of the relevant NVF Call Option Shares, then the VWAP will be adjusted so as to be calculated on a uniform basis throughout the period of calculation as if the split or consolidation had



occurred at the commencement of the period, and the resulting number of MTN Shares to be delivered shall accordingly be adjusted to reflect the relevant split or consolidation.

### 13. Regulatory approvals

13.1 The exercise of the NVF Call Option, and resulting sale and purchase agreement under clause 12.6, shall be suspensively conditional on the fulfilment of the following conditions:

13.1.1 the lodgement, within 60 Business Days of the relevant NVF Call Option Exercise Date, by the NVF Call Option Counterparty of the necessary applications (subject always to the rights or obligations of the applicant to amend or supplement such application as may be necessary or desirable) for approval by all Authorities or persons which are required (a) by law to give their approval as a precondition for any exercise and/or implementation of the NVF Call Option; and (b) which may be required in order to preserve any rights (including access rights), licence, permission, consent or condition of business applicable by law to the MTN SA Group; and

13.1.2 the unconditional approval being granted, within 180 days of the NVF Call Option Exercise Date, by all Authorities or persons referred to in clause 13.1.1; or, if the approval is granted by such Authorities or persons subject to stipulated conditions, such conditions being accepted in writing by the relevant party(ies) to the sale in respect of whom such conditions apply within 5 Business Days of being notified of such conditions (or such further period as (i) the NVF Call Option Counterparty may specify (but no more than a further 90 days); or (ii) BIC2 and the NVF Call Option Counterparty may agree).

13.2 The Parties record that, notwithstanding the time periods permitted in clauses 13.1.1 and 13.1.2 it is their common intent to resolve the fulfilment or non-fulfilment of the suspensive conditions as soon as reasonably possible, and accordingly undertake to one another to use reasonable endeavours to procure the fulfilment of the conditions as soon as reasonably possible.

- 13.3 The suspensive condition in clause 13.1.1(b) (read with clause 13.1.2) is stipulated for the benefit of the NVF Call Option Counterparty, and may be waived by written notice to BIC2 prior to the time within which such condition is required to be fulfilled.
- 13.4 If an exercise of the NVF Call Option fails by virtue of a failure of any of the suspensive conditions, the NVF Call Option shall remain in force and may be duly exercised subsequently in accordance with, and subject to, the provisions of this Agreement in all respects as if such failed exercise had not occurred.
- 13.5 If the issue and/or transfer of securities pursuant to the provisions of this Agreement requires the consent or approval of any Authority, or law to be complied with, after the relevant issue and/or transfer, the exercise of the NVF Call Option, and resulting sale and purchase agreement under clause 12.6, shall be resolutely conditional on (i) such consent or approval not being granted unconditionally by the relevant Authority/ies (or, if granted conditionally, on conditions which are not accepted in writing by the relevant party(ies) to the sale in respect of whom such conditions apply within 5 Business Days of being notified of such conditions (or such further period as BIC2 and the NVF Call Option Counterparty may agree)); and/or (ii) on such law not being complied with, in each case by 180 days (or such longer period as (i) the Call Option Counterparty may specify (but not more than 90 days) or (ii) the Call Option Counterparty and BIC2 may agree) after the NVF Call Option Exercise Date. The resolute condition may be waived by the Call Option Counterparty by written notice to BIC2 given on or before the expiry of the period for its non-fulfilment.
- 13.6 The Parties record that, notwithstanding the time periods permitted in clause 13.5, it is their common intent to secure the relevant approval and/or consent and/or compliance with law (and thus securing that the resolute condition does not trigger), and accordingly undertake to one another to use reasonable endeavours to procure that the resolute condition does not trigger.
- 13.7 If an exercise of the NVF Call Option fails by virtue of a failure of the resolute condition in clause 13.5, the Parties shall restore to one another any performance as may have occurred thereunder, and the NVF Call Option shall remain in force and may be duly exercised subsequently in accordance with, and subject to, the provisions of this Agreement in all respects as if such failed exercise had not occurred.

## 14. Transfer terms

- 14.1 Subject to the fulfilment of any suspensive conditions to which the NVF Call Option is subject, the risk in and the benefit of the relevant NVF Call Option Shares shall pass to the NVF Call Option Counterparty with effect from the NVF Call Option Exercise Date.
- 14.2 Notwithstanding 14.1, ownership of the relevant NVF Call Option Shares shall pass to the NVF Call Option Counterparty on delivery thereof against payment of the full amount of the purchase price therefor.
- 14.3 Any sale and/or transfer of NVF Call Option Shares pursuant to the exercise of the NVF Call Option shall further be on terms that:
- 14.3.1 BIC2 warrants and undertakes to the NVF Call Option Counterparty that, on delivery of the NVF Call Option Shares, it will be the sole registered and beneficial owner of the NVF Call Option Shares to the exclusion of all third parties and will be entitled to give, and will give, valid ownership to the NVF Call Option Shares to the NVF Call Option Counterparty;
- 14.3.2 BIC2 warrants and undertakes to the NVF Call Option Counterparty that the NVF Call Option Shares will be free, and will be transferred free, from all Encumbrances or other third party rights; and
- 14.3.3 the NVF Call Option Shares are transferred with the benefit of all rights attaching to them as at the NVF Call Option Exercise Date, including the right to any dividends or distributions declared and/or paid in respect of the NVF Call Option Shares on or after such date.
- 14.4 BIC2 shall deliver the NVF Call Option Shares to the NVF Call Option Counterparty on:
- 14.4.1 if the exercise of the NVF Call Option is subject to suspensive conditions as provided for in clause 13, the 2<sup>nd</sup> Business Day following the fulfilment or, where applicable, waiver of such suspensive conditions; otherwise
- 14.4.2 the 2<sup>nd</sup> Business Day following the NVF Call Option Exercise Date,
- (the "**NVF Call Option Delivery Date**"), against payment by the NVF Call Option Counterparty of the NVF Call Option Exercise Price.

14.5 The NVF Call Option Counterparty will pay the NVF Call Option Exercise Price to BIC2, in cash, by physical payment or by way of electronic funds transfer to the South African bank account specified by BIC2 in writing not less than 5 Business Days prior to the NVF Call Option Delivery Date (including, if applicable, as may already have been nominated for this purpose under the Transaction Documents to which MTN is a party) (which payment shall be made free of exchange and bank commission and which payment by the NVF Call Option Counterparty shall constitute a complete discharge of its obligations to pay the NVF Call Option Exercise Price).

14.6 In effecting the due transfer of the NVF Call Option Shares to the NVF Call Option Counterparty, by no later than the NVF Call Option Delivery Date, BIC2 shall execute all documents of transfer as are reasonably required by the NVF Call Option Counterparty (in a form reasonably satisfactory to the NVF Call Option Counterparty) and will deliver to the NVF Call Option Counterparty all such documents of transfer and relevant documents of title evidencing ownership in the NVF Call Option Shares, including – where such shares are in certificated form – the share certificate evidencing BIC2's registered title to the NVF Call Option Shares. In this regard, where the NVF Call Option Shares are evidenced by a share certificate or share certificates, BIC2 shall procure that a new share certificate is obtained to reflect the NVF Call Option Shares and that such new certificate is delivered to the NVF Call Option Counterparty.

## 15. Early exercise of the NVF Call Option

15.1 BIC2 shall be entitled (and in certain instances, obliged) at any time and from time to time prior to the NVF Call Option Trigger Date to offer to MTN (or, for the avoidance of doubt, where applicable, the NVF Call Option Counterparty) an early exercise of all or part of the NVF Call Option on the terms set out in this clause 15.

15.2 Pursuant to and subject to the terms of the Finance Documents, BIC2 will prior to the BIC2 Discharge Date only have the right to offer the early exercise of the NVF Call Option at select dates and times permitted by and subject to the applicable BIC2 Priority of Payments ("**Waterfall Payment Dates**") and in relation to such number of MTN Shares may or may be required to be subscribed for or purchased by BIC2 under this Agreement with amounts for this purpose provided for under the Finance Documents. BIC2 undertakes to co-operate with MTN to advise MTN not less than 7 Business Days in advance of any such Waterfall Payment Dates of

the maximum amount (or its best-estimate thereof, including for the avoidance of doubt an estimate prepared for or on its behalf by suitably qualified advisors appointed for this purpose) which it could, on such date, be obligated to pay or provide for the purposes of this clause 15 under the applicable BIC2 Priority of Payments having regard to the cash which is expected to be available for this purpose in the relevant BIC2 Priority of Payments after payment or provision for higher ranking payments under such BIC2 Priority of Payments.

- 15.3 Should BIC2 wish to offer to MTN an early exercise of all or any part of the NVF Call Option (or be obligated to do so in accordance with the applicable BIC2 Priority of Payments or clause 18), and – if such early exercise would be prior to the BIC2 Discharge Date – provided that such early exercise under the Finance Documents and as contemplated in clause 15.2, it shall do so by notice in writing to MTN (an **"NVF Call Option Early Exercise Notice"**):
- 15.3.1 specifying an amount ("**the Maximum NVF Reduction**"), representing the maximum amount which the NVF Balance may be reduced by following the early exercise (if any) by MTN of the NVF Call Option and the maximum amount which BIC2 will utilise to subscribe for further MTN Shares (or otherwise apply as directed in clause 15.5); which maximum amount will, in relation to a mandatory offer to MTN under the applicable BIC2 Priority of Payments or in terms of clause 18, be limited to the amount available in the relevant BIC2 Priority of Payments or priority of payments under clause 18 for this purpose;
- 15.3.2 specifying a date (being a Business Day on or after the date on which BIC2 gives MTN the NVF Call Option Early Exercise Notice) by when MTN may elect in writing whether or not to exercise all (or relevant part) of the NVF Call Option ("**the Longstop Date**"); and
- 15.3.3 confirming that it has available cash in an amount not less than the Maximum NVF Reduction and is permitted under the Transaction Documents to apply such cash if and as may be required pursuant to clause 15.5.
- 15.4 Following receipt of the NVF Call Option Early Exercise Notice, MTN shall have the right (but no obligation) to exercise all (or, as applicable, part) of the NVF Call Option on or prior to the Longstop Date and shall do so *mutatis mutandis* in

accordance with clauses 12.2 to 12.6 (but excluding clause 12.3), clauses 13 and 14, and, where applicable, clause 15.6, save that:

- 15.4.1 MTN may only exercise the NVF Call Option in respect of, and require delivery of, a maximum number of MTN Shares equal to the lesser of:
- 15.4.1.1 the Maximum NVF Call Option Shares as at the NVF Call Option Exercise Date; and
- 15.4.1.2 the Maximum NVF Reduction notified under clause 15.3.1 divided by the NVF Call Option Reference Price (fractions of MTN Shares rounded down); and
- 15.4.2 in the exercise notice, MTN shall specify to BIC2 the number of MTN Shares (not exceeding the limit set in clause 15.4.1) in respect of which it has elected to exercise the NVF Call Option prior to the NVF Call Option Trigger Date (such number of shares being "**the NVF Call Option Early Exercise Shares**");

provided that, where clause 15.5.3 applies, the implementation of the above exercise of the NVF Call Option will be delayed (and the NVF Call Option Delivery Date postponed) until 2 Business Days after the expiry of the Market Purchase Period (as defined in clause 15.5.3.1) and the NVF Call Option Early Exercise Shares shall be adjusted and be deemed to be the lesser of:

- 15.4.3 the NVF Call Option Early Exercise Shares as elected by MTN under clause 15.4.2; and
- 15.4.4 a number of MTN Shares calculated by the following formula (fractions of an MTN Share rounded down):

$$[((ES \times RP) - BPA)/RP] + BPS, \text{ where}$$

"**ES**" represents the NVF Call Option Early Exercise Shares as elected by MTN under clause 15.4.2;

"**RP**" represents the NVF Call Option Reference Price;

"**BPA**" represents the Balancing Purchase Amount elected under clause 15.5.1; and

"BPS" represents the Balancing Purchased MTN Shares (as defined in clause 15.5.3.2) acquired by BIC2 in the market or from third parties under clause 15.5.3.1.

- 15.5 If and to the extent that MTN exercises all (or, as applicable, part of) the NVF Call Option as envisaged in clause 15.4, and acknowledging that BIC2's shareholding in MTN will decrease following the early exercise of all or part of the NVF Call Option thereunder, and that such decreased shareholding in MTN will reduce the effective interest of Black People and/or Black Groups (as such terms are defined in the Relationship Agreement) in MTN (which reduction both BIC2 and MTN may wish to avoid or minimise), MTN may (but shall not be obligated) during the BIC2 Empowerment Compliance Period require BIC2 to acquire MTN Shares up to or equal in number to the NVF Call Option Early Exercise Shares specified in clause 15.4.2, pursuant to a subscription and/or market purchases, in such combination as MTN may direct or as may be determined under clause 15.6, as follows:
- 15.5.1 if MTN requires BIC2 to acquire additional MTN Shares consequent on the early exercise of an NVF Call Option under this clause 15, it shall advise BIC2 thereof under the NVF Call Option Exercise Notice and include therein the total amount BIC2 is required to apply under this clause 15.5 (such amount not to exceed the Maximum NVF Reduction), split into the portion to be applied under clause 15.5.2 ("**the Balancing Subscription Amount**") and the portion to be applied under clause 15.5.3 ("**the Balancing Purchase Amount**");
- 15.5.2 to the extent that MTN requires BIC2 to subscribe for MTN Shares under clause 15.5, BIC2 shall subscribe for a number of MTN Shares equal to the Balancing Subscription Amount divided by the Market Value of an MTN Share as at the NVF Call Option Exercise Date (ie. the NVF Call Option Reference Price as it applies to the NVF Call Option which triggers this clause 15.5), fractions of MTN Shares to be rounded down (together "**the Balancing Subscription MTN Shares**"). This subscription shall be effected *mutatis mutandis* in accordance with clauses 6, 7 and 9 (in which respect the warranties shall be as set out in Annexe "B") on the NVF Call Option Delivery Date immediately following the delivery on such date by BIC2 of the NVF Call Option Early Exercise Shares;

- 15.5.3 to the extent that MTN requires BIC2 to acquire additional MTN Shares in the open market or from third parties under clause 15.5:
- 15.5.3.1 within a period ("**the Market Purchase Period**") of 5 Business Days (or such longer period as MTN may agree to) following the NVF Call Option Exercise Date BIC2 shall acquire as many MTN Shares in the open market or from willing third parties as it is able at such price or prices as may reasonably be available to BIC2 and which, for the avoidance of doubt, may be at a price or prices which exceed the NVF Call Option Reference Price, and shall do so in an aggregate amount up to the Balancing Purchase Amount.
- 15.5.3.2 the number of MTN Shares so purchased by BIC2 within the Market Purchase Period shall be the "**Balancing Purchased MTN Shares**";
- provided that, prior to the BIC2 Discharge Date, MTN shall only be entitled to require BIC2 to, and BIC2 shall only be obligated to, so subscribe for and/or purchase MTN Shares under this clause 15.5 if and to the extent that BIC2 is permitted to do so under the Finance Documents (including in accordance with the BIC2 Priority of Payments).
- 15.6 If under clause 15.4 for any reason MTN does not make an express election to exercise all (or, as applicable, part) of the NVF Call Option in respect of NVF Call Option Early Exercise Notice and does not notify BIC2 that it declines the offer made thereunder (which elections and/or notifications may, for the avoidance of doubt, be given either in relation to a specific offer or generally so as to apply on a standing basis until otherwise amended or revoked), then MTN shall – without further written notice to BIC2 being required – be deemed, as at 16h30 on the Longstop Date:
- 15.6.1 to have exercised the NVF Call Option to the maximum limit set in clause 15.4.1; and
- 15.6.2 to have directed BIC2 to effect a subscription of additional MTN Shares under clause 15.5 in the Balancing Subscription Amount equal to the Maximum NVF Reduction applicable under the relevant NVF Call Option Early Exercise Notice; provided that, in this regard, if so notified in writing by MTN from time to time prior to the applicable Longstop Date, MTN shall have the right, in



lieu of a subscription, to require BIC2 to effect the rebalancing by way of a purchase of MTN Shares from a designated member of the MTN Group, and shall timeously notify BIC2 of the identity of such member of the MTN Group. Any such purchase shall be effected *mutatis mutandis* (including as to the price for and number of the MTN Shares) as set out in clause 15.5.2.

- 15.7 In addition to the foregoing, BIC2 and MTN may, by agreement between them, agree on the early exercise by MTN of all or part of the NVF Call Option to an extent so agreed and, in such circumstances, the provisions of clauses 15.2 to 15.5 shall not apply to such early exercise of all or part of the NVF Call Option. The early exercise of the NVF Call option or part thereof under this clause 15.7 shall be effected *mutatis mutandis* in accordance with clauses 12.2 to 12.6 (but excluding clause 12.3), clauses 13 and 14.

## 16. Rebalancing Subscriptions

- 16.1 The Parties note that the funding provided to BIC2 under the BIC2 Pref Shares (and the related liabilities and obligations under the Finance Documents) have a scheduled maturity on or about the fifth anniversary of the Effective Date ("**Initial Scheduled Maturity Date**"), and are required to be settled at such time, whereas the BIC2 Empowerment Compliance Period of the scheme and the scheduled maturity of the NVF (and related liabilities and obligations in respect thereof) are both 118 years after the Effective Date.
- 16.2 BIC2 acknowledges that the overall objective for MTN in facilitating the New Empowerment Transaction is for BIC2, as a Black Company, to obtain a material shareholding in MTN on the commencement of the New Empowerment Transaction and for it thereafter to maintain such shareholding for the duration of the BIC2 Empowerment Compliance Period such that the MTN SA Group derives all or a meaningful portion of its empowerment status (as regards equity ownership) from such shareholding.
- 16.3 Accordingly, BIC2 agrees in favour of MTN that if at any time and for any reason during the BIC2 Empowerment Compliance Period any or all of the MTN Shares held by it are Disposed of, including any voluntary or involuntary Disposal as a result of the Third Party Funding being or becoming due and payable (including as a result of a failure to Refinance (as defined in the Relationship Agreement) all or any part thereof in circumstances where the relevant terms, conditions and/or

funding rates were not approved by MTN), MTN shall have the right at any time thereafter (but shall not be obligated) during the BIC2 Empowerment Compliance Period on written notice to BIC2 ("**Rebalancing Notice**") to require BIC2 to subscribe for (or purchase, as provided for in clause 16.5) MTN Shares at the Rebalancing Subscription Price, which Rebalancing Notice shall set out:

- 16.3.1 the number of MTN Share to be subscribed for (the "**Rebalancing Subscription Shares**", as defined); provided that such number may be any number up to, but not in excess of, the number of MTN Shares which have been Disposed of; and
- 16.3.2 the date on which the subscription is to occur ("**Rebalancing Subscription Date**"), such date being not less than 5 Business Days after the date of the Rebalancing Notice (or such shorter period as the Parties may agree).
- 16.4 On the Rebalancing Subscription Date, BIC2 shall accordingly subscribe for the Rebalancing Subscription Shares at the Rebalancing Subscription Price *mutatis mutandis* in accordance with clauses 6, 7 and 9 (in which respect the warranties shall be as set out in Annexe "B" given as at the Rebalancing Subscription Date).
- 16.5 MTN shall have the right, in lieu of a subscription, to require the Rebalancing Subscription to occur by way of a purchase of MTN Shares from a member of the MTN Group (or a nominated third party). Any such purchase shall be effected *mutatis mutandis* (including as to the price for the MTN Shares) as set out in clauses 16.3 and 16.4.

## 17. **Acceleration of the right to exercise the NVF Call Option**

- 17.1 MTN shall have the right (but no obligation), on written notice to BIC2, to exercise the NVF Call Option (or any part thereof) at any time while there exists an Acceleration Event (as defined below).
- 17.2 For the purposes of this Agreement, an "**Acceleration Event**" shall occur if:
  - 17.2.1 BIC2 breaches any of the undertakings set out in Annexe "C" and such breach is not remedied to the satisfaction of MTN, acting reasonably, within 14 Business Days after having received written notice from MTN requiring such remedy;

- 17.2.2 BIC2 breaches any of the representations and/or warranties set out in Annexe "D" and such breach is not remedied to the satisfaction of MTN, acting reasonably, within 14 Business Days after having received written notice from MTN requiring such remedy;
- 17.2.3 BIC2 commits any material breach of any of the terms, conditions, warranties, representations or undertakings contained in this Agreement and such breach is not remedied to the satisfaction of MTN, acting reasonably, within 14 Business Days after having received written notice from MTN requiring such remedy; and/or
- 17.2.4 any amount owing by BIC2 to BFC2 and/or the holders of preference shares in BFC2 under the Finance Documents is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described) under such agreements and/or pursuant to the relevant terms of the preference shares,

and the "Acceleration Event" shall be deemed to be continuing if and for so long as any of the aforesaid matters, facts, event or circumstances continues unremedied, whether in whole or in part.

## 18. Priority of payments

- 18.1 The Parties acknowledge that BIC2's obligations to use available cash are regulated under the BIC2 MOI (and related Finance Documents) until the BIC2 Discharge Date, and that such agreements include an obligation, at certain times and in (or with references to) certain amounts, to offer MTN an early exercise of the NVF Call Option, as contemplated in clause 15.
- 18.2 After the BIC2 Discharge Date, BIC2 undertakes to MTN that, save as MTN may otherwise permit by prior written consent or save as is otherwise provided or required under any Permitted Refinancing Document, it will deposit all monies received by it into the BIC2 Collection Account (as defined in the BIC2 Pref Share Terms) and, on a quarterly basis on the last Business Day in each of February, May, August and November or such earlier date within a calendar quarter when the balance of the BIC2 Collection Account exceeds R50 million, ("**Relevant Date**") apply all Distributable Cash in accordance with the following priority of payments and for no other purpose:

- 18.2.1 first, to pay any amount due and payable for taxation and other statutory charges and liabilities;
- 18.2.2 second, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clause of this clause 18.2, to make reasonable provisions for taxation and other statutory charges and liabilities, and for deduction of all amounts required to be transferred to any and all reserves required to be created and/or maintained under applicable law or regulation, all in accordance with (i) applicable law (to the extent prescribed); and/or (ii) generally accepted accounting principles current in South Africa, and then only to the extent that such matters would not reasonably be expected to be funded out of future revenues of BIC2;
- 18.2.3 third, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, to pay or make reasonable provision for third party creditors and current debts and operating expenses up to an annual (calendar) amount of (i) prior to the commencement of the BEE Listing Period (as defined in the BIC2 Pref Share Terms), R15 000 000,00 (fifteen million Rand per annum); and (ii) for the duration of the BEE Listing Period, R40 000 000,00 (forty million Rand per annum), and, as a once-off amount, in respect of the BEE Listing (as defined in the BIC2 Pref Share Terms), an aggregate amount not exceeding R30 000 000,00 (thirty million Rand) (adjusted annually to take into account any changes to the CPI since the New Empowerment Transaction Closing Date) or such greater amount as MTN may permit in writing from time to time, all as incurred in the ordinary course of business and in accordance with (a) applicable prevailing trading terms and practices; and (b) generally accepted accounting principles current in South Africa, and then only to the extent that such matters would not reasonably be expected to be funded out of future revenues of BIC2;
- 18.2.4 fourth, only (i) after the expiry of the Initial Period (as defined in the BIC2 Pref Share Terms); (ii) at BIC2's election and in its discretion but provided that (i) the financial covenant/s (measured immediately before and after the proposed dividend payment) set by MTN in writing from time to time in respect thereof is/are satisfied and (ii) no Default or Potential Default exists, as defined in Annexe C hereto, to apply an amount up to 20% of the

Distributable Cash which remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, towards the payment of a cash dividend to the holders of BIC2 Ordinary Shares;

- 18.2.5 fifth, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, to pay to the lender amounts payable under any loan outstanding to the lender under any BIC2 Subordinated Loan Agreement (as defined in the BIC2 Pref Share Terms), in the order of priority as to costs, interest, capital and other sums as set out in such BIC2 Subordinated Loan Agreement;
- 18.2.6 sixth, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, to offer to MTN an early exercise of the NVF Call Option pursuant to clause 15 specifying a Maximum NVF Reduction equal to the balance of the cash thus available and setting out a Longstop Date not less than 7 Business Days thereafter;
- 18.2.7 seventh, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, to pay or make reasonable provisions for any other third party liabilities or expenses which are or will become due and payable and such matters would not reasonably be expected to be funded out of future revenues of BIC2 to the extent not paid; and
- 18.2.8 eighth, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this clause 18.2, and at BIC2's election and in its sole discretion but provided that (i) the financial covenant/s (measured immediately before and after the proposed dividend payment) set by MTN in writing from time to time in respect thereof is/are satisfied and (ii) no Default or Potential Default exists, as defined in Annexe C hereto, to apply all or any part of such amounts towards payment of a cash dividend to the holders of BIC2 Ordinary Shares; and
- 18.2.9 ninth, to the extent that any Distributable Cash remains after payment or retention of amounts in terms of the preceding sub-clauses of this

clause 18.2, to retain any remaining balance of the Distributable Cash in the BIC2 Collection Account, pending its further application under this clause 18 at the next Relevant Date.

- 18.3 Where an amount is provided for, such amount may be retained in the BIC2 Collection Account (or placed in a separate payments reserve account) and earmarked for the required payment (and until such provision is utilised, no longer required or otherwise released) shall for the purposes of the above priority of payments not be regarded as forming part of the Distributable Cash.

## 19. Certificates

Unless disputed as provided for in clause 24, a certificate of, or under the authority of, any director of MTN as to any amount or number calculated or to be calculated under Part B of this Agreement, including the Initial NVF Balance, the NVF Balance, the Market Value, the NVF Call Option Reference Price, the number of MTN Shares in respect of which an NVF Call Option is or may be exercised and the number of MTN Shares to which BIC2 is or may become obligated to subscribe for under clause 15.5.1, and/or the amount payable by BIC2 under clause 20 shall, in the absence of manifest error, be *prima facie* proof thereof for the purposes of this Agreement.

## 20. Impossibility

- 20.1 If, for any reason, BIC2's obligation to deliver to MTN (or MTN's corresponding right to require and/or take delivery of) any NVF Call Option Shares becomes impossible of performance in circumstances where such impossibility would, under common law, excuse non-performance of the obligation, or is or becomes unlawful, or is or becomes otherwise unenforceable under applicable law, or if all MTN Shares become at any time held by a single person (or persons acting in concert) by virtue of a scheme of arrangement or merger or amalgamation transaction or an 'affected transaction' under the Companies Act (including a mandatory acquisition following an affected transaction), MTN shall continue to be entitled to exercise the NVF Call Option save that, upon such exercise, BIC2 shall not be obligated to deliver the relevant number of NVF Call Option Shares but shall, in lieu thereof, pay to MTN (or applicable NVF Call Option Counterparty) an amount equal to the NVF Call Option Reference Price multiplied by the relevant number of NVF Call Option Shares to which this clause 20.1 applies.

20.2 To the extent that BIC2 would be required to Dispose of any assets, including any MTN Shares, in order for it to obtain the cash necessary to make the required payment to MTN (or applicable NVF Call Option Counterparty) under clause 20.1, MTN agrees to grant such consents and/or waivers of the provisions of this Agreement or other Transaction Document which confer on MTN a right or power to preclude or limit such disposals of BIC2's assets as may be necessary to enable BIC2 to so dispose of the assets for cash, such consents and/or waivers to be given on such terms and conditions as MTN may reasonably specify, including as to (i) the extent of the assets that may be disposed of; (ii) the nature of the assets disposed of; (iii) the manner and process of the disposal/s; (iv) the timing of the disposal/s; and (v) the price at which such disposal/s may occur.

## 21. **Adjustment on Corporate Events**

If at any time during which the NVF Call Option remains wholly or partly undischarged, MTN declares and/or pays a dividend *in specie* or unbundles any shareholding (or part of such shareholding) it has in any company, or makes any capitalization issue of securities other than MTN Shares, or a scheme of arrangement is implemented (or to be implemented) in relation to the MTN Shares, or MTN is subject to a merger, consolidation, amalgamation, combination or exchange of shares with another company, or other corporate action applies to the MTN Shares, (all such foregoing events "**Corporate Events**") in each case which may impact on the respective rights and obligations of the Parties under this Agreement, MTN and BIC2 shall consider, in good faith but otherwise without obligation to agree, suitable amendments to this Agreement to take account of the Corporate Events.

## **PART C: GENERAL TERMS**

### 22. **Termination and breach**

22.1 The provisions of this clause 22 are subject in all respects to the provisions of clause 12 of the Implementation Agreement.

22.2 If either Party breaches any provision of this Agreement ("**the Defaulting Party**") and remains in breach for 7 days after written notice to that Party requiring that Party to rectify that breach (other than in respect of clause 22.2.1 in respect of which the 7 day notice period will not apply), or if either Party repudiates this Agreement (such repudiating Party also a "**Defaulting Party**"), save as otherwise

expressly provided elsewhere in this Agreement, the other Party shall be entitled at that Party's option:

- 22.2.1 to sue for the immediate specific performance of any of the Defaulting Party's obligations under this Agreement, whether or not any such obligation is then due; or
- 22.2.2 (either as an alternative to a claim for specific performance or upon the abandonment of such a claim) to cancel this Agreement; provided that no Party shall be entitled to cancel this Agreement except pursuant to clause 22.4.2 or clause 22.5. Written notice of such cancellation shall be given to the Defaulting Party and the cancellation shall take effect on the giving of that notice.
- 22.3 An innocent Party's remedies in terms of this clause (save for the right to cancel this Agreement which is restricted under clause 22.2.2) are without prejudice to any other remedies to which that innocent Party may be entitled in law, including the right to claim such special and general damages as are actionable in law.
- 22.4 Notwithstanding anything to the contrary contained in this Agreement:
- 22.4.1 a breach by a Party of any of the provisions of the Implementation Agreement and/or the New MTN Tranche 2 Subscription Agreement and/or the New MTN Tranche 3 Subscription Agreement shall also constitute a breach by such Party of this Agreement, and references to breaches of this Agreement and/or the provisions of this Agreement shall be read accordingly; and
- 22.4.2 MTN shall be entitled to cancel this Agreement immediately on notice to BIC2 in respect of any breach (including under clause 22.4.1) by BIC2 of this Agreement which occurs on or is otherwise unremedied at the New Empowerment Transaction Closing Date.
- 22.5 In the event that any of the Implementation Agreement and/or the New MTN Tranche 2 Subscription Agreement and/or the New MTN Tranche 3 Subscription Agreement is terminated or cancelled by the parties thereto in accordance with its terms or by operation of law (whether on its terms or as a result of any invalidity or unenforceability of a material term thereof or for any other reason whatsoever), and this Agreement is not otherwise cancelled or terminated as a result thereof,



either of the Parties shall be entitled to cancel this Agreement forthwith on written notice to the other Party.

22.6 To the extent that this Agreement has already been wholly or partially implemented at the time of any cancellation of this Agreement, the Parties shall restore to one another any performance they may have received under this Agreement (and any benefit derived therefrom). If this Agreement is cancelled or terminated as a result of a breach by any Party of its obligations under this Agreement, the costs of restoring the respective performances as required under this clause 22.6 shall be borne by the Defaulting Party.

### 23. Dispute resolution

23.1 This clause 23 is a separate, divisible agreement from the rest of this Agreement and shall:

23.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall be subject to arbitration in terms of this clause 23; and

23.1.2 remain in effect even if the Agreement terminates or is cancelled.

23.2 Save as expressly provided elsewhere in this Agreement (which shall include, for the avoidance of doubt, any matters to be determined by the Expert pursuant to clause 24), any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement including any dispute concerning:

23.2.1 the existence of the Agreement apart from this clause 23;

23.2.2 the interpretation and effect of the Agreement;

23.2.3 the Parties' respective rights or obligations under the Agreement;

23.2.4 the rectification of this Agreement;

23.2.5 the breach or termination of this Agreement or any matter arising out of the breach or termination thereof; and

- 23.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause is valid and enforceable,
- shall be resolved as set out in this clause 23.
- 23.3 Either Party ("**the claimant**") may demand by written notice given to the other Party ("**the respondent**") that a dispute be determined by consultation between the members of their respective boards of directors or senior management nominated for this purpose. The respective nominees shall meet in good faith at such time and on such date as may be agreed to by the respective nominees.
- 23.4 If such persons do not or are unable to meet and/or to resolve the issue within 7 Business Days of the matter being referred to them (or such longer period as they may have agreed under clause 23.3), then either the claimant or the respondent may, on written notice to the other Party, refer the dispute to arbitration in accordance with this clause 23.
- 23.5 The arbitration will be held and will be completed as soon as possible:
- 23.5.1 governed by the provisions of the Arbitration Act, 1965;
- 23.5.2 in accordance with the provisions of the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**");
- 23.5.3 in Sandton, in the English language; and
- 23.5.4 in the presence of only the arbitrator/s, his assistant/s and recording staff the arbitrator/s so require/s, the legal and other representatives of the claimant and respondent who wish to be present or represented, and only if and for so long as the arbitrator/s may permit, such witnesses as either of the claimant or respondent may wish to call to present expert or other evidence.
- 23.6 The arbitrator shall be one who is acceptable to both claimant and respondent and, if the matter in dispute is, or matters are, principally:
- 23.6.1 a legal or deemed legal matter in terms of clause 23.7, a practising attorney or advocate of at least 15 years' standing;

23.6.2 an accounting matter, a practising chartered accountant of at least 15 years standing; or

23.6.3 any other matter, any independent person.

23.7 Should the claimant and respondent fail to agree whether a dispute is principally a legal, accounting or other matter within five days after the arbitration has been demanded by notice as aforesaid, the dispute will be deemed to be principally a legal matter.

23.8 Should the claimant and respondent fail to agree on an arbitrator within 14 days after the giving of notice in terms of clause 23.4, the arbitrator will be appointed at the request of either or both of the claimant and/or respondent by the President for the time being of the Law Society of the Northern Provinces or its successor in law, or by such President's nominee, according to the provisions of clauses 23.6.1 to 23.6.3, 23.7 and 23.9. If two or more disputes are referred to arbitration at the same time, some being of an accounting or general nature and others of a legal nature, unless otherwise agreed in writing between the claimant and the respondent such disputes shall all be deemed to be legal matters.

23.9 Any dispute submitted to and decided by arbitration in terms of this clause 23 shall:

23.9.1 be determined by a single arbitrator, if the claim is for a monetary sum of less than R5 million; or

23.9.2 otherwise, be determined by a panel comprising three arbitrators,

who will be suitably qualified professionals as envisaged in clause 23.6 above ("**the Arbitrator/s**"). In the event that clause 23.9.2 applies, MTN will be entitled to appoint one arbitrator, BIC2 will be entitled to appoint one arbitrator, and the third arbitrator will be appointed by agreement between MTN and BIC2, failing which by the President for the time being of the Law Society of the Northern Provinces or its successor in law, or by such President's nominee *mutatis mutandis* in accordance with clause 23.8. If either MTN and BIC2 fails to appoint an arbitrator within 14 days of written request to do so by the other Party, such arbitrator shall be appointed by the President for the time being of the Law Society of the Northern Provinces or its successor in law, or by such President's nominee *mutatis mutandis* in accordance with clause 23.8.

- 23.10 The decisions of the Arbitrator/s will be final and binding on the claimant and respondent and at the instance of either of them may be made an order of any court to whose jurisdiction the Parties are or either of them is subject.
- 23.11 The Arbitrator/s will be entitled to make such award, including an order for specific performance, interdict, damages or penalty or otherwise as he in his sole discretion may deem fit and appropriate in accordance with applicable law and to deal as he deems fit with the question of costs, including if applicable, costs on an attorney and own client scale, and his own fees and expenses, provided that the costs of the arbitration (i.e. the costs of the Arbitrator/s, the venue and the related costs of the arbitration itself, but for the avoidance of doubt not the costs of the other Party/ies) will be paid upfront by both parties equally (subject to the Arbitrator's final award in this regard). The Arbitrator/s shall be entitled to receive and rely on expert advice and/or expert evidence in reaching his determination.
- 23.12 Notwithstanding the provisions of this clause 23, the High Court of South Africa shall have jurisdiction to determine any proceedings instituted by way of notice of motion by any of the Parties to this Agreement against any of the other Parties thereto in which interim relief, or urgent final relief, is claimed howsoever arising out of or in connection with this Agreement. In respect of such applications, each of the Parties specifically submits itself to and consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).

#### 24. Expert determination

- 24.1 If BIC2 does not agree with the amounts of the applicable NVF Balance, NVF Call Option Reference Price, Maximum NVF Call Option Shares, VWAP and/or Market Value (i) as set out or referenced in any exercise notice given (or deemed to have been given) by the NVF Call Option Counterparty in respect of the NVF Call Option; or (ii) implied under or pursuant to the deemed exercise of, the NVF Call Option (or, for the avoidance of doubt, any underlying fact or data used to derive, or in the derivation of, such amounts), BIC2 shall be entitled to send MTN or the relevant the NVF Call Option Counterparty (as applicable) a written notice ("**Calculation Dispute Notice**") specifying the aspects in respect of which the calculation is not agreed within five Business Days of receipt of the relevant exercise notice for, or deemed exercise of, the NVF Call Option. Upon receipt of such notice the Parties shall endeavour to resolve the dispute by written agreement within a further five

Business Days (or such longer period as the Parties may agree in writing) and, failing such resolution, the disputed NVF Balance, NVF Call Option Reference Price, Maximum NVF Call Option Shares, VWAP and/or Market Value (as applicable) shall be determined by the Expert in accordance with Annexe "E".

24.2 If BIC2 fails to issue a Calculation Dispute Notice within the period stipulated in clause 24.1, it shall - save for any fraud by any person or manifest error - be deemed to have agreed with, and BIC2 and the NVF Call Option Counterparty will be bound by, the then applicable NVF Balance, NVF Call Option Reference Price, Maximum NVF Call Option Shares, VWAP and/or Market Value set out or referenced in any exercise notice given by the NVF Call Option Counterparty in respect of, or implied under or pursuant to the deemed exercise of, the NVF Call Option.

## 25. Miscellaneous matters

### 25.1 notices

25.1.1 Any written notice in connection with this Agreement may be addressed:

25.1.1.1 in the case of **BIC2** to:

address: 5<sup>th</sup> Floor  
Block D, 135 Rivonia Road  
Sandown, Sandton, 2196

fax no: (011) 294 8018

and is marked for the attention: c/o Nedbank Share Scheme Administration; and

25.1.1.2 in the case of **MTN** to:

address: MTN Innovation Centre  
216 14<sup>th</sup> Avenue  
Fairland  
Roodepoort

fax no: (011) 912 4093

and is marked for the attention of the Group Company Secretary.

25.1.2 The notice shall be deemed to have been duly given:

- 25.1.2.1 on delivery, if delivered to the Party's physical address in terms of either clause 25.1.1 or clause 25.2.1 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
- 25.1.2.2 on despatch, if sent to the Party's then fax number between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours), provided that the sender has proof of successful transmission,
- unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 25.1.3 A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7<sup>th</sup> Business Day after the giving of such notice.
- 25.1.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in clause 25.1.1.

25.2 **address for service of legal documents**

- 25.2.1 The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*):

- 25.2.1.1 in the case of **BIC2**:

address: 5<sup>th</sup> Floor  
Block D, 135 Rivonia Road  
Sandown, Sandton, 2196; and

- 25.2.1.2 in the case of **MTN**:

address: MTN Innovation Centre  
216 14<sup>th</sup> Avenue  
Fairland

## Roodepoort

25.2.2 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party such change to be effective only on and with effect from the 7<sup>th</sup> Business Day after the giving of such notice.

25.2.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.

25.3 **entire contract**

This Agreement (as read with the other Transaction Documents) contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in the Transaction Documents.

25.4 **no stipulation for the benefit of a third person**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

25.5 **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.

25.6 **variation, cancellation and waiver**

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 and subject in all respects to the provisions of clause 12 of the Implementation Agreement.

## 25.7 indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

## 25.8 cession and delegation

25.8.1 Save as otherwise expressly provided in this Agreement, including clauses 12.5 and 25.8.2, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

25.8.2 MTN shall, on written notice to BIC from time to time after full discharge by MTN of its obligations under clauses 5, 6 and 7 hereof, be entitled to:

25.8.2.1 exercise its rights under this Agreement through one or more nominees (who, prior to the BIC2 Discharge Date, may only be MTN Acceded Nominees or such other persons who may be permitted in writing by the New Preference Share Agent in its sole discretion); and/or

25.8.2.2 cede and/or delegate to any person (who, prior to the BIC2 Discharge Date, may only be MTN Acceded Nominees or such other persons who may be permitted in writing by the New Preference Share Agent in its sole discretion) all or any part of its rights which it has under this Agreement (including in respect of any undertakings, warranties and/or representations given in its favour, and any discretions, elections, notices or consents which it may exercise, make or give) and/or obligations under this Agreement,

and, save as expressly provided otherwise or whether the context so requires, references to MTN in this Agreement shall (in so far as the relevant rights or obligations which are exercised by, or which have been ceded or delegated to, the third party are concerned) shall be read as references to such third party.



**25.9 set off**

No Party shall be entitled to set off any liability that it owes the other Party against a liability which such other Party owes it. For the avoidance of doubt, BIC2 shall not be entitled to treat as identical any MTN Shares which it is obligated to deliver to MTN under any NVF Call Option, or otherwise withhold delivery of such MTN Shares against, any MTN Shares which MTN is or may be obligated to issue to BIC2, and such obligations shall be separate and severable from one another.

**25.10 applicable law**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

**25.11 costs**

25.11.1 Save as provided to the contrary elsewhere in this Agreement or in the Implementation Agreement, each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

25.11.2 Any costs, including all legal costs on an attorney and own client basis, incurred by a Party arising out of or in connection with a breach by the other Party shall be borne by the Party in breach.

**25.12 signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

**25.13 independent advice**

Each of the Parties hereby respectively agrees and acknowledges that:

25.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

25.13.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

25.14 **co-operation**

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2024

**Witness** \_\_\_\_\_ for **MTN Zakhele Futhi (RF) Limited**

.....

.....  
duly authorised and warranting such authority

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2024

**Witness** \_\_\_\_\_ for **MTN Group Limited**

.....

.....  
duly authorised and warranting such authority

**Annexe A****Warranties by MTN**

- (a) For purposes of this Annexe, references to "**the Agreement**" or "**this Agreement**" shall be references to the agreement to which this is Annexe "A" and the definitions contained in or incorporated into the Agreement shall be applicable in this Annexe.
- (b) The warranties set out below are given as at the Signature Date and as at the New Empowerment Transaction Closing Date, and over the periods between those dates unless otherwise specified in respect of any warranty (in which case the specified date or period shall apply).
- (c) Insofar as any warranty in this Annexe "A" is promissory or relates to a future event, it is deemed to have been given as at the date of fulfilment of the promise or the happening of the event, as the case may be.
- (d) Each warranty in this Annexe "A" is a separate warranty and in no way limited or restricted or governed by any reference to or inference from the terms of any other warranty.

Subject, for the avoidance of doubt, to the fulfilment (or waiver, as the case may be) of the New Empowerment Transaction Conditions Precedent in the Implementation Agreement, and in accordance with clause 9 of this Agreement, MTN warrants to BIC2 that:

**1. Registration, capacity and authority**

- 1.1 MTN is regularly incorporated as a public company according to the laws of South Africa.
- 1.2 No steps have been taken by MTN to terminate the corporate existence of MTN under any applicable law.
- 1.3 MTN is duly registered and incorporated and validly existing and registered and has the power and all necessary governmental and other consents, approvals, licences, permits and authorisations to own its assets and carry on its business under the laws of South Africa.

1.4 MTN has the corporate power to enter into, exercise its rights and perform and comply with the obligations contained in this Agreement which are required to be performed on the New Empowerment Transaction Closing Date.

## 2. **MTN Tranche 1 Subscription Shares**

2.1 MTN will, on the New Empowerment Transaction Closing Date, be authorised and entitled to issue the MTN Tranche 1 Subscription Shares to BIC2 and, upon such issue, BIC2 will be the sole beneficial holder of the MTN Tranche 1 Subscription Shares.

2.2 On the New Empowerment Transaction Closing Date the MTN Tranche 1 Subscription Shares shall be validly allotted and issued to BIC2 as fully paid-up MTN Shares.

2.3 On each date on which BIC2 subscribes for MTN Tranche 1 Additional Subscription Shares from MTN in accordance with the MTN Tranche 1 Subscription and Call Option Agreement, such MTN Shares shall be validly allotted and issued to BIC2 as fully paid-up MTN Shares.

2.4 The MTN Tranche 1 Subscription Shares (and/or any MTN Tranche 1 Additional Subscription Shares) allotted and issued to BIC2 will not be Encumbered, save for any Encumbrances which may generally apply under law, Encumbrances which may generally apply to MTN Shares under MTN's constitutional documents and/or Encumbrances granted by BIC2 (whether under or in connection with the Transaction Documents, or otherwise).

**Annexe B****Warranties by MTN**

- (a) For purposes of this Annexe, references to "**the Agreement**" or "**this Agreement**" shall be references to the agreement to which this is Annexe "B" and the definitions contained in or incorporated into the Agreement shall be applicable in this Annexe.
- (b) The warranties set out below are given as at the NVF Call Option Delivery Date.
- (c) Insofar as any warranty in this Annexe "B" is promissory or relates to a future event, it is deemed to have been given as at the date of fulfilment of the promise or the happening of the event, as the case may be.
- (d) Each warranty in this Annexe "B" is a separate warranty and in no way limited or restricted or governed by any reference to or inference from the terms of any other warranty.

Subject, for the avoidance of doubt, to the fulfilment (or waiver, as the case may be) of the New Empowerment Transaction Conditions Precedent, and in accordance with clause 9 of this Agreement (as read with clause 15.5.2 of this Agreement), MTN warrants to BIC2 that:

**1. Registration, capacity and authority**

- 1.1 MTN is regularly incorporated as a public company according to the laws of South Africa.
- 1.2 No steps have been taken by MTN to terminate the corporate existence of MTN under any applicable law.
- 1.3 MTN is duly registered and incorporated and validly existing and registered and has the power and all necessary governmental and other consents, approvals, licences, permits and authorisations to own its assets and carry on its business under the laws of South Africa.
- 1.4 MTN has the corporate power to enter into, exercise its rights and perform and comply with the obligations contained in this Agreement which are required to be performed on the NVF Call Option Delivery Date.

**2. MTN Tranche 1 Additional Subscription Shares**

MTN will, on the NVF Call Option Delivery Date, be authorised and entitled to issue the relevant MTN Tranche 1 Additional Subscription Shares required to be issued to BIC2 pursuant to clause 15.5.2 of this Agreement and, upon such issue, BIC2 will be the sole beneficial holder of such MTN Tranche 1 Additional Subscription Shares.

## Annexe C

## Undertakings by BIC2

## 1. Definitions

For purposes of this Annexe, references to "**the Agreement**" or "**this Agreement**" shall be references to the agreement to which this is Annexe "C" and the definitions contained in or incorporated into the Agreement shall be applicable in this Annexe. Further, the following capitalised terms in this Annexe "C" shall, unless otherwise stated on inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings in this Annexe "C":

- |       |                       |  |
|-------|-----------------------|--|
| 1.1   | <b>"Default"</b>      | means, in relation to any Transaction Document, any breach of any representation, warranty or undertaking thereunder or any event of default (however described) thereunder;           |
| 1.2   | <b>"Distribution"</b> | means:   |
| 1.2.1 |                       | any repurchase by BIC2, in terms of section 48 of the Companies Act, of any shares of any class in its issued share capital;   |
| 1.2.2 |                       | the payment of any dividend or the making of any other distribution by BIC2 to its shareholders, or the redemption of any shares by BIC2; or   |
| 1.2.3 |                       | the making of any payment as envisaged in section 46 of the Companies Act, as the case may be, by BIC2 to its shareholders, whether such payment is made in cash or <i>in specie</i> ; |





- 1.6 **"JSE Trading Platform Agreements"** has the meaning given to that term in the BIC2 Pref Share Terms;
- 1.7 **"Key Transaction Documents"** has the meaning given to that term in the BIC2 Pref Share Terms;
- 1.8 **"Permitted Encumbrance"** means:
- 1.8.1 any Encumbrance arising or permitted under or evidenced by the Transaction Documents; or
- 1.8.2 any Encumbrance created with the prior written consent of MTN;
- 1.9 **"Permitted Financial Indebtedness"** means any Financial Indebtedness of BIC2:
- 1.9.1 incurred under and in accordance with the Transaction Documents;
- 1.9.2 arising under a Permitted Refinancing; or
- 1.9.3 incurred with the prior written consent of MTN;
- 1.10 **"Potential Default"** means any matter, fact, event or circumstances (including any act or omission) which itself, or which when taken together with any other matter, fact, event or circumstances, would or which, following the giving of notice and no further steps being taken by the recipient of the notice, would or is reasonably likely to, result in Default;
- 1.11 **"Service Provider Agreements"** has the meaning given to that term in the BIC2 Pref Share Terms; and

1.12 **"Transaction Document"** is as defined in the Implementation Agreement but for purposes of this Annexe C shall include each Permitted Refinancing Document.

Insofar as any undertaking in this Annexe "C" is promissory or relates to a future event, it is deemed to have been given as at the date of fulfilment of the promise or the happening of the event, as the case may be.

Each undertaking in this Annexe "C" is an undertaking and in no way limited or restricted or governed by any reference to or inference from the terms of any other undertaking.

## 2. **General undertakings by BIC2**

Save as MTN may permit by prior written consent or as MTN may permit by subsequent written consent within 30 days thereafter, or such lesser or longer period as MTN may notify BIC2 of from time to time (provided that the provision for subsequent written consent will not apply (and MTN's prior written consent shall accordingly be required) if and to the extent that MTN has from time to time given BIC2 prior written notice, whether in relation to a specific act or omission, or acts or omissions, or class or potential class of acts or omissions, that such alternative to obtain subsequent written consent shall not apply in those circumstances), BIC2 hereby irrevocably and unconditionally undertakes to MTN, until the NVF Call Option Discharge Date:

- 2.1 to comply timeously with its obligations under the Transaction Documents;
- 2.2 not to perform any act, or refrain from performing any act which is within its power or control, or exercise any direct or indirect ownership, economic and/or control interest in any way, or otherwise take any action whatsoever or procure the taking of any actions, which would (or which, taken together with the acts, omissions or votes of any other person, would) or which, following the giving of notice and no further steps being taken by the recipient of the notice, would or is reasonably likely to result in a breach or other event of default under (however described) the Transaction Documents;
- 2.3 to permit and authorise (and does hereby so permit and authorise) MTN as its agent and *in rem suam* to take all such steps and sign all such documents as may be necessary or, in MTN's reasonable discretion, required to cure and/or mitigate

any Default or Potential Default directly or indirectly under the Transaction Documents;

2.4 save as required in terms of any Applicable Law agree to or permit any variation, amendment, deletion, addition and/or alteration to and/or (save in respect of any right which BIC2 may have in respect of a Default by MTN) cancellation of:

2.4.1 any of the Transaction Documents, other than the Service Provider Agreements;

2.4.2 any of the Service Provider Agreements, unless such variation, amendment, deletion, addition, alteration and/or cancellation:

2.4.2.1 is, in respect of the JSE Trading Platform Agreements only, for the purposes of BIC2 to effectively and properly manage the operational requirements and risks in respect of establishing, operating and/or maintaining the JSE Trading Platform;

2.4.2.2 will not or is not reasonably likely to result in BIC2 not being able to fully and timeously perform its obligations under the Transaction Documents (other than the Service Provider Agreements) to which it is a party; and

2.4.2.3 will not affect the validity and/or enforceability of any of the security granted under and/or pursuant to the Finance Documents and/or Permitted Refinance Documents;

2.5 BIC2 shall not give any consent or approval requested or required under, or waive any of its rights under, or waive any, or consent to any, non-compliance with, any provision of any Transaction Document, other than the Service Provider Agreements, unless, in relation to such Service Provider Agreements, such consent, approval, waiver or consent to any non-compliance with the provisions of any Service Provider Agreement:

2.5.1 is, in respect of the JSE Trading Platform Agreements only, for the purposes of BIC2 to effectively and properly manage the operational requirements and risks in respect of establishing, operating and/or maintaining the JSE Trading Platform; and

- 2.5.2 will not or is not reasonably likely to result in BIC2 not being able to fully and timeously perform its obligations under the Transaction Documents to which it is a party;
- 2.6 to renew promptly any JSE Trading Platform Agreement that is reasonably necessary or required in order to ensure that all operational requirements and risks arising in respect of establishing, operating and/or maintaining the JSE Trading Platform are in force and effective at all times;
- 2.7 to manage the JSE Trading Platform in a manner such that the operational requirements and risks arising in respect thereof are properly and effectively managed at all times if a failure to do so is reasonably likely to (i) result in BIC2 not being able to fully and timeously perform its obligations under the Transaction Documents (other than the Service Provider Agreements) to which it is a party;
- 2.8 save as expressly contemplated in the Transaction Documents, BIC2 will not implement, or incur any obligation to propose, approve or implement, any resolution (whether of the directors or members of BIC2) or transaction in relation to BIC2 for:
- 2.8.1 the issue of shares by BIC2, other than (i) the issue of the BIC2 Pref Shares under the BIC2 Pref Subscription Agreement; (ii) the issue of BIC2 Ordinary Shares to the BIC2 shareholders in terms of the BIC2 Public Offer; and/or (iii) the issue of BIC2 Ordinary Shares to MTN Zakhele pursuant to the Loan Transfer and Cession Agreement; and/or (iv) the issue of BIC2 Ordinary Shares pursuant to the BIC2 Ords Subscription Agreement;
- 2.8.2 the repurchase by BIC2 of any of its shares (it being recorded for the avoidance of doubt that the redemption of any BIC2 Pref Shares in accordance with the provisions of or in any manner permitted in terms of the BIC2 MOI and/or the BIC2 Pref Share Terms shall not be a breach of this undertaking);
- 2.8.3 the reduction, return or repayment of BIC2's share capital, share premium, stated capital, non-distributable reserve account or reserves (other than payments made in accordance with the BIC2 MOI);
- 2.8.4 a capitalisation issue by BIC2;

- 2.8.5 a declaration, payment or Distribution of any assets (whether cash assets or non-cash assets) by BIC2 (other than payments made as required under and/or in accordance with the Transaction Documents, including any dividend permitted in terms of clause 18.2);
- 2.8.6 any amendment to the BIC2 MOI;
- 2.8.7 any change to the financial year of BIC2;
- 2.8.8 any change in the auditors of BIC2; or
- 2.8.9 any change in the accounting policies of BIC2 as at the New Empowerment Transaction Closing Date;
- 2.9 to procure that its audited financial statements are prepared in accordance with the International Financial Reporting Standards, issued by the Board of International Accounting Standards Committee from time to time ("**IFRS**") and all applicable laws;
- 2.10 to maintain its corporate existence in South Africa according to applicable laws;
- 2.11 to maintain its books and records as required by applicable laws and, where applicable, in accordance with IFRS;
- 2.12 not to repudiate nor to give written notice of an intention to repudiate any Transaction Document (save for any repudiation in relation to a Service Provider Agreement) to which BIC2 is a party or any of its obligations under any such Transaction Document, provided that any such repudiation of a Service Provider Agreement (i) shall be, in respect of the JSE Trading Platform Agreements only, only for the purposes of BIC2 to effectively and properly manage the operational requirements and risks in respect of establishing, operating and/or maintaining the JSE Trading Platform; and (ii) will not or is not reasonably likely to result in BIC2 not being able to fully and timeously perform its obligations under the Transaction Documents (other than the Service Provider Agreements) to which it is a party;
- 2.13 to promptly pay and discharge all taxes and other liabilities payable by or assessed upon BIC2 when due;

- 2.14 shall duly file all tax returns containing information required by law to be contained therein, shall maintain its tax residence in South Africa and shall not surrender or dispose of any tax credit, loss, relief or allowance to any person;
- 2.15 pay when due any filing duties or securities transfer tax or dividends tax (if any) payable in relation to the transactions contemplated under the Transaction Documents and in respect of which BIC2 is liable;
- 2.16 not to vote in favour of, commence and/or implement any business rescue proceedings in respect of itself;
- 2.17 if business rescue proceedings have commenced in relation to BIC2 in accordance with the Companies Act, BIC2 shall not -
- 2.17.1 vote to amend, approve or reject a proposed business rescue plan in relation to such business rescue proceedings in the manner contemplated in the Companies Act; and/or
- 2.17.2 propose the development of an alternative business rescue plan in the manner contemplated in the Companies Act; and/or
- 2.17.3 present an offer to acquire the interests of any or all of the other creditors of the Company in the manner contemplated in the Companies Act,
- if such vote, proposal or offer would reduce the amounts payable to MTN or an MTN Acceded Nominee under this Agreement or any other Transaction Document;
- 2.18 not act in any manner which would contravene the BIC2 MOI;
- 2.19 save for any Permitted Financial Indebtedness or any Permitted Encumbrance, it shall not incur any Financial Indebtedness, grant any credit, make any loan, give any suretyship, guarantee or indemnity to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any other person;
- 2.20 it shall not enter into any type of merger or consolidation with any other person or enter into any type of corporate reconstruction;
- 2.21 it shall not acquire or incorporate any subsidiary or participate in or enter into any joint venture;

- 2.22 it shall not Dispose any of its property (or any interest therein) (save for (i) Disposals giving effect to its obligations under Part B of this Agreement; (ii) Disposals of Designated Additional Shares (as defined in the BIC2 Pref Share Terms) which are required under the BIC2 Pref Subscription Agreement; (iii) Disposals of the Subject Shares (as defined under the BIC2 Pref Share Terms) and/or any other asset of BIC2 pursuant to the enforcement of the provisions of the BIC2 Pledge and Cession (as defined in the BIC2 Pref Share Terms); (iv) Disposals pursuant to the rights of the funders under and/or pursuant to any security granted in respect of the Permitted Refinancing Documents; and (v) an expenditure of cash which is made in accordance with the applicable Priority of Payments or relevant comparable provisions of the Permitted Refinancing Documents), nor allow any of its property to become subject to any Encumbrance (other than a Permitted Encumbrance), or enter into any other transaction in respect of the MTN Shares (or any rights and interests therein);
- 2.23 it shall not acquire any assets or businesses, other than any additional interest in MTN that is acquired in terms of this Agreement and any assets acquired pursuant to any Permitted Action (as permitted and defined under the BIC2 Pref Share Terms and then only for so long as such provisions are in force);
- 2.24 any cash Distribution or other payment of whatsoever nature including, without limitation, any disposal proceeds, received by BIC2 shall be paid directly by the payer thereof into the bank account/s maintained by BIC2 into which the relevant cash Distributions and other payments are required under the Finance Documents to be paid and, to the extent such Finance Documents do not apply to the relevant receipt or have terminated, to the BIC2 Collection Account, to be applied as contemplated in clause 18;
- 2.25 its sole business shall be to (i) enter into the Transaction Documents; (ii) exercise its rights and perform its obligations under the Transaction Documents; (iii) to carry on the business of holding and managing and dealing in MTN Shares, cash and such other property as may be received or acquired solely by virtue of or in relation to the MTN Shares; (iv) receiving and distributing dividends and other distributions in terms of the Transaction Documents; (v) after the BIC2 Discharge Date, such other main business as may be approved in writing by MTN; and (vi) all matters reasonably necessary for or reasonably ancillary to the foregoing;
- 2.26 it shall comply with all applicable laws necessary to carry on its business;

- 2.27 it shall maintain all necessary authorisations under any applicable laws required for the entering into and implementation of the transactions contemplated by the Transaction Documents;
- 2.28 it shall not enter into any agreement, arrangement or understanding whatsoever with any third party whomsoever, save for (i) the Transaction Documents to which it is a party; (ii) as is necessary for or reasonably incidental to the purpose of conducting the limited business permitted in paragraph 2.25 or for exercising its rights, or performing its obligations, under the Transaction Documents to which it is a party; (iii) for any agreement or arrangement in connection with the BIC2 Public Offer Documents; and (iv) the appointment of auditors, legal advisors, tax advisors, directors, its public officer and company secretary, or other corporate or statutory office required to be filled by law;
- 2.29 notwithstanding anything to the contrary herein contained, it shall promptly inform MTN of any change of name and furnish MTN with a copy of the form approved by the CIPC in relation to such change of name;
- 2.30 if it is entitled to receive cash or a distribution *in specie* on account of the MTN Shares it holds, it shall elect to receive cash on account of such MTN Shares which it holds;
- 2.31 to the extent permissible by applicable law, it shall not apply for any order of court in terms of section 48(6) of the Companies Act;
- 2.32 it shall take all action and fulfil all conditions required by it in order to enable it lawfully to enter into, exercise its rights under and comply with its obligations contained in, each Key Transaction Document to which it is a party, and take all action and fulfil all conditions required to ensure that those obligations are legally binding and enforceable;
- 2.33 it shall take all action and fulfil all conditions required by it in order to enable it lawfully to enter into, exercise its rights under and comply with its payment obligations contained in, each Service Provider Agreement, and take all action and fulfil all conditions required to ensure that those payment obligations are legally binding and enforceable;
- 2.34 it shall procure that –



- 2.34.1 all requisite resolutions (the "**Requisite Resolutions**") of its board of directors to authorise its execution and performance of each of the Transaction Documents to which it is a party shall be duly and properly passed at duly convened and constituted meetings at which all statutory and other relevant formalities shall be observed; and
- 2.34.2 the Requisite Resolutions remain of full force and effect and are not varied or rescinded;
- 2.35 it shall not list its shares on any stock exchange save for the BEE Listing (as defined in the BIC2 Pref Share Terms) during the BEE Listing Period (as defined in the BIC2 Pref Share Terms);
- 2.36 save as provided for in the Relationship Agreement, it shall not list its shares on any stock exchange.

### 3. **Information undertakings**

- 3.1 Until the NVF Call Option Discharge Date unless MTN otherwise agrees in writing, BIC2 shall deliver to MTN:
- 3.1.1 all notifications and documents delivered or required to be delivered to the holders of preference shares (or their agents) under the BIC2 Pref Share Terms;
- 3.1.2 notification of (a) any material litigation, arbitration or other analogous proceedings in respect of BIC2, (ii) any material Default or Potential Default, and (iii) any 'BIC2 Trigger Event' and of any 'BIC2 Potential Trigger Event' in respect of which BIC2 has been given notice by the 'Preference Share Agent' (as such terms are defined in the BIC2 Pref Share Terms);
- 3.1.3 the audited annual financial statements of BIC2 for each financial year ending after the Issue Date (as defined in the BIC2 Pref Share Terms) within 120 (one hundred and twenty) Business Days of the end of such financial year;
- 3.1.4 copies of all documents delivered by BIC2 to its creditors or shareholders from time to time on the Business Day following such documents having been delivered to such creditors or shareholders, as the case may be, save

for any documents delivered to Service Providers (as defined in the BIC2 Pref Share Terms) to the extent that any such documents do not relate to the non-payment of, or dispute in respect of, any amounts owing by BIC2 to any Service Provider; and

3.1.5 such other information in relation to BIC2 as MTN may require, promptly after such information is requested by MTN.

3.2 Until the NVF Call Option Discharge Date, BIC2 shall allow any one or more representatives, agents and/or advisors of MTN, upon reasonable notice, to have access to its assets, books and records and to inspect same during normal business hours in order for MTN to confirm or investigate the performance by BIC2 of its obligations (including representations and warranties) under this Agreement and the other Transaction Documents.

## Annexe D

**Representations and Warranties by BIC2****1. Definitions**

- 1.1 For purposes of this Annexe, references to "**the Agreement**" shall be references to the Agreement to which this is Annexe "D" and the definitions contained in or incorporated into the Agreement shall be applicable in this Annexe. Further, the capitalised terms in Annexe "C" (other than the terms defined in clause 1.2 of this Agreement and those incorporated by reference to the Implementation Agreement) shall, unless otherwise stated on inconsistent with the context in which they appear, bear the meanings set out therein in respect of this Annexe "D".
- 1.2 Insofar as any warranty and/or representation in this Annexe "D" is promissory or relates to a future event, it is deemed to have been given as at the date of fulfilment of the promise or the happening of the event, as the case may be.
- 1.3 Each warranty and/or representation in this Annexe "D" is a separate warranty and representation and in no way limited or restricted or governed by any reference to or inference from the terms of any other warranty or representation.

**2. Warranties and Representations**

BIC2 represents and warrants to MTN that, save as MTN may permit by prior written consent or as MTN may permit by subsequent written consent by MTN within 30 days thereafter, or such lesser or longer period as MTN may notify BIC2 of from time to time (provided that the provision for subsequent written consent will not apply (and MTN's prior written consent shall accordingly be required) if and to the extent that MTN has from time to time given BIC2 prior written notice, whether in relation to a specific act or omission, or acts or omissions, or class or potential class of acts or omissions, that such alternative to obtain subsequent written consent shall not apply in those circumstances):

- 2.1 from the Signature Date and each day thereafter until the NVF Call Option Discharge Date (each such date a "**Warranty Date**"), BIC2 is duly registered and incorporated and validly existing and registered and has the power and all necessary governmental and other consents, approvals, licences, permits and authorisations to own its assets and carry on its business under the laws of South Africa;

- 2.2 on each Warranty Date, BIC2 has the corporate power to enter into, exercise its rights and perform and comply with its obligations contained in, the Transaction Documents and/or Permitted Refinancing Document to which it is a party, and no limits on its powers will be exceeded as a result of the borrowings, grant of security or the taking of any other action contemplated by any Transaction Document and/or Permitted Refinancing Document to which it is a party;
- 2.3 on each Warranty Date, save for:
- 2.3.1 the MTN Tranche 1 Subscription and Call Option Agreement, the MTN Tranche 2 Subscription Agreement and the MTN Tranche 3 Subscription Agreement;
- 2.3.2 its acquisition of the MTN Loan Account (as defined in the BIC2 Pref Share Terms) and any assets pursuant to any Permitted Action or Permitted Disposal (each as permitted and defined under the BIC2 Pref Share Terms and then only for so long as such provisions are in force), and then only with the prior written consent of MTN;
- 2.3.3 its acquisitions or Disposal of any assets pursuant to any Permitted Action or Permitted Disposal (each as permitted and defined under the BIC2 Pref Share Terms);
- 2.3.4 the liabilities incurred or assumed, and the assets acquired, in terms of the Transaction Documents and/or Permitted Refinancing Documents to which it is a party;
- 2.3.5 administration and operating expenses and tax liabilities incurred by BIC2 pursuant to the Transaction Documents and/or Permitted Refinancing Documents to which it is a party and other legal and advisory and ordinary operating costs;
- 2.3.6 its entry into of the Transaction Documents and/or Permitted Refinancing Documents to which it is a party;
- 2.3.7 any other acquisition of assets or incurrence of liabilities by BIC2 with the prior written consent of MTN;

- 2.3.8 the making of the BIC2 Public Offer and performance of any of BIC2's obligations in terms of the BIC2 Public Offer Documents;
- 2.3.9 incurring any Permitted Financial Indebtedness (as permitted and defined under the BIC2 Pref Share Terms);
- 2.3.10 establishing, maintaining and operating the JSE Trading Platform during the BEE Listing Period (as defined in the BIC2 Pref Share Terms);
- 2.3.11 any other acquisition of assets or incurrence of liabilities by BIC2 with the prior written consent of MTN,

BIC2 has not and will not have acquired any assets and/or incurred any liabilities of whatsoever nature;

- 2.4 from the date of its incorporation, up to and including each Warranty Date, BIC2 has not and will not have traded in any manner or entered into any transaction whatsoever, save -
  - 2.4.1 in respect of the issue of the BIC2 Ordinary Shares (including the BIC2 Underwrite Shares), the making of the BIC2 Public Offer and performance of any of BIC2's obligations in terms of the BIC2 Public Offer Documents;
  - 2.4.2 for its entry into of the Transaction Documents and/or Permitted Refinancing Documents to which it is a party and performance of any obligations and/or exercise of any rights under such Transaction Documents and/or Permitted Refinancing Documents;
  - 2.4.3 for the appointment of auditors, legal advisors, corporate advisors, tax advisors, directors, its public officer and company secretary;
  - 2.4.4 for its acquisition of any Subject Shares (as defined in the BIC2 Pref Share Terms); and
  - 2.4.5 to open the relevant bank accounts as contemplated under the Finance Documents;
- 2.5 on the New Empowerment Transaction Closing Date and on each Warranty Date thereafter (save only for Disposals giving effect to its obligations under Part B of this Agreement), BIC2 shall be the legal and beneficial owner of the MTN

Tranche 1 Subscription Shares, the MTN Tranche 2 Subscription Shares and the MTN Tranche 3 Subscription Shares;

- 2.6 on each date on which BIC2 subscribes for the MTN Tranche 1 Additional Subscription Shares and/or Balancing Subscription MTN Shares and/or Balancing Purchased MTN Shares and/or Rebalancing Subscription Shares in accordance with this Agreement and on each Warranty Date thereafter, BIC2 shall, save only for Disposals giving effect to its obligations under Part B of this Agreement, be the legal and beneficial owner of such MTN Shares;
- 2.7 on the date on which BIC2 acquires any Additional Shares and each Warranty Date thereafter, save only for Disposals giving effect to its obligations under Part B of this Agreement and/or such Permitted Disposals (as defined under the BIC2 Pref Share Terms), other than (i) Disposals of Designated Additional Shares (as defined in the BIC2 Pref Share Terms) which are required under the BIC2 Pref Subscription Agreement; and (ii) Disposals of Subject Shares (as defined under the BIC2 Pref Share Terms) and/or any other asset of BIC2 pursuant to the enforcement of the provisions of the BIC2 Pledge and Cession (as defined in the BIC2 Pref Share Terms)) as MTN may agree to in writing, BIC2 shall be the legal and beneficial owner of such Additional Shares;
- 2.8 on each Warranty Date, BIC2 is not in default in the payment of any taxes which have been assessed and demanded;
- 2.9 on each Warranty Date, every consent, authorisation, permit, licence, certificate or approval of, or declaration to, any government entity required by BIC2 to authorise, or required by BIC2 in connection with, the validity, enforceability or admissibility in evidence of the Key Transaction Documents and/or Permitted Refinancing Documents to which it is a party or the performance by BIC2 of its obligations under the Key Transaction Documents and/or Permitted Refinancing Documents to which it is a party have, been obtained or made or, prior to the Issue Date (as defined in the BIC2 Pref Share Terms), will have been obtained or made and are in full force and effect and there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same;
- 2.10 on each Warranty Date, the obligations expressed to be assumed by BIC2 in terms of the Transaction Documents and/or Permitted Refinancing Documents to which it is a party are legal and valid obligations binding on BIC2 and enforceable against

- BIC2 in accordance with the terms thereof and do, and will, not conflict with any applicable laws binding on BIC2 or the assets of BIC2;
- 2.11 on each Warranty Date, no Insolvency Event in respect of BIC2, BIC2 Illegality Event nor BIC2 Trigger Event will have occurred (each as defined under the BIC2 Pref Share Terms or comparable provisions of any Permitted Refinancing Document);
- 2.12 on each Warranty Date, no third party has or will have the right to purchase, acquire and/or subscribe for any shares or equity in BIC2 other than as provided for in terms of the Transaction Documents and/or Permitted Refinancing Documents, the BIC2 Public Offer or save as required by any applicable law;
- 2.13 on each Warranty Date, the execution and delivery of, the performance of BIC2's obligations under, and compliance with the provisions of, each of the Transaction Documents and/or Permitted Refinancing Documents by BIC2 will not:
- 2.13.1 contravene any applicable law to which BIC2 is subject;
- 2.13.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement, mortgage or notarial bond or other security instrument to which BIC2 is party or which is binding upon it or any of its assets or revenues;
- 2.13.3 contravene or conflict with any provision of the BIC2 MOI; or
- 2.13.4 result in BIC2's winding-up or liquidation or the appointment to it of a receiver, administrator, business rescue practitioner or liquidator or similar person;
- 2.14 on each Warranty Date, save for any litigation, arbitration or other proceedings of a litigious nature which may arise in connection with any Permitted Enforcement Action (as permitted and defined under the Subordination and Undertaking Agreement and then only for so long as such provisions are in force), or any litigation or arbitration proceedings by BIC2 entered into or opposed by BIC2 reasonably and in good faith in order to enforce its rights or defend invalid claims against it under or in respect of any of the Transaction Documents and/or Permitted Refinancing Documents, BIC2 is not involved in, nor is there pending or threatened against BIC2, any litigation, arbitration or other proceedings of a litigious nature nor are there any circumstances likely to give rise to any such litigation, arbitration

or proceedings provided that if such litigation, arbitration or proceedings are instituted by a BIC2 shareholder, such litigation, arbitration or proceedings have a reasonable prospect of being decided against BIC2 and if so decided, will or is reasonably likely to adversely affect the rights of MTN under the Transaction Documents and/or Permitted Refinancing Documents;

- 2.15 on each Warranty Date, BIC2 has not incurred any Financial Indebtedness other than Permitted Financial Indebtedness;
- 2.16 on each Warranty Date, all information furnished by BIC2 to MTN in connection with:
- 2.16.1 the Key Transaction Documents and/or Permitted Refinancing Documents to which it is a party and the transactions contemplated thereby was, and remains true and correct in all respects and there are no other facts or circumstances of which it is aware that would render any such information misleading;
- 2.16.2 the Service Provider Agreements and the transactions contemplated thereby was, and remains true and correct in all material respects and there are no other facts or circumstances of which it is aware that would render any such information misleading in any material respect;
- 2.17 on each Warranty Date, BIC2 is not in breach of any terms of any agreement of whatsoever nature (other than a Service Provider Agreement) to which it is party, provided that if BIC2 is in breach of any Service Provider Agreement, any such breach does not relate in any way to the payment obligations of BIC2 under such Service Provider Agreement;
- 2.18 on each Warranty Date, the execution and delivery of the Transaction Documents and/or Permitted Refinancing Documents to which it is a party and performance of its obligations thereunder by BIC2 represent commercial acts of BIC2 entered into and done for private and commercial purposes and neither BIC2 nor any of its property is entitled to any right of immunity from set-off, suit or execution in respect of their obligations under the Transaction Documents and/or Permitted Refinancing Documents;
- 2.19 on each Warranty Date, in entering into each of the Transaction Documents and/or Permitted Refinancing Documents and in performing its rights and obligations



hereunder and thereunder, BIC2 acts and will continue to act solely for its own account;

- 2.20 on each Warranty Date, BIC2 has not taken any action nor have any other steps been taken or legal proceedings been started or threatened against BIC2 for its winding-up, dissolution, administration, re-organisation or placing under supervision or for the appointment of a receiver, administrator, administrative receiver, trustee, business rescue practitioner or similar officer of BIC2 or of any or all of its respective assets or revenues;
- 2.21 on each Warranty Date, save for the Permitted Encumbrances (as permitted and defined under the BIC2 Pref Share Terms), no Encumbrance exists over all or any of BIC2's present or future assets or revenues;
- 2.22 on each Warranty Date, BIC2 shall not have disposed of any of its material assets or properties, or any material part thereof; and
- 2.23 on each Warranty Date, save as required in terms of applicable law, there shall be no amendment of the BIC2 MOI and/or any Key Transaction Documents and/or Permitted Refinancing Documents to which it is a party without the prior written consent of MTN.

## Annexe E

## Expert determination

## 1. Appointment of the Expert

- 1.1 In each such instance where an "**Expert**" is to be agreed and/or appointed to perform a function under or in connection with this Agreement, including as to the calculation of the then applicable NVF Balance, NVF Call Option Reference Price, Maximum NVF Call Option Shares, VWAP and/or Market Value or other matter referred for Expert determination under clause 24 of the Agreement ("**Subject Matter**"):
- 1.1.1 the person shall be as identified and agreed to in writing between the relevant parties to whom the valuation or determination applies ("**Determination Parties**") within 7 Business Days of any of such parties calling on the other/s so to agree (or within such further period as all of the relevant Determination Parties may all agree to);
- 1.1.2 if the relevant Determination Parties are unable to agree on the identity of the Expert within the time/s provided for in paragraph 1.1.1 of this Annexe "E", then the Expert shall be a reputable investment bank or other appropriate reputable experts who are independent of the Determination Parties as:
- 1.1.2.1 in the first instance, the Expert shall be as nominated by the statutory auditors from time to time of MTN ("**Auditors**") on the written request of any of the relevant parties; and
- 1.1.2.2 in the final instance, should the Auditors not be able to, or have declined to, nominate the Expert in relation to a specific written request of any of the relevant Determination Parties, then the Expert shall be as nominated by MTN;
- 1.1.3 each of the Determination Parties hereby jointly and severally indemnifies and holds harmless (and agrees to indemnify and hold harmless), the Auditors and MTN in respect of their identification and/or nomination by them of an Expert, and waives any claims each such party may have against them, whether in contract, delict, equity or otherwise in law excluding only wilful misconduct, fraud or any non-waivable provision of applicable law;

- 1.1.4 each of the relevant parties hereby agrees to accept, and be bound by, the reasonable terms of engagement proposed by the Expert, including as to such person's costs, fees and expenses and any limitations of such person's liability; and
- 1.1.5 if the Expert agreed to or nominated pursuant to the above provisions declines to accept the appointment, the process set out above in paragraphs 1.1.1 to 1.1.3 of this Annexe "E" shall be followed again until an Expert is appointed.

## **2. Determination by Expert**

- 2.1 The Expert shall exercise its independent professional judgement in arriving at a determination of the Subject Matter having due regard to the terms of the Agreement, including specifically clause 12.7.
- 2.2 The Expert will act as expert and not as arbitrator, and the determinations by the Expert under this Annexe "E" shall be final and binding on the Determination Parties.